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# **Between communicative action and strategic action: the Article 113 Committee<sup>1</sup> and the negotiations on the WTO Basic Telecommunications Services Agreement**

Arne Niemann

**ABSTRACT** This article argues that Habermas's concept of communicative action significantly adds to our understanding of EU negotiations concerning the WTO Agreement on Basic Telecommunications Services. Accounts of bargaining and strategic action alone leave us in the dark about important parts of these negotiations. Building on existing work, the paper suggests how the concept can be made operationalizable for empirical research. The most important step in this direction has been a further specification of the conditions conducive to communicative action. Important conditions that have been identified are: a strongly shared 'lifeworld' amongst negotiators, uncertainty and lack of knowledge, technical or cognitively complex issues, the presence of persuasive individuals and low levels of politicization. By contributing to the conditions and mechanisms of actors' preference and (norm) change, the article adds to the debate on socialization. As the concept of communicative action advanced our understanding of international negotiations, it should generally contribute to our comprehension of EU negotiations: an important precondition for communicative action, the existence of a shared lifeworld is particularly well developed in the EU, given its dense patterns of institutionalization and socialization.

**KEY WORDS** Article 113 Committee; basic telecommunications services; communicative action; constructivism; negotiation; strategic action.

## **INTRODUCTION**

In February 1997 the World Trade Organization (WTO) Agreement on Basic Telecommunications Services was concluded. The offer made by the Community and member states was regarded as a very liberal one, with few restrictions on market access and foreign investment. This outcome is puzzling. It differs substantially from many member states' initial preferences. This in itself is not necessarily odd because side payments, splitting the difference, threats and other means typically encountered in strategic bargaining could be expected to adequately explain the outcome. However, on closer examination it becomes clear that strategic bargaining only prevailed in some instances, which taken together can by no means explain the outcome sufficiently. Add

other typically employed alternative explanations, such as domestic pressure, and we still do not get the whole picture.

To contribute to solving this puzzle I will draw on Habermas's concept of communicative action.<sup>2</sup> In his theory of communicative action, Habermas (1981) suggests that – apart from strategic action – agents have another mode of action at their disposal, communicative action. In this mode, agents' behaviour is not oriented towards maximizing their own utility but geared towards reaching a *reasoned* understanding about valid behaviour. While there has been a lively theoretical debate on communicative action in the German international relations (IR) journal *Zeitschrift für Internationale Beziehungen* (ZIB), there are few authors who have employed the concept of communicative action empirically in the international relations literature (e.g. Risse 2000; Lynch 1999). In the European Union (EU) literature, the concept has so far been largely ignored or rejected for theoretical or empirical purposes (cf. Neyer 2002; Checkel 2002; yet Risse-Kappen 1996; Eriksen and Fossum 2000).<sup>3</sup> This is astonishing. If communicative action added to our understanding of international relations and especially international negotiations, it should be of even greater relevance in the EU policy process and EU negotiations. An important Habermasian precondition for communicative action – the existence of a shared lifeworld – is particularly well developed in EU negotiating settings which are characterized by high levels of institutionalization and socialization (e.g. Lewis 1998).

Most theorizing in the constructivist tradition has been criticized for its general lack of operational concepts, as propositions are meta-theoretical and thus rarely testable (Moravcsik 1999: 671). Communicative action, which has been appropriated by some constructivists (e.g. Risse-Kappen 1995), could constitute such operational concept. However, Keck (1995: 42) has argued that it is not operationalizable for empirical research, as Habermas failed to specify adequately the conditions<sup>4</sup> under which we can expect communicative action to occur and have an impact on outcomes. Addressing these shortcomings, Risse (2000) has begun to specify some important conditions. I seek to build on his insights by adding to and refining these conditions. The subsequent case study on the WTO telecommunications agreement aims to probe my hypothesized conditions and show that communicative action can matter in EU negotiations.

## THEORETICAL CONTEXT

In recent years a theoretical debate has evolved in political science, centred around the dichotomy of 'communicative action' versus 'strategic action' or 'arguing' versus 'bargaining' (e.g. Elster 1991; Prittwitz 1996). In the international relations context, this debate has mainly taken place in the ZIB. At the centre of this discussion was the question as to what extent Habermas's concept of communicative action could be reconciled with rational choice approaches. Without having reached a definitive consensus, most authors agree

that communicative action requires actors that are not only strategically but also discursively competent, which is difficult to accommodate within rational choice approaches (e.g. Müller 1994; Risse-Kappen 1995; for a deviant account: Keck 1995). This paper seeks to take the almost entirely theoretical debate to more empirical spheres. Preparing the ground for the empirical analysis, I will define some crucial concepts and terminologies and briefly discuss these in the context of current IR and EU integration theorizing.

### Strategic action and bargaining

The concept of 'strategic action' as defined by Habermas presupposes at least two goal-directed actors who seek to achieve their ends by way of an orientation to, and influence on, the decisions of other actors. Goal attainment is dependent on other actors, each of whom is oriented to his own success and behaves co-operatively only as long as developments fit his egocentric interest calculus. Hence, the aim of strategic action is to maximize one's own preferences and interests (Habermas 1981, vol. 1: 129–30). Rational choice theory (e.g. Monroe 1991) makes use of the concept of strategic action.<sup>5</sup> It generally views preferences as stable (e.g. Becker 1976). Game theory (e.g. Luce and Raiffa 1957) is a methodological instrument for analysing strategic action. 'Bargaining' as conceived by Nash (1950) also rests on the assumption of self-interested actors and has commonly been equated with strategic action (e.g. Elster 1991; Risse *et al.* 1999: 12).

In the literature on EU negotiations most authors, either explicitly or implicitly, base their analysis on rational choice premises which leads them to describe EU negotiations as characterized by bargaining.<sup>6</sup> Most prominently perhaps in the European integration literature, Moravcsik (1993) in his liberal intergovernmentalist (LI) approach describes a process of interstate bargaining that defines the possible responses of the EU political system to pressures from national governments. Schneider and Cederman (1994) and Schneider (1994) employ a rational choice approach to explain EU bargaining leading to a stop-and-go pattern in European integration. Scharpf (1988: 258–65) characterizes actors in his 'joint-decision trap' as utility-maximizing and following a 'bargaining decision style'. While Moravcsik and Schneider and Cederman mainly refer to bargaining between governments at the 'super-systemic' (i.e. European Council) level, which is less relevant for the subsequent analysis, Scharpf's analysis already deals with the 'systemic' and 'meso' (i.e. official) levels of decision-making (cf. Peterson 1995: 71), as his empirical evidence is mainly taken from regional policy and common agricultural policy (CAP) policy-making.<sup>7</sup> Bargaining accounts which deal with the official level can also be found in a number of Ph.D. and Master's theses that have extended Moravcsik's LI to encompass day-to-day policy-making negotiations (e.g. Shaffer 1997). In addition, some of the more recent game-theoretic literature has looked at official level strategic interaction, for instance under comitology (e.g. Steunenberg *et al.* 1996).

