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Beyond Problem-Solving and Bargaining: Genuine Debate in EU External Trade Negotiations

Final version

Beyond Problem-Solving and Bargaining: Genuine Debate in EU External Trade Negotiations*

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Abstract

This article suggests that existing negotiation theory, which is dominated by the two paradigms of ‘bargaining’ and ‘problem-solving’ does not capture some important characteristics of international negotiations. It is argued that ‘genuine debate’ encapsulated by Habermas’s concept of ‘communicative action’, which has largely been ignored in the negotiation literature, furthers and complements our understanding regarding negotiators’ rationale for action and the dynamics of international negotiations. The paper specifies five conditions conducive to genuine debate: (1) a strongly shared lifeworld among negotiators; (2) uncertainty and lack of knowledge; (3) technical or cognitively complex issues; (4) the presence of persuasive individuals; and (5) low levels of politicization. My hypotheses are probed through a case study of EU negotiations concerning the WTO basic telecommunications agreement. My findings imply that genuine debate may occur most likely in pre-negotiations and at the diplomatic level of negotiations. I also conclude that agreements arrived at through genuine debate tend to be more enduring than

those reached by bargaining and problem-solving, and that communicative negotiators are vulnerable to those merely pretending to participate in genuine debate. My analysis also tentatively indicates what kind of arguments may be persuasive in genuine debate.

Key words: Bargaining, communicative action, debate, international negotiations, negotiation theory, problem solving, telecommunications services

Introduction

Negotiation theory is currently dominated by two main paradigms: ‘bargaining’ and ‘problem-solving’ (cf. Hopmann 1995; Murray 1986).¹ For many negotiation researchers the distinction between bargaining² and problem-solving is more a matter of degree and some have tried to build syntheses between the two approaches (e.g. Lax and Sebenius 1986; Hopmann 1996; cf. esp. Putnam 1990). However, such models have usually stayed within the borders delineated by those two paradigms (which have remained the prevailing points of reference). This article argues that bargaining and problem-solving do not capture some important aspects of negotiating behavior. In order to gain a more complete understanding of (international) negotiation I will draw on Habermas’s concept of communicative action, which can be characterized most succinctly as ‘genuine debate’³. I do not argue that this concept is superior to, or that it can replace, bargaining and problem-solving (which remain the most important paradigms), but that communicative action may supplement established negotiation theory. When actors engage in communicative action, they neither *haggle* or *coerce* as in bargaining, nor do they *compensate*, *trade-off*, *concede* or *buy acquiescence* as in problem-solving mode. Instead, agents *argue*, *reason*, *discuss*, *debate*, *deliberate* and *persuade* (all in a ‘non-strategic’⁴ manner) about what constitutes valid behavior

according to shared standards of truth, rightness and sincerity. When following the logic of communicative action, actors are not oriented towards maximizing their own utility but geared towards reaching mutual understanding by entering into a reasoned and argumentative discourse about valid behavior.

In the theoretical International Relations (IR) literature, particularly in the German IR community, the concept of communicative action has undergone considerable reflection (e.g. Müller 1994; Risse-Kappen 1995; Risse 2000). By contrast, in the established literature on (international) negotiation, reference or consideration, let alone systematic analysis, of genuine debate is very rare, if not absent.⁵ This (relative) absence from the traditional negotiation literature along with its confinement to the *theoretical* spheres of IR begs the question, whether genuine debate really exists in real life negotiations. Empirical work that applies the concept of communicative action to negotiations is almost entirely absent (yet Risse 2000). The below case study on EU negotiations concerning the WTO Basic Telecommunications Services Agreement aims to probe the concept empirically and seeks to indicate that communicative action can matter in international negotiations. In addition, I seek to show how and under what conditions genuine debate may occur and make an impact.

Bargaining and problem-solving

The (distributive) *bargaining* paradigm has been strongly influenced by the literature on game-theory (e.g. Luce and Raiffa 1957). Game-theory was first applied to negotiations by Nash (1950) and later introduced into the literature on international negotiations by Schelling (1960). Based on Schelling's seminal work, a substantial body of literature emerged that took the logic of bargaining as the foundation for the study of international negotiations. Bargaining thus became

the dominant theory of (international) negotiations, certainly until the early 1980s (e.g. Schelling 1960; Young 1968; Snyder and Diesing 1977; Axelrod 1984). The bargaining paradigm assumes actors who seek to maximize their self-interests. Preferences are generally viewed as stable. Parties that engage in bargaining behave cooperatively only as long as negotiations correspond to their individual interest calculus. Negotiating parties will only accept an agreement that increases their utility compared to no agreement, but they may prefer an agreement in which they gain more relative to other parties. Bargaining behavior aimed at advancing one's interests typically includes concealing information, misleading other parties, as well as using threats and promises.

The foundations for the *problem-solving* paradigm were laid by Follet (1924, 1942) who advocated a creative, constructive and integrative approach towards conflict resolution. Problem-solving was further developed by Rapoport (1960) who went beyond game-theory and contrasted “games” with “debates”, and by Walton and McKersie (1965) who differentiated between “distributive” and “integrative” bargaining. However, only since the early 1980s – and the works of scholars such as Fisher and Ury (1981) as well as Zartman and Berman (1982) – has the problem-solving paradigm become influential in the study of (international) negotiations. Despite different accentuations and emphases, authors generally view problem-solving as the pursuit of solutions that satisfy the interests of the different negotiating parties. In problem-solving the focus is on mutual, absolute benefits, in contrast to relative gains as in most bargaining accounts. And while bargaining is characterized by zero-sum games, problem-solving attempts to convert negotiations to non-zero-sum games (Hopmann, 1996: 89). From a problem-solving perspective, the basic problem does not lie in conflicting positions, but in conflicting interests. Therefore, negotiations should focus on parties' underlying interests and not on their superficial – and what may be tactical – positions, because compatible interests may be found behind opposed positions. Where there appear to be conflicting interests, there is still potential for agreement, as parties tend

to have multiple interests that can be addressed to reach a mutually satisfactory outcome (Fisher and Ury, 1981: 43-50). Solutions in the problem-solving tradition include increasing scarce resources, making mutual concessions or paying rewards for concessions (Pruitt 2002: 43).

Communication and social context in (international) negotiations

While negotiations are (always) embedded in a certain social context, few accounts portray negotiations as such. However, some strands in the negotiation literature pay attention to the social embeddedness of negotiations, such as the literature on culture and negotiation (e.g. Faure and Rubin 1993), cognitive approaches (e.g. Jönsson 1991), and social-psychological perspectives (e.g. Druckman 1977). When taking social contexts seriously, speech and communication attain an important role. In the IR literature, constructivist authors such as Kratochwil (1989) and Onuf (1989) placed substantial emphasis on the role of speech and communication concerning our construction of social reality, which for them is, at least to some extent, a linguistic construction.