### Communicative action

Habermas's concept of communicative action refers to the interaction of at least two people who establish interpersonal relations. He talks of communicative behaviour when the actions of participating agents are co-ordinated not via egocentric calculations of success but through acts of reaching understanding (*Verständigung*). In communicative action, participants are not primarily oriented to achieving their own individual success; they pursue their individual objectives under the condition that they can co-ordinate or harmonize their plans of action on the basis of shared definitions of the situation (Habermas 1981, vol.1: 385–6). Hence, the goal of communicative action is not to achieve one's own pre-defined aims. In fact, objectives and preferences are not seen as fixed. They can change through argumentative processes, in which actors challenge each others' causal and principled beliefs. Where actors *bargain* in strategic interaction (when they cannot maximize their utility without co-operation), they *discuss*, *deliberate*, *reason*, *argue* and *persuade*<sup>8</sup> in communicative interaction. Subsequently, the terminologies 'arguing', 'reasoning' and 'deliberating' are used to indicate interaction processes in the Habermasian sense.<sup>9</sup>

Agents engaging in communicative action seek to reach understanding about valid behaviour. Drawing on speech act theory (Searle 1969; Austin 1975) Habermas distinguishes between three validity claims that can be challenged in discourse: first, that a statement is true, i.e. conforms to the facts; second, that a speech act is right with respect to the existing normative context; and third, that the manifest intention of the speaker is truthful, i.e. that he means what he says. Communicative behaviour which aims at reasoned understanding counterfactually assumes the existence of an 'ideal speech situation', in which nothing but the better arguments count and actors attempt to convince each other (and are open to persuasion) with regard to the three types of validity claims. If a listener doubts a validity claim, the speaker must explain himself and come up with reasons which are questionable in a rational discourse. By arguing in relation to standards of truth, rightness and sincerity, agents have a basis for judging what constitutes reasonable choices of action, through which they can reach agreement (Habermas 1981, vol.1: 397–426).

According to Habermas, the possibility for communicative action is dependent on a number of factors. First, actors have to share a common lifeworld (*Lebenswelt*), i.e. collectively share the same patterns of interpretation of the world. Second, actors should recognize each other as equals and need to have equal access to the discourse. Communicative action, thus, excludes interactions characterized by coercion. Third, communicative action is dependent on actors' ability to empathize, i.e. to see things with the eyes of the discourse partner (Habermas 1981: ch. vi).

### The relationship between communicative action and strategic action

The above analysis has pointed to crucial differences between the two modes of action: first, the goal of maximizing utility versus reaching a reasoned

understanding about valid behaviour; second, a conception of preferences as fixed versus one in which interests are fluid and subject to change. Additional differences between the two are noteworthy. A third difference is – like the first one – ontological. Communicative action does not share the individualist ontology of strategic action based on rational choice theory. The latter explains social life as the result of individual human action. In contrast, for communicative action this is only part of the explanation. Human action must be understood as a product of society, in which people shape their social environment and are in turn shaped by it (Habermas 1981: chs v–vii). A fourth difference, already alluded to above, concerns the conception of rationality. While in rational choice theory, broadly speaking, rational actors seek maximum individual utility, Habermas conceives rational actors to be collectively responsible. Moreover, they behave rationally when they are able to defend their behaviour against criticism, i.e. when their actions endure public scrutiny (Habermas 1981: ch. 1).

Another important question is whether communicative action and strategic action are complements or alternatives. Here, one has to distinguish two levels of analysis. First, in terms of function (and occurrence) the two concepts are complementary rather than alternative modes of action. While strategic action refers to a modal logic (of wanting), communicative action refers to an epistemic logic (of believing and knowing) (cf. Holzinger 2001b: 420). Thus, the occurrence of a certain action mode in a given situation is *not* usually the result of competing logics. Second, in terms of causal relevance (on outcomes/positions) the two action modes may be viewed as alternatives. Both modes of action may appear to varying degrees in a given negotiating situation and may thus ‘compete’ for impact on participants’ positions.

### Communicative action in wider perspective

In the recent IR literature, constructivist authors such as Kratochwil (1989) and Onuf (1989) decisively placed emphasis on the role of speech and communication concerning our construction of reality. In the ZIB debate, Müller developed this argument. He sought to close the gap in neoliberal institutionalist reasoning between the motivation for interstate co-operation and its accomplishment, by adding speech as another dimension to the action repertoire available to agents. For this purpose he drew on Habermas’s concept of communicative action. Risse-Kappen (1995: 175), in turn, explicitly appropriated Müller’s argument for the constructivist approach.

The role of speech and communication has also been taken up by other theoretical approaches, albeit in very different forms. Game-theoretic endeavours have incorporated communication into bargaining models. Here communication is mainly aimed at exchanging information about objectives, trade-offs and compromises. These models have commonly been termed ‘cheap talk’, as they provide nearly cost-free, non-binding information (Farrell 1987). They differ from communicative action in that actors may exchange messages about

preferences but they do not argue or reason. Preferences remain fixed and do not change during the communicative process.

Another approach which incorporated communication in international negotiations is 'rhetorical action', the strategic use of norm-based arguments. Actors whose self-interested preferences are in line with certain prevailing norms or values can use these argumentatively to add cheap legitimacy to their position and delegitimize the position of their opponents. Whereas communicative actors attempt to reach reasoned understanding, rhetorical actors seek to strengthen their own position strategically and are not prepared to be persuaded by the better argument (Schimmelfennig 2001).

The concept of communicative action – although bearing some similarity to existing European integration research on (1) socialization, (2) deliberation and arguing, and (3) persuasion – has to be distinguished from these interrelated discussions. First, research on socialization has emphasized the impact of frequent and continuous interaction in a highly institutionalized Community framework on prevailing norms, allegiances and role conceptions (e.g. Lewis 1998; Beyers and Dierckx 1998). While these accounts also tend to arrive at the conclusion that purely bargaining characterizations of EU negotiations are incomplete, the role of communicative action is largely overlooked or not made explicit<sup>10</sup> and certainly not made use of in a systematic fashion.

Second, recent literature has emphasized the role of deliberation and arguing as important features of the EU governance system (Neyer 2002; Joerges and Neyer 1997; Gehring 1999). The understanding of deliberation and arguing in this literature must be distinguished from Habermas's notion of communicative action. When referring to communicative rationality (or deliberation and arguing, for that matter) the approach presented in this paper assumes a mode of action which is fundamentally different from strategic action, whereas Neyer (2002: 5–6) and Gehring (1999: 217), for example, using a wider conception of arguing and deliberation, maintain that these types of interaction may also be strategically motivated. Non-strategic communicative rationality does exist and its analysis would be impeded using wider and less clear-cut conceptual lenses.

Third, Checkel (2002: 3) has emphasized the role of persuasion – 'the process of convincing through argument and principled debate'. Both persuasion and communicative action à la Habermas share a non-strategic understanding of arguing. Persuasion is different from communicative action in the sense that it places more weight on the persuasive appeal of the interlocutor and the open-mindedness of the persuasion target, while communicative action emphasizes the force of the better argument (cf. Checkel 2001: 580; 2002: 4). As the subsequent section will indicate, the concept of communicative action is wide and flexible enough to incorporate acts of persuasion.

#### HYPOTHESIS-BUILDING, OPERATIONALIZATION AND METHODOLOGY

Habermas's theory of communicative action has been criticized for its inadequate operationalization, particularly its failure to specify adequately the

conditions under which actors can be expected to switch between the two modes and under what conditions arguing may have an impact on outcomes (e.g. Keck 1995: 41). Some of the subsequent conditions are interrelated and partly overlap. A clear-cut separation between the two levels – conditions for the occurrence of communicative action and conditions for its impact on outcomes – is not possible.

Generally speaking, the new institutionalism in organizational analysis (DiMaggio and Powell 1991; March and Olsen 1984) may offer a theoretical bridge between Habermas's construction of modes of behaviour, on the one hand, and the (institutional) conditions activating such roles, on the other hand, as the approach focuses on the way in which different institutional contexts shape actors' interests, identities, role conceptions and modes of behaviour (cf. Trondal 2001). For a concrete formulation of the hypothesized conditions below, I have drawn on my own prior work (Niemann 1997, 1998, 2000) and the findings of related research (especially Checkel 2001; Risse 2000; Elgström and Jönsson 2000), including insights from work on epistemic communities (e.g. Haas 1992).

#### Conditions for communicative action to take place and change preferences

*Condition 1: The existence of a strongly shared lifeworld:* Although the preconditions set out by Habermas were not sufficient for determining when communicative action would take place, they constitute important basic prerequisites. In particular, the existence of a strongly shared lifeworld is hypothesized as fundamental, as it provides a common system of norms and values which constitute crucial reference points for communicative action (cf. Haas 1992: esp. 3).

*Condition 2: Lack of knowledge, uncertain situations and new problems:* When actors lack knowledge, face new problems or experience uncertain situations, they are motivated to analyse new information, consider different views and learn. They are particularly inclined to enter into communicative action processes since truth-seeking is essential under such circumstances (cf. Checkel 2001: 562; Risse 2000: 19; Haas 1992: 14–15).

*Condition 3: Cognitively complex issues:* The more technical the negotiated topic, the more expert knowledge is required, the more discursive inquiry is necessary and the more validity claims about what constitutes the right basis for appropriate action have to be made (cf. Elgström and Jönsson 2000: 691–2; Haas 1992). However, for an argumentative debate on complex issues to be possible, negotiators also need to have the requisite expertise to evaluate each others' validity claims (Niemann 2000).

*Condition 4: The possibility for lengthy discussions:* In many negotiations overloaded agendas limit the time available for a formal or informal discussion



of issues, to the extent that truth-seeking becomes very difficult (Niemann 2000). For an argumentative discussion to take place or a reasoned consensus to emerge, time is required, e.g. for laying down arguments, for challenging arguments and for reflection.

*Condition 5: Persuasive individuals:* The theory of communicative action, as outlined above, postulates that the force of the better argument would change the mind of individuals. This may not be enough in itself. The persuasive appeal of the interlocutor may be crucial for persuasion to take place (Checkel 2002: 4). Hence, arguing may impact on preferences more easily when the communicator is persuasive, for example, owing to intellectual capacity or a reputation for integrity.

*Condition 6: Weak/only moderate countervailing pressures – low levels of politicization:* Entering into an argumentative process and reaching a reasoned mutual agreement can be crucially obstructed when some negotiators face strong pressure from outside sources (domestic or international), i.e. when the negotiations become politicized. Hence, argumentative persuasion is more likely 'in less politicized and more insulated, private settings' (Checkel 2001: 563).

### Methodology

The method used to reconstruct and analyse the negotiating process – including officials' preferences, arguments and motivations – is process tracing (e.g. George and McKeown 1985). It is put into practice through four different techniques, thereby reducing reliance on any one source of data. First, forty-seven non-attributable structured interviews have been conducted with members of the Article 113 Committee (Full Members, Deputies and Services), national civil servants and experts from member state capitals involved in the formulation of national positions, Commission officials from what used to be Directorates-General (DGs) I, IV and XIII, and representatives from industry. Interviews employed a similar protocol asking questions concerning preferences and motivations and also addressed actors' judgements concerning the mode of interaction between the negotiating parties at different sequences of the process. Second, owing to a four months' internship at the Council Secretariat, I was able to witness fifteen sessions of the Article 113 Committee (at different levels) as a participant observer. During this period, I also had a chance to be part of informal meetings among officials. Third, during my placement at the Council Secretariat I had access to confidential documentation (including outcomes of meetings' proceedings, correspondence between delegations and informal evaluations). Fourth, I made use of official documentation, major media and specialist publications.

In addition to process tracing, I have used alternative explanations in order to question and verify processes of communicative action during the

negotiations. Changes of position or preference can have different reasons and may not have come about through processes of arguing and reasoning. The absence or non-applicability of powerful alternative explanations – while by no means constituting a sufficient condition for confirming communicative action – can strengthen the rationale for the concept. Potential alternative explanations of preference change considered here are: (1) coercion and side-payments à la strategic interaction; (2) domestic pressures, for example, from domestic industries; and (3) rhetorical action.

Elster (1991) has pointed out that arguing and bargaining are difficult to separate in real life. He holds that processes of arguing frequently serve positions of interest, and that bargaining is often disguised as arguing. Indeed, strategic action and communicative action should be seen as ideal types which do not often appear in their pure form. Therefore, 'the empirical question to be asked is not whether actors behave strategically or in an argumentative mode, but which mode captures more of the action in a given situation' (Risse 2000: 18). But, how do we recognize communicative action when we see it, and how can we distinguish it from rhetorical action or other types of strategic talk? Important tools are the use of alternative explanations and analyses of actors' motivations derived from my triangulation across multiple data sources. In addition, Risse (2000: 18–19) has identified a number of useful clues for spotting argumentative rationality: first, he has pointed to argumentative consistency. Actors that change their arguments depending on the audience probably engage in rhetorical behaviour. Second, arguments in communicative action mode are not based on hierarchy or authority. Pointing to status or rank to make an argument does not qualify as discourse. Third, and in addition to Risse's criteria, the assertion that persuasion has really taken place, i.e. that learning processes resulting from argumentative debate have occurred, gains further substance when what has been learned is used or applied. More concretely, when negotiators start to use arguments (in a non-strategic manner) by which they have been convinced, they are likely to have been truly persuaded.

The subsequent case study should be viewed as a plausibility probe rather than a rigorous test of the hypothesized conditions. One case study which seeks to analyse six conditions faces problems of indeterminacy, even if it allows for several sub-cases. The case study includes three main sub-cases: (1) pre-negotiations; (2) revision of the (first) EU offer concerning restrictions on non-EC investment; (3) finalizing the EU offer: the reduction of Spain's restrictions. The independent variables across sub-cases vary as follows: conditions 2 (uncertainty), 3 (technical issues) and 6 (low levels of politicization) were strongly pronounced during case 1, significantly less present in case 2 and even further diminished in case 3. Condition 5 (persuasive individuals) was present in case 1 but seems to have been pronounced to a (somewhat) lesser extent during case 2 and probably to a significantly lesser extent in case 3. Condition 1 (lifeworld) was at a very high level during case 1. It was slightly reduced in case 2, and more significantly so in case 3. Condition 4 (time) was

at a high level in case 1, slightly reduced in case 2 but at a relatively high level in case 3. As a result of this distribution of values regarding the independent variables, one can expect a negotiating style dominated by communicative action and outcomes close to reasoned understandings in case 1. In contrast, case 2 should contain substantial elements of strategic (i.e. rhetorical) action, while case 3 should be characterized by outright bargaining, including outcomes stemming from side-payments and tit-for-tat strategies.

In order to ascertain the relevance of the hypothesized conditions, the comparative method has been employed. Different degrees of communicative action would corroborate those conditions changing as hypothesized and falsify those conditions remaining constant or changing in the direction opposite to the one hypothesized. With steady levels of communicative action across the three cases, conditions remaining constant are likely to be important, without establishing any positive causality, while changing conditions are challenged (cf. e.g. King *et al.* 1994).

#### THE ARTICLE 113 COMMITTEE

The Article 113 Committee was established as part of the decision-making framework for the common commercial policy. It was directly provided for in the European Economic Community (EEC) Treaty as a special committee appointed by the Council to assist the Commission in the task of conducting international trade negotiations. Although legally the 113 Committee has only a limited consultative function, it is accepted that it has the right to advise the Council on commercial policy matters and to participate in the formation of trade policy (Johnson 1998). While it was essentially created as a watchdog for member states over the Commission – the institution that acts as the external representative of the Community in international trade negotiations<sup>11</sup> – the Committee has become an important partner of the Commission. The Committee functions as a clearing house for the Commission. It communicates member states' views to the Commission and indicates what sort of agreement would be acceptable for conclusion in the Council. The Commission can ignore the wishes of the Committee, which itself does not formally vote, and can place its proposals directly on to the Council via the Committee of Permanent Representatives (COREPER). This, however, rarely happens because Committee members usually reflect the views of their ministers (Hayes-Renshaw and Wallace 1997: 88).