The role of communication in negotiation has received quite some attention.⁶ Scholars have contributed to negotiation and conflict research through their work on game theory (e.g. Bennett 1971), through empirical studies of restricted and unrestricted communication (e.g. Johnson, 1974), the role of communication in labor-management negotiations (e.g. Keltner, 1965) and rhetorical studies on persuasion and social conflict (e.g. Simons 1972). These strands have led to a community of researchers that employs a distinct communication angle to the analysis of negotiations (e.g. Putnam and Jones 1982). Despite this development, it has been concluded that “communication aspects of bargaining warrant more research” (Jönsson, 2002: 227), or that “much of the extant literature and many theoretical perspectives are insensitive to the role that communication plays in negotiation” (Putnam and Roloff, 1992: 5). Moreover, the role of

communicative action has not yet received sufficient attention in the negotiation literature.

Communicative action

The concept of communicative action was devised by Habermas (1981a, 1981b). It was applied to international negotiations by Müller (1994) and Risse (2000), whose focus, however, was on International Relations theorizing rather than placing it into the context of existing literature on negotiation theory. Habermas talks of communicative behavior when the actions of agents participating in social interaction are coordinated not via egocentric calculations of success but through acts of reaching understanding. 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 coordinate or harmonize their plans of action on the basis of shared definitions of the situation (Habermas 1981a: 385-6).

Agents engaging in communicative action seek to reach mutual understanding about valid behavior. In order to achieve this type of understanding certain 'validity claims' have to be fulfilled. Validity claims are requirements for the validity of a speech act. Habermas distinguishes between three validity claims: 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 s/he means what s/he says (Habermas 1981a: 149). Communicative behavior which aims at reasoned understanding counterfactually assumes the existence of an 'ideal speech situation', in which nothing but the better argument counts 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 the validity of a statement, the speaker must explain himself and come up with reasons which are questionable in a rationale 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 1981a: 149). Interests may change in the process of communicative interaction, as actors challenge each others' causal and principled beliefs (Habermas 1981a: 397-426).

The possibility for communicative action is dependent on a number of factors. First, actors have to share a common lifeworld, i.e. collectively share the same patterns of interpretation of the world, for example through a common system of norms, rules and values. Second, actors should recognize each other as equals and need to have equal access to the discourse. Third, communicative action is dependent on actors' ability to empathize, i.e. to change from the role of speaker to listener and see things with the eyes of the discourse partner (Habermas 1981b: ch. vi).

Genuine debate in broader context

Communicative action is a 'non-strategic' mode of behavior. What is meant by 'non-strategic' and what form of instrumentality does genuine debate reflect? Agents engaging in communicative action are rational, i.e. they choose that option which they believe best fulfils their purposes. Preferences do not result from random choice but reflect deliberate/intentional behavior. Moreover, the existence of interests is not denied. However, when engaging in communicative action, agents' pursuit of their interests is conditioned by their perception of valid behavior according to standards of truth, rightness and sincerity. When communicative rationality predominates, actors do not primarily seek to satisfy their pre-conceived interests, but to challenge and substantiate the validity claims that are inherent in their interests.⁷

The meaning of 'non-strategic' can be further specified by contrasting it with 'rhetorical

action', the strategic use of norm-based arguments (Schimmelfennig 2001). 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. Similarly, manipulative forms of arguing and persuasion, which predominate in the literature (e.g. Axelrod 1977; Pruitt 1981; Lewicki *et al.* 1994) have to be distinguished from communicative action. The predominant usage of the above notions notwithstanding, this article holds that a non-strategic communicative rationality exists and that its analysis would be impeded using wider and less clear-cut theoretical lenses. Especially when working with this "pure" notion of arguing, reasoning and persuasion⁸ (i.e. genuine debate), one faces considerable challenges in terms of research design and methodology.

Research design: hypotheses, operationalization and methods

As indicated earlier, this article aims to show that communicative action does exist in international negotiations. More specifically, it seeks to go some way towards explaining when (under what conditions) genuine debate takes place and impacts on preferences/outcomes. One of the stronger criticisms of Habermas's theory concerns its inadequate operationalization in terms of empirical research. More concretely, it has been criticized for its failure to specify adequately the conditions under which actors can be expected to change between modes of action and under what conditions communicative action may have an impact on preferences (Keck 1995). Some of my hypothesized 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 preferences – is not possible. For devising the hypothesized conditions below, I have drawn on my own prior work (1998, 2000, 2004b) and the findings of related research (see below).⁹ In general, the subsequent conditions should be regarded as approximations, and more importantly, as properties and structures that condition choices and actions, rather than mechanical devices that click-start genuine debate.

Hypotheses: conditions for genuine debate to take place and impact on preferences

Condition 1: The existence of a strongly shared lifeworld: The preconditions set out by Habermas they constitute important basic prerequisites. Especially, 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 analyze 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).

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 (Elgström and Jönsson 2000; Haas 1992). Yet, 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 2006 forthcoming).

Condition 4: Persuasive individuals: The force of the better argument itself may not be enough to change individuals' mind. The persuasive appeal of the interlocutor may be crucial for persuasion to take place (Checkel 2002: 4). Hence, arguing may impact preferences more easily when the communicator is persuasive, for example, due to intellectual capacity or a reputation of integrity.

Condition 5: Weak / only moderate countervailing pressures – low levels of politicization: Communicative action can be crucially obstructed when 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).

How does one recognize communicative action when one sees it?

To substantiate the existence of a non-strategic communicative rationality at work in (real life) international negotiations implies a very substantial methodological challenge, as the researcher has to be able to differentiate between genuine and strategic (or rhetorical) forms of arguing. Moreover, communicative and strategic/rhetorical action are ideal types, which do not often appear in their pure form (cf. Elster 1991). Hence, the question to be asked, is not whether negotiators behave communicatively or strategically, but which mode captures more of the action in a given situation period (Risse 2000: 18).

For the purpose of distinguishing genuine debate from strategic forms of arguing, several indicators have been developed which were analyzed and, as far as possible, verified in my empirical analysis. First, by reconstructing actors' (true) underlying motivations one can determine more easily whether negotiators' stated arguments are sincere (i.e. communicative) or rhetorical. The analysis of actors' motivations also helps us ascertain the broad mode of

interaction. For example, if negotiators are generally motivated by norms (rather than material interests), we can (tentatively) exclude bargaining and infer elements of communicative rationality, as norms attain validity through learning processes and consensus and cannot be haggled (cf. Holzinger 2001: 271). Second, as pointed out by Risse (2000: 18) 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, Risse (2000: 18) and Checkel (2001) have pointed to argumentative consistency as an indicator. Actors that change their arguments depending on the audience probably engage in rhetorical behavior. Fourth, the assertion that persuasion has really taken place, i.e. that learning processes resulting from argumentative debate have occurred, gains further substance when that what has been learned is used or applied. Hence, when negotiators use arguments (non-strategically), by which they have been persuaded, they are likely to have been truly convinced. Finally, I have explored alternative explanations so as to substantiate processes of genuine debate. Indicating the irrelevance of powerful alternative explanations would strengthen the rationale for communicative action. Potential alternative explanations of preference change considered here are (i) threats and coercion à la bargaining; (ii) expanding the pie, logrolling, cost-cutting or compensation/side-payments à la problem-solving; (iii) rhetorical action; (iv) domestic pressures, for example, from domestic industries.

Process tracing and triangulation across multiple data sources

Process tracing is usually understood as a method for the analysis of causal mechanisms, which carefully traces events, processes and actors' beliefs and expectations (George and McKeown 1985). On a more general level, it is viewed as a method that establishes a link between cause and effect beyond the level of correlation by appealing to knowledge of the real structures that





produce observed phenomena (Dessler 1991). More specifically, process tracing is seen as a method for analyzing the relationship between actors' cognitions and their behavior. In order to reconstruct actors' arguments, preferences and motivations, and analyze the negotiating process more generally, I have used four different techniques. First, 47 non-attributable structured and semi-structured interviews have been conducted with members of the Article 113 Committee, (other) national and Commission officials involved in the negotiations, and representatives from industry. Second, I used specialist publications, official documentation and major media. Third, due to a four months placement at the Council Secretariat, I was able to witness fifteen sessions of the Article 113 Committee (at different levels) and several informal meetings as a participant observer. Finally, during my internship I had access to confidential documentation (including informal evaluations and outcomes of meetings' proceedings).

Variation of conditions and comparative method

The case study that follows includes three main sub-cases: (1) pre-negotiations; (2) revision of the first EU offer; (3) and finalizing the EU offer. My analysis should be viewed as a plausibility probe, rather than a rigorous test of the hypothesized conditions. Conditions across sub-cases vary as follows: conditions 2 (uncertainty), 3 (technical issues) and 5 (low levels of politicization) were present during sub-case 1, significantly less pronounced in sub-case 2 and even further reduced in sub-case 3. Condition 4 (persuasive individuals) was present in sub-case 1 but seems to have been somewhat weaker during sub-case 2 and probably significantly weaker in sub-case 3. Condition 1 (lifeworld) was at a very high level during sub-case 1. It was slightly diminished in sub-case 2, and more significantly in sub-case 3. As a result of this distribution of values regarding the hypothesized conditions, one can expect a negotiating style mostly dominated by communicative action in sub-case 1. Sub-case 2 should constitute an intermediate outcome,

containing a mixture of rhetorical action, communicative action, some form of concession swapping, and possibly bargaining. Sub-case 3 should be characterized by negotiating behavior close to bargaining, (possibly) including some type of coercion.

Table 1: Variation of conditions among sub-cases with expected outcomes

Conditions	Sub-cases	Sub-case 1: pre-negotiations	Sub-case 2: revision of first EU offer	Sub-case 3: finalising the revised EU offer
Condition 1: existence of a strongly shared lifeworld		Present	Slightly Reduced	Significantly Reduced
Condition 2: lack of knowledge and uncertainty		Present	Reduced	Significantly Reduced
Condition 3: cognitively complex issues		Present	Reduced	Significantly reduced
Condition 4: persuasive individuals		Present	(Slightly)* Reduced	(Significantly)* Reduced
Condition 5: weak counter-pressures / low politicization		Present	Reduced	Significantly Reduced
				
Expected Outcome		Close to communicative action	Mix of rhetorical action, communicative action, concession swapping and bargaining	Close to bargaining

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

To establish the relevance of the above conditions, the comparative method has been used. Different degrees of genuine debate would support those conditions changing as hypothesized and seriously challenge those conditions remaining constant or changing in the direction opposite to the one hypothesized. With constant levels of genuine debate across sub-cases, conditions

remaining steady are likely to be causally relevant, without establishing any positive causality, while changing conditions are contested (Ragin 1987).

The GATS and WTO negotiations on Basic Telecommunications Services

Before embarking on the empirical analysis, the structure and environment within which the negotiations took place need to be elucidated. As for the General Agreement on Trade in Services (GATS), the central principle of non-discrimination, as reflected in MFN¹⁰ and national treatment rules, is less comprehensive than in the GATT. Although MFN is a general obligation, the GATS allows countries to invoke MFN exemptions. In addition, the GATS provides for members to negotiate ‘specific commitments’, which only apply to sectors listed in a country’s schedule of commitments and then only to the extent that existing measures are not exempted. In their Schedule of Specific Commitments in the GATS, the EC and its member states had made commitments to remove most restrictions on national treatment and market access concerning *value-added* telecommunication services, such as voice mail and electronic mail. The negotiations on *basic* telecommunications services were deferred until after the conclusion of the Uruguay-Round.

In the EC/EU framework, pre-negotiations¹¹ on a WTO basic telecoms services agreement began in late April 1994, more than one year before formal negotiations on the substance of the first official EU offer took place. In the liberalization talks, basic telecommunications services were treated as including all major sub-sectors, on a facilities and a resale basis, both wireless and wireline. The general goal of the negotiations at WTO level was to reach a critical mass of offers, so that participants in the negotiations would be prepared to open their national markets on a MFN basis by eliminating domestic monopolies and foreign ownership restrictions. My

analysis focuses on intra-EU negotiations, i.e. on the talks among the Member States (and the Commission) concerning a common EU position for the negotiations at WTO level.

EU trade policy decision-making and the Article 113 Committee

This article concentrates on the exchanges and discussions in the Article 113¹² Committee. This body was established as part of the decision-making framework for the European Community's Common Commercial Policy. The Article 113 Committee was already specified in the Treaty of Rome (1957) to assist the Commission in international trade negotiations. Although formally it has only consultative function, it is accepted that the Article 113 Committee advises the Council – the institution that concludes agreements and may issue negotiating directives to the Commission – on trade policy matters and takes part in shaping the Community's commercial policy. The Committee was essentially created as a watchdog for Member States over the Commission (which acts as the Community's external representative in international trade negotiations). However, over the years, the Article 113 Committee has become an important partner of the Commission. It functions as a clearing house for the Commission and communicates Member States' views to the Commission and thus helps the Commission to ascertain what type of agreement would be acceptable for conclusion in the Council (Johnson 1998).

The Committee is made up of two levels, the Full Members and the Deputies. While the former are responsible for overall policy, the latter tend to deal more with the nuts and bolts issues. The Article 113 Committee has increasingly set up specialized sub-committees to deal with issues such as services. During pre-negotiations, the main thrust of the intra-Community negotiations concerning the WTO Agreement took place in the Article 113 Services Committee.

The Full Members Committee became more involved in the formal negotiations, during which the Services Committee repeatedly took a back seat. It has been pointed out that members of the Article 113 Committee share a strong common lifeworld (*condition 1*). In particular, high levels of interaction – due 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. The lifeworld shared in the Article 113 Services Committee is more solid than the one in the Full Members Committee due to higher levels of interaction (Niemann 1997).