The Article 113 Committee consists of two levels. At senior level, the Full Members are responsible for overall policy. They are usually the highest senior civil servants responsible for trade policy in national administrations. Below, the Deputies tend to deal more with the nuts and bolts issues. The Article 113 Committee has increasingly set up specialized sub-committees in the Council framework to deal with issues such as textiles, services, steel, or export credits. These sub-committees operate independently of the Deputies and receive only moderate supervision by the Full Members (Johnson 1998: 55).

Table 1 Overview of the presence and variation of conditions among cases

<i>Conditions/Cases</i>	<i>Case 1: pre-negotiations</i>	<i>Case 2: revision of first EU offer</i>	<i>Case 3: finalizing the revised EU offer</i>
<b>Condition 1: existence of a strongly shared lifeworld</b>	Present	Slightly diminished	Significantly diminished
<b>Condition 2: lack of knowledge and uncertainty</b>	Present	Diminished	Significantly diminished
<b>Condition 3: cognitively complex issues</b>	Present	Diminished	Significantly diminished
<b>Condition 4: (possibility of) lengthy discussions</b>	Present	Slightly diminished	Present
<b>Condition 5: persuasive individuals</b>	Present	(Slightly)* diminished	(Significantly)* diminished
<b>Condition 6: weak counter-pressures/low politicization</b>	Present	Diminished	Significantly diminished

\* Brackets signify that information is somewhat ambiguous and only allows for a tentative assertion.

The Article 113 Services Committee which, along with the Article 113 Full Members Committee, is relevant for the subsequent case study was originally established at the beginning of the Uruguay Round. During pre-negotiations, the main thrust of the intra-Community negotiations concerning the Basic Telecommunications Agreement took place in the Services Committee. The Full Members Committee became more involved in the formal negotiations, during which the Services Committee repeatedly took a back seat.

Participants of the Article 113 Committee (Full Members and Services) share a strong common lifeworld (*condition 1*). In particular, high levels of interaction – owing to committee participation overlap and considerable informal contact – have given rise to thick trust among officials and ‘close personal acquaintance’ (Johnson 1998: 43), a ‘club-like atmosphere’ (Hayes-Renshaw and Wallace 1997: 90) and a ‘certain community-feeling’ (Murphy 2000: 112) on the different levels of the Article 113 Committee. Moreover, members of the Article 113 Committee share a common system of values and norms, such as ‘a high degree of honesty’, or ‘taking the perspective of opposite numbers’. The lifeworld shared in the Services Committee is stronger than the one in the Full Members Committee owing to higher levels of interaction (cf. Niemann 1997).

## EU<sup>12</sup> NEGOTIATIONS CONCERNING THE WTO AGREEMENT ON BASIC TELECOMMUNICATIONS SERVICES

The General Agreement on Trade in Services (GATS) which was reached during the Uruguay Round contained commitments on value-added telecommunication services, such as voice mail and electronic mail, but no commitments on basic telecommunications services. Post-Uruguay Round negotiations on basic telecommunications services (which were treated as including all major sub-sectors, whether on a facilities or resale basis, whether wireless or wireline) began on 30 April 1994 and were concluded in February 1997. The subsequent analysis of communicative action and the conditions under which it occurs restricts itself to the more decisive sequences and discussions concerning the formation of the EU negotiating offers. I will first look at the important pre-negotiations (case 1), followed by an analysis of formal negotiations, including the revision of the (first) EU offer concerning restrictions on non-EC investment (case 2) and the reduction of Spain’s restrictions (case 3).

### Case 1: pre-negotiations

Informal debate on the WTO liberalization of basic telecommunications began more than a year before formal discussions on the substance of the first EU offer took place. This period was dominated by communicative rather than strategic action. In addition, processes of arguing and reasoning enabled a change in preferences on the part of those delegations that were rather sceptical

of far-reaching liberalization. The far-reaching and very liberal offers made by the Community and member states during the negotiations at WTO level could not be taken for granted, given the initial strategic positions at the EU negotiating table. At the outset, the Commission, the UK, Denmark, the Netherlands and, to a lesser degree, Germany supported very far-reaching WTO liberalization. After enlargement, Sweden and Finland joined this group. On the other side, Spain, Portugal and Greece, and to a lesser extent France, Belgium, Ireland and Luxembourg, were rather more cautious. Italy and Austria took an intermediate stance (cf. Enser 1998).

Although positions and preferences had already been formed to some extent,<sup>13</sup> there was still considerable uncertainty and a substantial lack of knowledge concerning developments in the telecoms services sector and the potential impact of liberalization at WTO level (*condition 2*). The issues under discussion were usually cognitively complex, requiring technological, legal and economic expertise (*condition 3*). During pre-negotiations there was a lot of time available for (often informal) debate (*condition 4*). As most of the discussion took place in the Services Committee the lifeworld shared among participants was particularly strong (*condition 1*). Many of the arguments from the liberal camp were put forward by persuasive individuals, above all Karl Falkenberg, Commission representative in the Services Committee who was highly respected and much trusted in the Committee (*condition 5*). The pre-negotiations were particularly characterized by a lack of pressure that could have countered this process (*condition 6*) owing to the fact that discussions took place in the absence of political attention (interview 1997).

The position of the less enthusiastic delegations mainly rested on three arguments: first, that telecommunications are so crucial to the operation of an economy and touch on so many political interests that the state should retain (some) control over its telecommunications; second, that with strong foreign competition, especially in economies where telecommunications are less developed, national operators would lose market share (cf. Shears 1997). Third, some officials (still) held the view that economies of scale would reduce costs, especially regarding the provision of local physical networks, thus arguing against substantial competition. In addition, some negotiators assumed that liberalization on the international level could be held back by political means.

Counter to the latter assumption, the more market-liberal delegations pointed to the enormous technical progress taking place. They argued that the further development of 'by-pass' services, such as call-back or internet telephony, would make any sort of protectionist legislation preventing such activities very difficult and hence *de facto* liberalization hard to escape, if not inevitable, 'in the medium to long term' (interview 1997; cf. Gonzalez-Durantez 1997: 137).<sup>14</sup> Technical progress also challenged the 'economy of scales' argument. Declining costs of installing wired networks and the growing importance of wireless communication would undermine the cost-reducing rationale of economies of scale for physical infrastructure (interview 1999). Second, it was argued that, owing to the free movement doctrine, the Community's internal market regime would

make it very difficult for individual member states to prevent third-country suppliers of services *once* the internal market in telecommunications was in place.<sup>15</sup> Third, the more liberal delegations pointed out that free trade and open markets would constitute appropriate economic policy because it would lead to greater economic freedom, efficiency and welfare.<sup>16</sup> The benefits of greater competition would greatly outweigh the risks entailed. Finally, member states had already subscribed to the principle of liberalization at Community level. Opening markets to non-EU third countries, it was argued, merely constituted an extension of that logic which member states had already bought into.

During pre-negotiations, the more liberal participants of the Article 113 Committee managed to weaken their counterparts' arguments and have their own arguments largely accepted. Important in changing the sceptics' minds was the anticipated development stemming from technological changes – as a result of which some officials began to regard liberalization as hard to escape, if not inevitable, in the medium term.<sup>17</sup> The result of this process was 'a nearly general, liberal consensus amongst officials in the 113 Committee' (interview 1997). This initial general debate influenced the subsequent broader discourse and negotiations on more specific issues. It led to a modification of general expectations and also of concrete stances by some of the more cautious delegations before formal negotiations on the first EU offer started in June 1995. Agreement was reached that a far-reaching offer should be tabled in the forthcoming negotiations, including a swift opening of markets with only few exceptions. By the end of the pre-negotiations, the positions taken by delegations on important issues already considerably resembled the provisions of the final EU offer.<sup>18</sup> When formal negotiations started, delegations began to negotiate 'on an already liberal plateau' (interview 1997).