My analysis of genuine debate and the conditions under which it occurs confines itself to the more decisive sequences concerning the formation of common EU positions and negotiating offers: first, I will look at the influential pre-negotiations (sub-case 1), followed by the revision of the first EU offer concerning restrictions on non-EC investment (sub-case 2), and the finalization of the revised EU offer: the reduction of Spain’s restrictions (sub-case 3).¹³

Pre-negotiations (sub-case 1)

The negotiating style during pre-negotiations is most aptly captured by ‘genuine debate’. Communicative action processes fostered preference changes on the part of those delegations that were rather skeptical of far-reaching liberalization at the outset, namely Spain, Portugal and Greece, and also (but not quite as skeptical) France, Belgium, Ireland and Luxembourg. On the other hand, the Commission, the UK, Denmark, the Netherlands and, to a lesser degree, Germany

supported very far-reaching WTO liberalization, joined by Sweden and Finland after enlargement in 1995 (cf. Enser 1998).

During the pre-negotiations the conditions for communicative actions were considerably favorable. As pointed out in the previous section, the pre-negotiations took place in the 113 Services Committee, which has been characterized by a particularly strong shared lifeworld among participants (*condition 1*). Despite the fact that (basic) telecommunications had already been discussed, to some extent, during the Uruguay Round and although internal EU telecoms liberalization was an ongoing topic and negotiators thus arrived in the Article 113 Committee with certain ‘domestic baggage’, national positions and preferences concerning the external realm were rather preliminary. There was still substantial uncertainty and a considerable lack of knowledge concerning the evolution of the telecoms sector and the potential repercussions of WTO-level liberalization (*condition 2*). In addition, the issues under discussion were usually cognitively complex, requiring technological, legal and economic expertise. This complexity also fostered communicative action, since it necessitated discursive inquiry in the search for ‘right’ action (*condition 3*). Discussions were characterized by a lack of politicization pressures that could have countered genuine debate. Instead, the pre-negotiations can be adequately depicted as a more insulated, private setting, where existing domestic constituencies could not (yet) come to the fore (*condition 5*). Furthermore, the arguments from the liberal camp were often articulated by persuasive individuals, above all Karl Falkenberg, Commission representative in the Services Committee, who was highly respected and much trusted in the Committee as well as known for his intellectual capacities (*condition 4*) (interviews 1997, 1999).

It is also worth pointing out that, in this case, the particular structure of the GATS was conducive to communicative behavior. Because of the decision to distinguish between horizontal and specific obligations, due to the scheduling of specific commitments by mode of supply and

by providing for MFN exemptions and exceptions to market access, different types of status-quo bindings were allowed under the GATS. As a result of these provisions, the GATS has been referred to as an ‘à-la-carte-agreement’ (Moos 2002: 206). The GATS negotiating structures thus allowed for flexible outcomes and varying commitments of the negotiating parties. This has been conducive to genuine debate, as processes of truth- and validity-seeking were not constrained by limited or pre-determined options. This openness and flexibility of outcome provided by the GATS structure was later ‘suppressed’ during formal negotiations, when stronger US pressure necessitated a far-reaching EU offer (with few derogations), and thus also somewhat restricted the scope for communicative action.

In their attempt to define the issues and problems involved in international basic telecommunications liberalization, delegations gradually began to enter into an argumentative exchange. The position of the less enthusiastic delegations was based, to some extent, on the assumption that liberalization on the international level could be held back by political means. These delegations put forward three main arguments: first, it was asserted that telecommunications were so fundamental to the functioning of an economy and touched on so many political interests that the state needed to retain a certain control over its telecommunications. Second, arguing against considerable competition, some officials still held the view that economies of scale would reduce costs, especially regarding the provision of local physical networks. Thirdly and less frequently, it was argued that with strong international competition, national operators would tend to lose market share, in economies with lesser developed telecommunications services (cf. Shears 1997).

The more liberal delegations’ reasoning directly undermined important aspects in the conservatives’ argumentation and assumptions. They pointed to the vast technical progress taking place, for example, through the further development of ‘by-pass’ services, such as call-back or

internet telephony.¹⁴ This would make any sort of protectionist legislation inhibiting such activities very difficult and hence *de facto* liberalization hard to escape in the medium to long-term (cf. Gonzalez-Durantez 1997: 137). Second, it was argued that falling costs of installing wired networks and the increasing significance of wireless communication would undermine the cost cutting rationale of economies of scale for physical infrastructure (interview 1999). Third, free trade and open markets would constitute appropriate economic policy since it would lead to greater economic efficiency and welfare. Fourth, it was asserted that Member States had already accepted the principle of liberalization at Community level. Opening markets to non-EU third countries, thus merely constituted an extension of that logic which Member States had already subscribed to. Finally, it was held that the Community's free movement doctrine would make it very difficult for individual Member States to prevent third country suppliers of services once the single market in telecommunications was in place, because a service can easily be traded across the internal frontiers of the single market, when a service has entered a Member State (with low external barriers).

The more skeptical delegations gradually changed their mind and increasingly began to concur in the liberal delegations' arguments during the course of the pre-negotiations. An interesting question in that regard is, *what type of arguments are persuasive in a genuine debate?* Derived from my empirical analysis, three sorts of arguments can tentatively be suggested as convincing in communicative action processes: (1) I have found that the persuasiveness of an argument increases, the greater its perceived quality. And quality seems to be related to comprehensibility, clarity and logical-consistency, as well as evidence in favor of an argument (cf. Thompson 2001: 143). For example, the liberal argument concerning the probable developments stemming from technological changes was particularly convincing, because it was logically-consistent and supported by substantial factual evidence (interview 1997). In other

words, the validity claim of truth was perceived as being fulfilled concerning this argument. By contrast, one of the reasons for the lack of persuasiveness of the skeptics' arguments was that they were based on the (probably erroneous) assumption that liberalization could be held back by political means. This argumentation was considered as flawed in view of the technological progress taking place in terms of 'by-pass' services.

(2) Arguments seem to be particularly persuasive when the speaker advocates a statement that is contrary to his or her alleged interests. This has been mirrored in the social psychology literature (e.g. Chaiken *et al.* 1996: 708). An argument that is out of keeping with a delegations' alleged interests is more convincing because it is assumed that such an argument is truthful, and not strategic. This, in turn, enhances the credibility and validity of the speaker and his/her statement.¹⁵ For instance, when the Luxembourgian delegation, which at the outset was more associated with the interests of the skeptics, had shifted its stance and began to echo increasingly the liberal rationales (while there was no scope/indication for side-payments), this reinforced the persuasiveness of the liberal argumentation, as the validity claim on the level of sincerity was enhanced for those arguments.

(3) Arguments in a genuine debate seem to be more persuasive when they are based on, reflect, or follow from, the assumptions and statements of those to be convinced. This may be largely due to the fact that the argument can resonate more easily and comprehensively with existing knowledge, norms and beliefs of the listener. There seems to be a human tendency for buying more easily into the well-known and well-acquainted. Put differently: self-persuasion may be more effective than persuasion by others (cf. Chaiken *et al.* 1996: 703-04). For example, the internal market argument made a certain impact in genuine debate as it reflected the assumptions and conclusions of many 'skeptical' national trade negotiators who were acquainted with linkages between the internal (EU) and external realms (and anticipated) the eventual

implications of internal liberalization on external trade policy (interview 1997, 1999).

The result of the process of genuine debate was a nearly general, liberal consensus amongst officials in the 113 Committee, although delegations had not talked much about concrete offers (interview 1997; e.g. Council 1995). The pre-negotiations led to a modification of general expectations and influenced the subsequent broader discourse and negotiations on more specific issues. An (implicit rather than explicit) understanding was reached that a far-reaching offer should be tabled in the forthcoming negotiations, including a swift opening of markets with only few exceptions. As pointed out earlier, genuine debate, problem-solving, bargaining and other forms of interaction are ideal types which do not often appear in their pure form. My analysis concerning EU pre-negotiations on basic telecoms services confirms this. Actors often used a *melange* of genuinely communicative as well as rhetorical arguments. However, my analysis and evidence suggests that the arguments presented above were, on the whole, made with the intention to lead a reasoned discussion concerning valid behavior.¹⁶ The subsequent sub-sections seek to substantiate the case of (primarily) communicative action during the pre-negotiation phase.

Evidence from structured interviews

During a first and second series of expert interviews a number of officials interviewed characterized the pre-negotiations in terms of communicative rationality *without being prodded* (interviews 1997). In a third small series of more structured (expert) interviews, in which three different categorizations (“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). In another, small series of interviews, in which “arguing/reasoning” was set against “upgrading common interests/swapping concessions”, genuine debate prevailed again in a clear-cut way.

Negotiators’ underlying motivations

The arguments presented during negotiations do not (in themselves) reveal, if they were made with the authentic intention to seek validity or if, by contrast, they were made out of a strategic rationale. To illuminate matters I have, as far as possible, reconstructed actors’ underlying motivations. These were traced through interviews with Committee members. Interviews with their colleagues in capitals, meeting summaries, position papers, other written (confidential) documentation and, on occasion, participant observation, have been used for *cross-checking*.

As far as the liberal delegations are concerned, three core motivations could be identified: first, negotiators were guided by ‘free trade’ or ‘neo-liberal economic’ norms and values. They believed that free trade – characterized by open markets and free competition – represented appropriate policy concerning economic efficiency and welfare. “Free trade” and “liberalization” had become shared orientations which strongly guided their economic policy views (interviews 1997, 1999; cf. Niemann 1997). Second, they regarded themselves as experts and sought to demonstrate their expertise. The third motivation was concern for maximizing self-utility, here mainly in terms of their national economy (interview 1997). My evidence suggests that adherence to the free-trade/liberal economic norm was the strongest motivation, followed by expert-guided behavior. The national interest motivation has generally come out as the least important one during this phase. As for the more conservative camp – equivalent to the free-trade/liberal economic norms held among the more liberal delegations – Committee members were most

strongly led by norms of (moderate) protectionism/state interventionism which guided their expectations regarding appropriate policy (interviews 1997, 1999; cf. Niemann 1997). Maximization of utility (for the domestic economy) again came out as the weakest among the three motivations, with expert-guided behavior constituting the second most important underlying motivation (interview 1999).

Negotiators have attributed their relatively low 'national interest' motivation during the pre-negotiations mainly to uncertainties and the lack of knowledge (*condition 2*), the complex of issues (*condition 3*) and only weak politicization pressures (*condition 5*). Hence, material self-interests were still in the process of being shaped (interviews 1997, 1999). The pre-negotiations constituted a conflict of norms¹⁷ and a conflict of facts, rather than a conflict of interests. Both norms and facts cannot be bargained (or traded). Norms attain validity through consensus and common convictions. Facts need to be verified or enriched with new knowledge (cf. Holzinger 2001: 271). That maximization of interests played only a subordinate role in actors' motivations thus weakens the case of bargaining (and, to a lesser extent, problem-solving).

However, the preceding analysis does not yet decisively weaken the case of rhetorical (as opposed to genuinely communicative) action. For this purpose we have to go further. The importance of norms in actors' underlying motivations furthers our understanding on that matter. First, the more norms are contested, the more actors will engage in validity- or truth-seeking processes. And real validity is arguably only attainable by entering into truly argumentative processes. Secondly, and perhaps more importantly, when norms provide the basis for human action, this action need not be a conscious process as norms tend to be enacted out of habit, not out of choice (cf. Risse 2000: 6). In a genuine normative debate/conflict, in which participants act out norms in an almost automatic fashion, there is less scope for actors' adding cheap validity to a norm. However, admittedly the preceding analysis still leaves some room for doubt concerning

the sincerity of argumentation. Hence, there is need for further substantiation of genuine debate.

Non-hierarchical argumentation

The case of communicative action is further supported by the non-hierarchical manner in which arguments were put forward. Negotiators generally refrained from pointing to their rank, status or qualification when making their arguments, and thereby avoided adding cheap authority to their statements (cf. Risse 2000: 18). For instance, as for the internal market argument, market-liberal negotiators held that the preclusion of third country service suppliers would become difficult to maintain *only when* the internal market in telecommunications *was in place*. They did not portray the single market as having instantaneous implications. Neither did they describe the impact of technological change in such a manner. Instead, they depicted these developments as bringing about de facto liberalization in the medium to long-term only (cf. Gonzalez-Durantez 1997: 137). Thus, liberal Article 113 Committee members did not add extra (non-discursive) legitimacy to the internal market argument, which they could have done without much difficulty (interview 1999). In addition, (liberal) officials abstained from pointing to their neo-liberal views as constituting the predominant economic paradigm.