As has been pointed out in the literature, strategic action and communicative action are ideal types which do not often appear in their pure form (e.g. Elster 1991; Risse 2000). EU pre-negotiations on the WTO Basic Telecoms Agreement are no exception. Negotiators used a mix of genuinely communicative as well as strategic arguments. However, the available evidence suggests that, in what was a conflict of facts and norms, communicative rationality prevailed. The arguments presented above were made with the genuine intention of leading a reasoned discussion about the right thing to do. One exception seems to have been the argument concerning the acceptance of the liberalization logic for the internal Community regime. By referring to this precedent few officials sought to add cheap legitimacy to their case (interview 1997).

#### *Evidence for communicative and strategic action*

(1) *Actors' statements and characterizations:* That the nearly liberal consensus was brought about largely through argumentative and not strategic (including rhetorical) action can be substantiated in several different ways. First, during a first series of interviews a number of officials characterized the pre-negotia-

tions in terms of communicative rationality without being prodded (interviews 1997). In a second series of more structured interviews, in which three different characterizations (arguing/reasoning, bargaining, confrontation/compulsion) were proposed to officials who were not interviewed before, it was consistently suggested that arguing captured the mode of interaction during the pre-negotiations most appropriately. Bargaining and compulsion were judged by most observers as 'largely absent' (interview 1997).

The way that arguments were presented further supports the case of communicative action. Speakers abstained from pointing to their rank, status or qualification when making their arguments, and thereby avoided adding extra (non-discursive) authority to their statements (cf. Risse 2000: 18). In addition, (liberal) officials refrained from pointing to their neoliberal views as constituting the predominant economic paradigm. Furthermore, as for the single market argument, they argued that the prevention of third-country service suppliers would become difficult to maintain *only when* the single market in telecommunications *was in place*. They did not portray the single market as having immediate implications. Neither did they portray the impact of technological changes in such a way. Instead, they described these developments as bringing about *de facto* liberalization in the medium to long term only (cf. Gonzalez-Durantez 1997: 137). Hence, liberal 113 members did not add cheap legitimacy to these arguments, even though this could have been easily done (interview 1999).

(2) *Argumentative consistency*: Consistency across different forums and contexts is a good indicator for truly argumentative behaviour, while actors changing their arguments and justifications depending on the interaction partner are likely to engage in rhetorical action (Risse 2000; Checkel 2001). In quite a number of cases, it was possible to trace actors' lines of argument in more than one forum. Apart from the arguments made in the Article 113 Committee, interviews in national capitals and the study of confidential reports revealed how individuals communicated in their domestic environment. My findings suggest that during pre-negotiations there was an astonishing consistency in argumentation. For example, liberal arguments concerning the appropriateness and benefits of liberalization and about the implications of technical change were articulated by Committee members in national capitals in a very similar manner as in the Article 113 Committee. One official at the *Bundeswirtschaftsministerium* noted, for instance, that his close colleague from the 113 Committee 'argued in Bonn in the same manner as in Brussels. To myself and others, he characterized his own arguments not as a bargaining chip, which he had freely admitted to in different contexts before, but as a practical solution to the situation in hand' (interview 1997). An exception seems to be the argument concerning the logic of having accepted liberalization at EU level which was used rhetorically. One official admitted *vis-à-vis* his colleagues at home that he used this argument as it conveniently increased the overall rationale for WTO-level liberalization (interview 1998).

(3) *The application of what has been learned*: The assertion, that learning



processes resulting from argumentative debate have occurred, gains further substance when that which has been learned is used or applied. More concretely, when negotiators start to use arguments (in a non-strategic manner) by which they have been convinced, they are likely to have been truly persuaded. There is evidence for such processes. For example, towards the end of the pre-negotiations in May 1995 one representative from a more sceptical delegation became aware of the liberalization needs owing to implications of technological change through reasoned debate with his opposite numbers (interview 1997). Subsequently, the same official began to explain this liberalization logic to his close colleague. That usage of this argument was sincerely argumentative and not strategic was asserted by the former official (interview 1997) and also corresponds to the impression of the latter (interview 1999). Argumentative behaviour has been judged to be more likely in private situations (cf. Elster 1991; Checkel 2001) and should be particularly likely among people who work together very closely on the same dossier with shared objectives, as under such circumstances one's opposite can easily distinguish sincerely argumentative from rhetorical action. Also under the rubric of applying what has been learned, officials noted that some delegations such as the Irish or Luxembourgian, which had not been convinced of the implications of technological change at the start, began to acknowledge the strength of the argument and joined in arguing along similar lines in the 113 Services Committee. That this move was not opportunistic has been substantiated through interviews and 'cross-interviews' within the delegations in question (interviews 1997, 1998).

(4) *Actors' motivations:* Whether arguments indeed underlie a communicative rationality or whether they are strategically placed to add cheap legitimacy cannot be ultimately ascertained from the arguments themselves. One way of shedding more light on this matter is to reconstruct the genuine underlying motivations of actors. As for the market-liberal delegations, three main motivations have been identified at this stage of the negotiations: first, officials were guided by 'free trade' or 'neoliberal economic' norms and values. They believed that free trade, including open markets and free competition, would constitute the appropriate policy orientation as regards economic freedom, efficiency and welfare. 'Free trade' and 'liberalization' had become shared standards which strongly guided their behaviour in terms of economic policy (interviews 1997, 1999; cf. Niemann 1997). Second, they considered themselves experts and were motivated to prove their expertise. That (knowledge-based) experts tend to engage in problem-solving behaviour by challenging each others' rival claims and elucidating cause-effect relationships has been pointed out, for example, by Haas (1990: 41). The third motivation was self-maximization of material utility, here mainly in terms of utility for the domestic economy (interview 1997).

Motivations have been traced through talks and interviews with Committee members and some of their colleagues in capitals. Meeting summaries, position papers and other written (confidential) documentation have been used for

cross-checking. Adherence to the free-trade/liberal economic norm has been identified as the most important motivation, followed by expert problem-solving behaviour. With one exception, (national) interest motivation has consistently come out as least important during pre-negotiations. Linking the various arguments used by the liberal delegations to the above motivations has been more difficult. The available data, however, suggest that the arguments related to 'the benefits and appropriateness of liberalization' and 'technological change' have been motivated by free-trade/neoliberal economic norms and expert-guided conduct, while the precedent argument about the acceptance of liberalization at EU level was largely strategic (interest-motivated), i.e. 'to increase leverage on the protectionist camp' (interview 1997). Extensive interviewing of officials suggests that the other liberal arguments (technological progress, single market, appropriateness of liberalization) were not made with the intention of reducing the sceptics' bargaining power (interviews 1997, 1999; cf. p. 393).

As far as the more sceptic delegations are concerned – equivalent to the free-trade/liberal economic norms held in the liberal camp – participants were most strongly guided by norms of (moderate) protectionism/state interventionism which regulated their expectations and actions concerning appropriate policy (interviews 1997, 1999; cf. Niemann 1997). In addition, expert-guided behaviour and maximization of utility (for the domestic economy) constituted the other main underlying motivations, with material interest considerations again consistently identified as the weakest motivation (interview 1999). Interviewees of both camps explained their relatively low 'national interest' motivation through insubstantial politicization pressures (*condition 6*), the uncertainty of the situation (*condition 2*) and the complexity of the issues discussed (*condition 3*) as a result of which 'material self-interests were still in the formative stages and thus mattered less in our motivations' (interview 1997).