Argumentative consistency

A meaningful indication for genuine debate is argumentative consistency across different contexts and forums. By contrast, actors changing their arguments and justifications depending on the audience are likely to engage in rhetorical action (Risse 2000; Checkel 2001). In several cases, it was possible to trace actors' lines of argument in more than one forum or context. In

addition to the arguments made in the Article 113 Committee, I was able to reconstruct negotiators' lines of reasoning in their domestic bureaucratic environment by interviewing their colleagues in national capitals and through the study of confidential reports. The cases investigated revealed a high degree of argumentative consistency. For example, liberal arguments concerning the implications of technical change and about the appropriateness and benefits of liberalization were communicated by Committee members in the domestic setting in virtually the same way as in the Article 113 Committee. One civil servant at the Federal Ministry of Economics noted, for example, that his close colleague from the Article 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 matters before, but as a practical solution to the situation in hand" (interview 1997).¹⁸

The application of what has been learned

Learning processes resulting from genuine debate are further substantiated when what has been learned is used or applied. When negotiators start to use lines of reasoning (in a non-rhetorical manner), by which they have been persuaded, they are likely to have been truly convinced. Such processes could be identified in quite a number of occasions, for instance, with regard to the Luxembourgian or Irish delegations, which had not been convinced of the implications of technological change at the start. However, after some time they began to acknowledge the strength of that argument and later fully concurred with the liberal delegations on this point (interview 1997). Eventually, they also joined in reasoning along very similar lines in the 113 Committee. That this move was not rhetorical has been asserted by the negotiators in question and also corresponds to the judgments of close colleagues in national capitals who should have

been able to detect strategic/opportunistic behavior (interviews 1997, 1998).

Exploring alternative explanations

The limited plausibility of alternative explanations during this stage of the negotiations further strengthens the rationale for genuine debate. First, logrolling, cost-cutting and pay-offs, which all involve the swapping of concessions/benefits in one way or another, played no role. Negotiators were still in the process of analyzing their interests and positions *vis-à-vis* complex and often new issues on which many lacked substantial knowledge. In addition, talk about concrete offers or positions had hardly taken place. As a result, there were no (or only few) horses to trade, yet. Pre-negotiations were mostly a dispute about facts and norms, which cannot be traded as pointed out above. If employed to arrive at the liberal consensus, compensations for the conservative member states would have had to take place in unrelated areas since the liberal consensus clearly disadvantaged them from an interest-maximization point of view, given the one-sidedness of ‘persuasion’. The latter explanation has been rejected (interviews 1997, 1999).

Second and third, the one-sidedness of ‘persuasion’ makes rhetorical action as well as threats or coercion more plausible alternative explanations. However, the afore-mentioned evidence suggests that rhetorical action was only relevant in some part and that, on the whole, the arguments exchanged can be attributed to genuine debate. Coercion or threats were judged absent by interviewees. Arguments concerning the single market rationale and technological progress were neither meant, nor used, as disguised threats (see above/below).

Another alternative explanation for preference changes would be pressures from domestic industry. National and intra-EU telecommunications liberalization has been a controversial issue in many countries. Domestic telecoms industries got (considerably) involved in these processes.

However, as for the negotiations on the *WTO-level*, it has been noted by interviewees that domestic telecoms industries were less involved, especially during the pre-negotiations. In fact, the Commission complained about the insufficient engagement of European industry throughout the entire WTO basic telecoms negotiations (interview 1999). This lack of involvement has been attributed to the relative novelty (and, to a lesser extent, the complexity) of rules and obligations on services in the GATS (interview 1999).

A fifth alternative scenario suggests that the more conservative countries had no real option other than fast liberalization on the international level and thus were in a vulnerable negotiating position from the outset. According to this line of reasoning, the emerging single market closed Member States' external policy options, as – with the single market in place – services entering one Member State were to be traded freely across the single market (cf. Hanson 1998). Contrary to this alternative explanation, the more skeptical delegations considered themselves to have substantial room for maneuver and need not have agreed to the principle of fast liberalization at this stage. Through Council Resolution 93/C213/EEC countries with less developed telecommunications networks, i.e. Spain, Ireland, Greece, Portugal and Luxemburg would be granted an additional transition period ('derogation') of up to five years beyond 1998 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. In addition, the generally strong doubts about timely implementation of legislation in the telecoms sectors (cf. Stone 1997; Commission 1999), and uncertainty concerning the timing and exact design of the telecoms single market reduced the perceived pressure from the internal market (interview 1997; cf. Niemann 2004a).

Revision of the first EU offer (sub-case 2)

Following the first EU offer of October 1995, intra-EU negotiations focused on potential changes to that offer which included a number of restrictions to competition, most prominently restrictions concerning non-EC investment in Spain, France, Portugal and Belgium. These were deplored by other WTO negotiating parties and especially by the US delegation. Among the more skeptical EU faction, some members of the 113 Committee – such as the Greeks, Irish and Luxembourgiens – had managed to persuade their capitals not to submit (moderate or significant) restrictions on commercial presence in the first EU offer. Although convinced about the rationale of a liberal and ‘progressive’ EU offer, other officials in the conservative camp faced difficulties in persuading their colleagues back home and started to face resistance from within their national administrations (*condition 5*). The small minority that had not been part of the ‘nearly general liberal consensus’ kept its cautious stance. Taken together, these developments account for the fact that the general change of expectations amongst the more ‘skeptical’ delegations could not be maintained on some questions throughout the negotiations (interview 1997, 1999).

While genuine debate had been the main mode of interaction during the pre-negotiations, this now began to change. This change was accompanied by altered conditions concerning the negotiating environment. Perhaps most importantly, countervailing pressures from national capitals started to emerge. As processes of genuine debate, in some instances, failed to trickle through capitals, national officials who do not attend the 113 Committee could not be carried along in the process. Progress towards a reasoned understanding in the 113 Committee was thus hampered (cf. *condition 5*). As a result of the growing importance and politicization, the Full Members Committee increasingly took charge of the negotiations, to the ‘detriment’ of the

Services Committee. Issues remained cognitively complex, but the Full Members sometimes lacked the required expertise to conduct a sensible reasoned debate about valid behavior, which adversely affected *condition 3*. 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 increasingly got involved in the more important aspects of the negotiations, Karl Falkenberg, the Commission representative in the Services Committee and arguably the most persuasive individual in the 113 Committee setting, was less able to influence the negotiations (*condition 4*). As the negotiations had become more settled and foreseeable, “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*).

With a number of countries remaining unwilling to alter their stance, elements of rhetorical action occurred more often and became increasingly pervasive. For instance, the Commission and other liberal delegations added ‘cheap’ legitimacy to their reasoning by exaggerating the advantages of revoking foreign ownership restrictions and by more and more pointing to neo-liberalism as the prevalent economic paradigm. When the Full Competition Directive of March 1996 specified the 1998 deadline for the internal telecoms market, the Commission started to use the internal market argument increasingly in a rhetorical manner, more and more framing the process as “immediate” and “inescapable” to put pressure on the more reluctant delegations.

Examining the consistency of arguments during this period corroborates the strategic use of arguments. Commission officials confirmed that in former DG I it was openly acknowledged that the internal market pressures and the advantageous of market opening for the derogation countries were overstated in the 113 Committee during this period (interview 1999). At this stage of the negotiations more explicit reference was made to the various (underlying) interests which had become clearer and more explicit by then. Forms of concession swapping, compensations or

buying acquiescence also began to appear.¹⁹ As a result of this mix of rhetorical and discursive arguments trickling down national administrations, along with tactics of swapping concessions/buying acquiescence and the exertion of indirect pressure, positions began to shift and the French, Belgian and Portuguese delegations removed (most of) their restrictions (Council 1996; interviews 1997, 1999).