Rather than a conflict of interests, the pre-negotiations constituted a conflict of norms (e.g. about appropriate economic policy)<sup>19</sup> and a conflict of facts (e.g. about the functioning and impact of new technologies), which cannot be bargained. Norms attain validity through consensus and facts need to be verified or enriched with new knowledge (Holzinger 2001a: 271). That self-maximization of interests played only a subordinate role in actors' motivations weakens the rationale for the strategic (rhetorical) use of arguments. When norms provide the basis for human action, this action need not be a conscious process as norms tend not to be enacted out of choice (strategic behaviour), but out of habit (cf. Risse 2000: 6). In a genuine normative debate/conflict, in which participants act out norms in an almost automatic fashion, it is less likely that actors add cheap validity to a norm. The more norms are contested, 'the less the logic of the situation can be captured by the statement "good people do X" than by "what does 'good' mean in this situation?"' (Risse 2000: 6). Hence, in order to judge about the validity of norms, actors have to enter into a truly argumentative process.

(5) *Alternative explanations*: The case for communicative action is further supported by the fact that important potential alternative explanations do not make sense here. One alternative explanation for preference changes would be pressures from domestic industry. The problem with this explanation is that domestic telecoms industries remained very much uninvolved in most, and particularly the more sceptical, countries. This has been attributed to the relative novelty of rules and obligations on services in the international trade regime, with the emergence of the GATS only a few years before (interview 1999). Second, coercion or side-payments à la strategic action played no role at this stage of negotiations, as there were yet no horses to trade (or force). The pre-negotiations have been characterized as a dispute about facts and norms, which cannot be bargained, as pointed out above. Third, the aforementioned evidence also suggests that rhetorical action was only relevant in some part. The argument concerning the precedent of Community-level liberalization has been identified as being used mainly rhetorically. However, the above analysis indicates that, on the whole, the arguments exchanged can be attributed to a genuine communicative rationality.

Fourth, another alternative explanation suggests that the more conservative countries were in a very weak bargaining situation from the start and that they had no real option other than swift liberalization on the international plane. In particular, it could be argued that the emerging internal market closed member states' options in the external realm, as – with the internal market in place – services entering one member state can be traded freely across the internal market. Regardless of the external regime, so the argument goes, the outcome will be open markets (cf. Hanson 1998). This alternative explanation does not correspond to the perception of the conservative delegations. They did not perceive the single market argument as a 'k.o. argument', but considered themselves to have 'substantial room for manoeuvre' (interview 1997). This can be explained in several complementary ways: first, although the 1998 date for internal liberalization proposed by the Commission was accepted in Council Resolution 93/C213/EEC, the latter also stated that those with less developed telecommunications networks, i.e. Spain, Ireland, Greece, Portugal and Luxembourg, would be given an additional transition period ('derogation') of up to five years in order to prepare for competition. During that period barriers to trade were allowed to remain in place. An impairment of the free movement doctrine was thereby accepted. The derogations undermined the single market pressure on the above countries and constituted a disincentive for swift (i.e. 1998) liberalization at WTO level. As one official put it, 'free movement of services would only become a problem after national derogations had ended. Our derogation enabled us to go into the talks quite relaxed, as we were not forced to liberalize by 1998 but could take more time' (interview 1997).

In addition, owing to generally strong doubts about timely implementation of legislation in the telecoms sectors (cf. Stone 1997; Commission 1999), some negotiators also felt that 'the free movement of services [would] be impaired for a few years beyond the actual liberalization date', which further

eased the pressure on the more conservative delegations (interview 1997). Finally, during the Uruguay Round the Commission and member states had agreed that no global liberalization in basic telecommunications services should be undertaken before the European Community (EC) single market in telecommunications was in place (Enser 1998: 286). Throughout the pre-negotiations the internal market was by no means yet in place, lacking legislation on numerous crucial aspects of voice telephony, mobile services and infrastructure (Enser 1998: 288). In addition, there was still uncertainty concerning the timing and exact design of the telecoms single market, which reduced the perceived pressure from the internal market (interview 1997). It was only in March 1996 that the basic legislation for the internal market in telecommunications was drawn up by the Commission with the Full Competition Directive under Article 90 (Commission 1996). The decision for this directive was taken within the Commission by autumn 1995, almost half a year after the pre-negotiations had finished (interview 1997). This account further underlines that the more conservative delegations need not have agreed on (the principle of) fast liberalization at this stage.

#### Case 2: revision of the EU offer concerning restrictions on non-EC investment

After the first EU offer of October 1995, negotiations were dominated by discussions on potential changes to that offer which contained a number of restrictions to competition. Most importantly, it included restrictions on non-EC investment in France, Spain, Belgium and Portugal which limited the value of the offer to other negotiating parties in Geneva, particularly the US. In the conservative camp, some officials of the 113 Committee, such as the Irish, Luxembourgers and Greeks had successfully convinced their capitals to abstain from tabling moderate or significant restrictions on commercial presence after the pre-negotiations. Others in the conservative camp had been persuaded about the worth and logic of a far-reaching and liberal Community offer. They would have agreed to dropping or further reducing those restrictions. However, they faced difficulties in convincing their colleagues in capitals and began to face pressure from within their national bureaucracies (*condition 6*). The very small minority that had not been part of the 'nearly general liberal consensus' kept their sceptical stance. The existence of the latter group and, more importantly, the emergence of a number of delegations that failed to carry their capitals along, can explain why the general change of expectations amongst officials of the conservative camp did not prevail on some issues during formal negotiations (interviews 1997, 1999).

Until that point, discussions had been very much about 'the right thing to do'. This now began to change. This change was flanked by modified conditions as regards the negotiating environment. As the negotiations had become more settled and predictable, 'people had started to be less inclined to listen to and learn from each others' arguments. It had become harder to

change minds because everyone had formed a firm opinion' (interview 1997) (cf. *condition 2*). And those officials who were convinced by the liberalization arguments failed at times to move towards a reasoned consensus because some of their colleagues in the capitals were not ready for such a step. If argumentative processes fail to trickle through capitals, national officials who do not attend the 113 Committee may not be carried along in the process. As a result, progress towards a mutual understanding in the negotiating forum can be obstructed (cf. *condition 6*), as Full Members' and Services officials' influence on the formulation of national positions has its limits (cf. Niemann 1997). In addition, owing to the mounting politicization, important sequences of the negotiations were increasingly discussed in the Full Members Committee, while the Services Committee more often took a back seat. Issues remained cognitively complex, but the Full Members sometimes lacked the necessary expertise to lead a sensible debate about the 'right thing to do' which adversely affected *condition 3* (cf. p. 385). In the Full Members Committee there was less time available for substantive debate on telecoms issues (*condition 4*), because of very tight meeting agendas in this committee. Full Members shared a common lifeworld (*condition 1*), however, one that was not quite as tightly knit as in the Services Committee. When the Full Members Committee took greater charge, Karl Falkenberg, the Commission representative in the Services Committee and arguably the most persuasive individual in the 113 Committee setting, was, to some extent, less able to assert himself (*condition 5*).

As the above countries remained reluctant to shift their position, elements of rhetorical action occurred more frequently and became widespread. For example, the Commission and other liberal delegations added 'cheap' legitimacy to their arguments by exaggerating the benefits of lifting foreign ownership restrictions and by increasingly pointing to neoliberalism as the predominant economic paradigm. In addition, with the Full Competition Directive of March 1996 lifting the uncertainty concerning the 1998 deadline for the single telecoms market, the Commission began to use the single market argument more and more strategically, increasingly describing the process as 'immediate' and 'inescapable' to put pressure on the conservative countries. Analysing the consistency of arguments during this phase of the negotiations confirms the rhetorical use of arguments. For instance, Commission officials confirmed that in former DG I it was openly admitted that the single market pressures and the benefits of market opening for the derogation countries were exaggerated in the 113 Committee during this phase (interview 1999).

As the use of rhetorical arguments increased and liberal arguments (both discursive and rhetorical) started to trickle down national administrations, positions began to shift and the French, Belgian and Portuguese delegations made concessions.<sup>20</sup> My evidence suggests that delegations were convinced to reduce their restrictions by the mix of rhetorical and discursive arguments. This has been confirmed by officials' accounts concerning the rationale for changing their positions (interviews 1997, 1999). Rhetorical arguments were important in so far as they implied that the options of the remaining

delegations began to narrow, while selectively highlighting the advantages of liberalization (interview 1997). The rationale for this mix of argumentative and especially rhetorical action is further increased, as alternative explanations have little to offer. Domestic industry was uninvolved in these countries and outright coercion and side-payments absent (interview 1997). Spain was not induced to move during this process of communicative and rhetorical action. Hard bargaining was necessary to change the Spanish positions.

### Case 3: finalizing the revised EU offer: the reduction of Spain's restrictions

In October/November 1996 EU-level negotiations entered a decisive phase with the preparation of the revised Community and member states' offer. All delegations of the Article 113 Committee regarded US participation in the final deal as vital. The most important issue for the US regarding the EU offer was the removal or reduction of Spain's restrictions.<sup>21</sup> The most distinctive feature of the Spanish case, in contrast to discussions with Portugal, France and Belgium concerning restrictions on non-EC investment, was the fact that the issue had become substantially politicized in Spain (*condition 6*), with *Telefonica*, the Spanish operator, lobbying for the maintenance of the status quo, despite the fact that Spain had become an active overseas investor in Latin American telecoms services operators (c.f. Vazquez Gallo and Redondo Velasco 1997). Negotiations of the Spanish case took place increasingly on a bilateral level between the Commission and Spain. The time available for discussions increased (*condition 4*). On the other hand, uncertainty (*condition 2*) had further waned, as positions in this case were particularly clear-cut and negotiators had, over time, become very familiar with the Spanish case (interview 1997). Issues remained cognitively complex in bilateral negotiations. However, negotiators at the Commissioner/Minister level were even less apt to deal with these issues in an argumentative way than the Full Members (cf. pp. 385, 398). They often lacked the fundamental expertise to make truth-seeking possible, as validity claims could not be adequately evaluated (interview 1999). As a result *condition 3* turned out even less favourable. Furthermore, negotiators did not share a lifeworld comparable to the one in the Article 113 Committee (*condition 1*).<sup>22</sup> As far as the persuasiveness of negotiators is concerned (*condition 5*), it is tentatively suggested here that this condition became even less conducive to communicative action.<sup>23</sup>

Argumentative debate was largely absent during this part of the negotiations. The concept of communicative action cannot explain how and why Spain decided to drop all market access and foreign ownership restrictions. Madrid continued to maintain that the removal of foreign ownership restrictions would weaken *Telefonica* and threaten Spain's national interest. In response to what was clearly perceived as strategic behaviour, the Commission began to operate in a more intensely strategic manner. DG I of the Commission was in close touch with DG IV which was in charge of *Telefonica's* application, under the Community's competition rules, for participation in the *Unisource* alliance of

telecom operators. Subsequently, from October 1996 the Commission pursued a tit-for-tat strategy. It made the competition clearance of *Telefonica* and *Unisource* conditional on Spanish concessions in the WTO negotiations (Sauter 1997: 71). In early November Spain agreed to a deal and agreed to drop all its market access and foreign ownership restrictions as of 30 November 1998.

## CONCLUSION

The Community and member state offers for the WTO Agreement on Basic Telecommunications Services and the formation of the EU position could not be adequately explained without conceding that discursive rather than strategic action prevailed during important phases of the process, such as the trend-setting pre-negotiations. My analysis suggests that the concept of communicative action can sensibly be used in empirical research by specifying the conditions conducive to arguing and discursive behaviour as well as reasoned preference changes.

Making use of comparative analysis confirms the relevance of most conditions. *Condition 2* (uncertainty), *condition 3* (complex issues) and *condition 6* (low level of politicization) are (firmly) corroborated by the above analysis, as they vary according to expected levels of communicative action. While these conditions were present during pre-negotiations, they were partly absent in case 2 and greatly diminished or non-existent in case 3. The relevance of *condition 1* is also largely confirmed, although slightly less clear-cut, as the turn towards rhetorical action in case 2 was accompanied by only a small adverse change in the shared lifeworld. However, on the whole the negative development of the common lifeworld corresponds to the deterioration of communicative action in the case study. Results concerning the relevance of *condition 5* (persuasive individuals) are somewhat tentative owing to the lack of unambiguous information in parts. However, the available information seems to confirm this hypothesized condition. The most persuasive individual, Karl Falkenberg, the Commission representative in the Services Committee, was less influential in formal negotiations when the Full Members Committee took greater charge. And it seems that the main Commission negotiator in the Spanish case was not able to match this persuasiveness. *Condition 4* (sufficient time available) did not constitute a necessary condition. Bilateral negotiations in case 3 allowed more time for discussion than in cases 1 and 2, while the outcome further slid into bargaining mode. Thus, *condition 4* may at best be conducive, but not necessary, for communicative action.

The empirical analysis suggests a further specification of some conditions. *Condition 3* (cognitively complex issues) has to be widened to include the requirement of negotiators having the expertise necessary for detailed substantive discussions. Otherwise, argumentative debate is difficult, if not impossible. As for *condition 6*, the case study suggests that this condition should also be widely defined. The negotiations on the revisions of the EU offer have shown that a reasoned consensus may already be sufficiently obstructed when

argumentative processes do not trickle through national capitals, as a result of which national officials in capitals cannot be carried along in the process and instead oppose further progress.

As far as potential further research is concerned, my comments above on *condition 6* have already indicated that the role and more precise workings of politicization/countervailing pressures, particularly regarding the formation of national positions, will have to be specified and developed more thoroughly, a task that would have gone beyond the scope of this paper. Moreover, testing the above conditions in one case study, although it allowed for several different observations, can of course bring only tentative results. A more comprehensive comparative analysis that includes more case studies would generally be useful in order to confirm, reject or refine the results of this article. Further research should also focus on specifying whether the above conditions are *conducive*, *necessary* or *sufficient* for the occurrence of communicative action and reasoned preference changes.

Despite the tentativeness of my findings, it can be suggested that behaviour oriented to reaching mutual agreement is particularly likely to occur at the official (diplomatic) level of negotiations. At this level we can expect issues that are less politicized and more cognitively complex, with more time available for lengthy discussions and particularly strong shared lifeworlds owing to high levels of interaction and socialization. In addition to the level of participants, we can also relate the relevance of communicative action to the stage in the decision-making process. The conditions for argumentative debate are most likely met at the stage of pre-negotiations, during which a high degree of uncertainty paired with negligible countervailing pressures can be expected (cf. Elgström and Jönsson 2000: 692).

On a more general level we can conclude that if communicative action furthered our understanding of international relations and especially international negotiations (e.g. Risse 2000), the concept should generally contribute to our comprehension of the EU policy process and EU negotiations. The existence of a shared lifeworld – as an important precondition for communicative action – is particularly well developed in EU negotiation settings which are characterized by high levels of institutionalization and socialization.

In terms of European integration theorizing, the concept of communicative action adds to the important debate on socialization by contributing to the mechanisms and conditions of preference (and norm) change on the part of social actors. In this debate some authors have largely overlooked the role of communicative interaction in terms of reaching understanding about valid behaviour (e.g. Beyers and Dierickx 1998). Others have conceptualized argumentative processes unnecessarily broadly (by encompassing strategically motivated behaviour), thus impeding our analysis of important non-strategic communicative behaviour (e.g. Neyer 2002; Gehring 1999). Moreover, in contrast to Checkel's work on persuasion, my conceptualization attributes more weight to the power of arguments than the persuasive appeal of the communicator without disregarding the latter.