Finalizing the revised EU offer: the reduction of Spain's restrictions (sub-case 3)

A crucial phase of the negotiations emerged in the autumn of 1996 when the EU set out to finalize its revised offer. US participation in the final deal was regarded as crucial by the Commission and Member States. The most significant hindrance for US acceptance of the EU offer were the restrictions to market access maintained by Spain.²⁰ As opposed to discussions with Portugal, France and Belgium concerning restrictions on non-EC investment, the issue had become substantially politicized in Spain (*condition 5*). With the change of government in April/May 1996 increasingly strong fractions of the Spanish government and administration favored a duopoly, as selling a second license promised to generate high revenues (interview 1997).

Other conditions also became less conducive to communicative action: negotiations of the Spanish case took place increasingly on a bilateral level between the Commission and Spain. Here, negotiators did not share a lifeworld comparable to the one in the Article 113 Committee (*condition 1*). Most of the bi-lateral negotiations took place at a very high level. For the Commission, Sir Leon Brittan led most of the bi-lateral 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. Uncertainty (*condition 2*) had further diminished, as positions and interests were particularly clear-cut here, as negotiators had, over time, become very familiar with the Spanish case (interview 1997). Issues remained cognitively complex during the bilateral talks. Yet, negotiators at the Minister/Commissioner level were even less capable to deal with items in an argumentative way than the Full Members. They frequently lacked the required knowledge to make truth-seeking possible, as validity claims could not be adequately evaluated (interview 1999). As a result *condition 3* further ‘deteriorated’. Finally, the persuasiveness of negotiators (*condition 4*) seems to have been adversely affected by the altered negotiating infrastructure. Karl Falkenberg, Commission representative in the 113 Committee (Services), who was rated by his peers as the most persuasive negotiator, was little involved in bilateral negotiations with Spain. Sir Leon Brittan, who led most negotiations with Spain, has got a mixed reputation as a negotiator.²¹

The concept of genuine debate cannot account for the Spanish government dropping its market access and foreign ownership restrictions. Instead, a mix of threats/promises, misleading arguments/rhetorical action and trade-off can explain why Madrid eventually changed its stance. Spain continued to hold that the removal of foreign ownership restrictions would be detrimental to *Telefonica* and challenge Spain’s national interest. The Commission reacted – to what was unambiguously perceived as strategic and non-cooperative action – by also assuming tougher bargaining tactics. DG I of the Commission was in close touch with DG IV, which was in charge of *Telefonica*’s application for participation in the *Unisource* alliance of telecom operators. Under the EC’s competition rules, the Commission has clearance powers over strategic alliances. It made use of these powers to increase its leverage over the Spanish government which strongly supported *Telefonica*’s participation in *Unisource* (Sauter 1997). The Commission promised to

clear the application, if Spain made substantial concessions in the WTO telecoms negotiations and implicitly threatened to withhold clearance in the absence of such a move.

The Commission justified its stance by referring to the ‘precedent’ of an earlier alliance of German and French operators in the ATLAS/Phoenix strategic alliance, which was made conditional on market-opening measures of member states (Official Journal 1996). This argument, however, was made chiefly in order to add cheap legitimacy to its claim and ‘to thinly disguise its threat’ (interview 1997). In addition, the Commission put considerable pressure on Spain. It contended that given the US demands concerning Spanish commitments, the entire WTO basic telecommunications negotiations might fail due to Spain’s reluctance to move. Eventually, Spain succumbed to the pressure and changed its position.²²

Conclusion

The above analysis indicates that genuine debate was important for explaining the negotiating style and actors’ behaviour during the pre-negotiations. Given the fact that the pre-negotiations were to some degree trend-setting, the concept was also significant for our understanding of the negotiations at large. Without contesting the general relevance of problem-solving and bargaining, which remain the two central paradigms of negotiation theory, these two established and dominant approaches could not (adequately) capture (the initial) parts of EU negotiations concerning the WTO Basic Telecommunications Services Agreement. This suggests that communicate action constitutes a valuable additional building block that complements traditional negotiation theory. Hence, it can be argued that the incorporation and inclusion of genuine debate contributes to a firmer basis and a richer repertoire for theory-building in the study of (international) negotiation.

What are the more practical implications of the above analysis? First, communicatively oriented actors may be more likely to reach agreement than problem-solvers and bargainers, as preferences are even more fluid and subject to change than under bargaining or problem-solving behavior (cf. Niemann 2004b: 13). Second, agreements reached through processes of communicative action and truthful persuasion should be more robust and enduring than outcomes reached by other negotiating styles. Whereas problem-solving outcomes can be characterized as *de facto* accords, agreements reached through genuine debate may be characterized as rationally motivated assent or reasoned understandings. Actors not just compromise, but fully concur in the agreement, since learning processes are more profound: rather than merely adapting the means to achieve basically unchanged goals (as in most of bargaining and problem-solving), actors redefine their very priorities in validity-seeking processes. Third, engaging in genuine debate entails some risks. In communicative action mode actors are, to some extent, vulnerable to rhetorical action or strategic arguing, as they are prepared to change their own preferences and to be persuaded by the ‘better’ argument. However, the ‘better’ argument may, at times, be supported by cheap legitimacy from rhetorical actors who argue strategically. As communicative actors may not always be able to ascertain their opposite numbers’ sincerity, they may buy into such rhetorical fallacies, in what they mistakably think of as a reasoned discourse among mutual truth-seekers (cf. Risse 2000: 23-28). Hence, communicative actors are more vulnerable to deceit. However, on many occasions they are able to spot rhetoric, as it often contradicts the ‘best’ solution according to (shared) standards of truth and rightness.

Genuine debate may also further our understanding concerning the phenomenon of negotiators “going native”. Negotiators may not necessarily depart from capitals’ instructions due to divided responsibilities or identities (cf. Lewis 1998) or, closely related, due to socialization processes whereby negotiators alter their norms, for example, due to the impact of frequent and

continuous interaction (cf. e.g. Lindberg 1963; Niemann 1997). An alternative explanation²³ would be that actors have an interaction mode at their disposal, other than utility maximization, namely communicative action, which is activated under certain conditions and circumstances and which leads actors to engage in truth-seeking behavior, at the expense of ‘domestic interests’.

The preceding analysis begs the question under what conditions we can expect genuine debate to occur and impact on preferences. The use of a comparative analysis corroborates the relevance of my hypothesized conditions. *Condition 2* (uncertainty), *condition 3* (complex issues) and *condition 5* (low level of politicization) are supported 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 sub-case 2 and significantly diminished in sub-case 3. *Condition 1* is also largely corroborated, although somewhat less straightforwardly, as the change towards rhetorical action in sub-case 2 was accompanied by only slight deteriorations of the common lifeworld. Analogously, the same applies to *condition 4* (persuasive individuals), although results are somewhat more tentative given the relatively poor availability of data.