The above analysis indicated that strategic bargaining cannot capture substantial parts of the negotiations on the WTO Basic Telecommunications Agreement. This is not to say that rational choice accounts of strategic bargaining should be dismissed for analyses of EU negotiations. These accounts have their legitimate place, as case 3 has shown. In terms of function, the relationship between communicative and strategic action has been described above as complementary. While strategic action refers to a modal logic (of wanting), communicative action refers to an epistemic logic (of believing and knowing) (cf. Holzinger 2001b: 420). If communicative action and strategic action can appropriately be attributed to constructivism and rational choice theory, respectively (cf. e.g. Risse-Kappen 1995), this article also contributes to bridging the constructivist–rationalist divide, as each mode of action may be activated under certain definable conditions.

**Address for correspondence:** Arne Niemann, University of Dresden, Philosophische Fakultät, Institut für Politikwissenschaft, Lehrstuhl für Internationale Politik, 01062 Dresden, Germany. Tel: +49 351 46335810. Fax: +49 351 46337732. email: arne.niemann@mailbox.tu-dresden.de

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#### NOTES

- 1 Since the renumbering of articles following the Amsterdam Treaty, the former Article 113 Committee is now called the Article 133 Committee. As EU negotiations on the WTO Agreement on Basic Telecommunications Services took place before this change, the committee in question will be referred to as the Article 113 Committee in this article.
- 2 One has to distinguish between the *theory* and what I refer to as the *concept* of communicative action. While the concept denotes a particular mode of action, the theory of communicative action not only entails communicative action, but other alternative modes such as strategic action (cf. Habermas 1981, 1986, 1992). This analysis focuses on the concept not the theory, unless indicated otherwise.
- 3 There is more literature on the related aspects of 'persuasion' (e.g. Checkel 2002) and 'deliberation' (e.g. Joerges and Neyer 1997).
- 4 Although Habermas did provide three necessary preconditions for communicative action (cf. p. 382), these are held to be insufficient for determining when actors change behaviour from strategic to communicative action (e.g. Keck 1995).
- 5 Keck (1995: 34) complains that Habermas ties 'strategic action' to an egotistical value system, while, according to Keck, it is compatible with altruistic values. Müller (1994) has convincingly contended that in the mainstream rational choice IR literature (e.g. Keohane 1984) actors are reduced to utilitarian egoists. Hence, Keck uses a very broad account of rational choice. I follow the more narrow mainstream conception of rational choice and strategic action.
- 6 Recently, a number of scholars have begun to reverse this trend. Drawing on new

- institutionalist and constructivist insights, they see EU negotiations as characterized by 'problem-solving' (cf. e.g. Elgström and Jönsson 2000; Lewis 1998). Some earlier works such as Haas (1958) view Community negotiations in similar terms.
- 7 Even where reference is made to the Council, substantive negotiations will have taken place at the official level in most instances. Hayes-Renshaw and Wallace (1997: 78) have estimated that about 85 per cent of the decisions taken by the Council are effectively negotiated and decided at the diplomatic level of the Council framework.
  - 8 'Persuasion', the process of convincing someone through reasoning, has to be distinguished from communicative action. While the former places causal weight chiefly on the persuasive appeal of the interlocutor and the open-mindedness of the persuasion target, the latter mainly emphasizes the force of the better argument (Checkel 2002: 4).
  - 9 Deliberating (considering and discussing reasons) is broader than reasoning and arguing. Reasoning (modification in view by persuasion) has been distinguished from arguing (the transition from premises to conclusion) by emphasizing cognitive change (cf. Ullmann-Margalit 2000: 5; *Concise Oxford Dictionary* 1990).
  - 10 In this type of literature, communicative rationality is most explicit in Lewis (1998).
  - 11 In its Opinion 1/94, the European Court of Justice ruled that in the area of services, which is relevant here, the Community and member states shared competence (except for the cross-border supply of services). In a Code of Conduct for negotiations on services reached between the Commission and the Council in 1995 it was agreed that the Commission should continue to act as sole negotiator, while member states could attend negotiations. With the Treaty of Nice, services other than cultural, audiovisual, education, social and health services have been brought under the scope of Article 133 (ex 113).
  - 12 Note that – as negotiations were conducted under shared competence (cf. previous note) – 'EU' here denotes 'the Community and member states'. In the context of these negotiations the two terms will be used interchangeably.
  - 13 This is largely due to the fact that basic telecoms had already been briefly discussed during the Uruguay Round.
  - 14 By the mid-1990s some countries, including the US and the UK, allowed telecommunications firms to resell capacity to other firms, thereby making these countries cheap hubs for international traffic from across the world. So-called 'call-back' services let consumers in countries with high telecommunications rates telephone abroad at inexpensive US or UK rates. In addition, digital technology, particularly the internet and the mobile-telephone network, allows users to bypass traditional voice-telephone networks (e.g. *The Economist*, 22 February 1997).
  - 15 Once a service has entered a member state (with low external barriers), so the argument goes, it can be easily traded across the internal frontiers of the single market (interview 1997).
  - 16 For example, it would bring about foreign investment in a growth sector, new (mainly quality) jobs and lower prices for consumers.
  - 17 The single market argument led some officials to come to similar conclusions. However, they did not regard the single European market argument as a 'k.o. argument', but considered themselves to have substantial negotiating space (cf. pp. 396–7).
  - 18 The two most disputed issues were foreign ownership restrictions and the general derogations from liberalization. Towards the end of the pre-negotiations, Portugal, Ireland, Luxembourg and, more cautiously, Spain signalled that they would not take up the entire transition period which they had been granted to prepare for competition. This preference change has been attributed to deliberations in the 113 setting (interviews 1997, 1999). Only four countries (Belgium, Spain, France

- and Portugal) tabled moderate foreign ownership restrictions. Spain, France, Portugal and Belgium would have been more restrictive in their approach to the participation of non-EC nationals had it not been for the pre-negotiations (interview 1997). Luxembourg, Ireland and Greece 'would most certainly have wanted foreign ownership restrictions included [beyond those that were insubstantial] for their countries, 'unless we had participated in such extensive preliminary discussion' (interview 1997; cf. WTO 1995).
- 19 In the constructivist literature, norms ('collective expectations about proper behaviour for a given identity') have been regarded as moulding actors' interests but also as shaping policies directly (cf. e.g. Jepperson *et al.* 1996: 52–4).
  - 20 France withdrew limitations on *indirect* participation of non-EC companies. Belgium removed all limits on non-EC foreign investment in telecoms facilities and services. Portugal made no direct concessions on commercial presence, but instead lowered the transitional period of market access for public voice telephony and facility-based services from January 2003 to January 2000 and July 1999 respectively.
  - 21 Spain was regarded as an important market by the United States. Perhaps more importantly, *Telefonica* operated as a monopoly in some Latin American countries. If *Telefonica* opened its home market, the US hoped that some Latin American countries would be encouraged to follow suit (Enser 1998: 292).
  - 22 Most of the bilateral negotiations took place at a very high level. For the Commission, Sir Leon Brittan led most of the bilateral talks. At the beginning, he hardly knew his Spanish counterparts, Ministers Rafael Arias-Salgado and Rodrigo Rato, who assumed their ministerial responsibilities only in May 1996. The level of interaction and socialization hence does not compare to the common lifeworld of the 113 Committee (interview 1997).
  - 23 Karl Falkenberg, Commission representative in the 113 Committee (Services), whose persuasiveness was undisputed, was little involved in bilateral negotiations with Spain. Sir Leon Brittan, who led most negotiations with Spain, has a mixed reputation as a negotiator. While his intellectual skills are highly rated, he has been described as 'high-handed', 'aloof' and 'lecturing' in his negotiations with member states, even by Commission officials (cf. *Financial Times*, 9 March 1999; Niemann 2000: 136). The latter attributes are not conducive to persuasiveness (cf. e.g. Checkel 2001: 563).

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