Given these conditions, it can be tentatively suggested that genuine debate is particularly likely to occur during the pre-negotiation phase when a high degree of uncertainty paired with low levels of politicization can be assumed (cf. Elgström and Jönsson 2000: 692; Stein 1989: 246-247). In addition to the stage in the decision-making process, we can also relate the relevance of communicative action to the level of participants. The conditions for genuine debate are met most likely at the diplomatic (i.e. official) level of negotiations. Here we can expect issues that are cognitively complex, less politicized and characterized by strongly shared systems of norms and values (due to high levels of interaction and socialization).

Finally, the above analysis has tentatively indicated, what kind of arguments are persuasive in a genuine debate. Three sorts of arguments can preliminarily be pointed too: firstly, the quality of

the argument matters. Arguments that were comprehensible, clear, logically-consistent, and supported by strong factual evidence tended to be (particularly) convincing. Secondly, arguments seem to be persuasive when the negotiator advocates a statement that is contrary to his alleged interest. And thirdly, arguments in a genuine debate seem to be more persuasive when they are based on or reflect the assumptions and cognitions of the listeners. Put differently, self-persuasion may be more effective than persuasion by others. These arguments, although supported by the social psychology literature (e.g. Chaiken *et al.* 1996), have been arrived at inductively. My study has been hypothesis-generating, rather than a serious test concerning the persuasiveness of the specified arguments.

By specifying the conditions for communicative actions and tentatively suggesting what kind of arguments are persuasive in a genuine debate, (only) some way has been gone towards presenting a theory of how genuine debate works in (international) negotiations. The tentativeness of parts of the preceding analysis (e.g. on the types of arguments that may be convincing), the remaining controversy regarding some of the hypothesized conditions (cf. note 9), and the possibility of further specifying the significance of these conditions (e.g. which of the hypothesized ones are *conducive*, *necessary* or *sufficient?*), suggests that there is substantial ground for further research.

Notes

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¹ These paradigms have also been referred to under several different terminologies such as ‘distributive bargaining’ and ‘integrative bargaining’ (Walton and McKersie 1965), or ‘competitive’ and ‘coordinative’ negotiating behavior (Pruitt 1981).

² The terms ‘negotiation’ and ‘bargaining’ are frequently used interchangeably in the literature. However, many authors talk of ‘negotiation’ to denote the formal process that occurs when parties seek to find a solution to a problem or conflict, while reserving ‘bargaining’ to refer to a negotiation style characterized by competitive haggling. Under this distinction ‘bargaining’ also refers the above-mentioned particular paradigm. In this article negotiation and bargaining are differentiated from each other following this distinction.

³ The terms ‘genuine debate’ and ‘communicative action’ as thus used interchangeably in this article.

⁴ What is meant by ‘non strategic’ and what form of instrumentality is reflected by communicative action is explained in the section ‘genuine debate in a broader context’.

⁵ It could be argued however that Fisher and Ury (1981) address some issues from a communicative action perspective (cf. Niemann 2004b).

⁶ This section draws considerably on Putnam and Roloff (1992: 1-10).

⁷ The reference that some authors in the problem-solving tradition have made regarding an interest in (normative) principles (cf. Lax and Sebenius 1986) approaches the communicative action rationale on one of the three validity claims (rightness). However, in the problem-solving approach, principles are often applied for purposes other than (normative) truth-seeking. Instead, they are frequently used strategically or instrumentally (cf. Lewicki et.al 1994: 88; Lax and Sebenius 1986: 73-74).

⁸ Subsequently the terminologies, ‘arguing’, ‘persuasion’, ‘reasoning’ and ‘deliberating’ will be used to denote interaction processes in the Habermasian sense.

⁹ Other studies (e.g. Checkel 2001; Deitelhoff and Müller 2004) have also worked on the conditions conducive to arguing and persuasion. (Preliminary) findings suggest that there is quite some overlap concerning the conditions across the three studies, but also disagreement on several important points. While Deitelhoff and Müller (2004) regard publicity conducive to arguing, Checkel (2001) and Niemann (2004a) have suggested that low level of politicization and in camera settings contribute to persuasion/communicative behavior. However, it may be disputed whether these works can be sensibly compared. For example, Deitelhoff and Müller use a (significantly) wider conception of arguing (including strategic and rhetorical arguing) than Checkel and I.

¹⁰ Under MFN (most-favored-nation) treatment service suppliers from other WTO members are offered, on a non-discriminatory basis, the best treatment offered to any foreign service supplier.

¹¹ My understanding of pre-negotiations is broad and arguably also includes parts which other authors would categorize as formal negotiations. Saunders (1991: 62-69) has defined pre-negotiations broadly as (1) identifying the problem (and ways to deal with it); (2) producing a commitment to negotiate; and (3) setting the parameters for formal negotiations. Zartman and Berman (1982: 87-88) have pointed out that pre-negotiations and formal negotiations are not clearly separable from each other but tend to overlap or partly proceed in parallel. This is also evident in my analysis.

¹² The former Article 113 Committee is now called the Article 133 Committee, since the renumbering of articles following the Amsterdam Treaty. As 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 here.

¹³ The empirical part of this article partly draws on data presented in Niemann (2004a).

¹⁴ 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. So-called “call-back” services let consumers in countries with high telecommunications rates telephone abroad to inexpensive US or UK rates. In addition, digital technology, such as the internet and the mobile-telephone network, allows users to by-pass traditional voice-telephone networks (The Economist 22/2/97).

¹⁵ This point is somewhat related to condition 4 (persuasive individuals) as the latter integrity is augmented under such circumstances. However, this point is not grouped together with condition 4, as it is not a structural/inherent characteristic of the speaker, but more related to the property of argument.

¹⁶ The liberal argument insinuating that the skeptics had already bought into the liberalization rationale regarding the internal Community regime seems to have been an exception. This argument was used to add cheap legitimacy to the liberal case.

¹⁷ Norms are defined as ‘collective expectations about proper behavior for a given identity’ (Jepperson *et al.* 1996: 52-54).

¹⁸ An exception appears to be the argument regarding the skeptics’ acceptance of liberalization at the Community level. This argument was only used by the liberals *vis-à-vis* the conservative delegations but played no role in other (internal) discussions (interview 1998).

¹⁹ It has been asserted, for example, that in return for dropping its limitations on *indirect* market access of non-EC judicial persons to companies providing basic telecommunications services to the general public, France was ‘permitted’ to retain some restrictions on *direct* non-EC participation in companies providing such services to the general public in France (interview 1997; cf. WTO 1996).

²⁰ *Telefonica*, the Spanish telecoms operator, 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).

²¹ While his intellectual skills are highly rated, he has been described as ‘high-handed’, ‘aloof’ and ‘lecturing’ in his negotiations with Member States (cf. Financial Times 9/3/99, Niemann 2006 forthcoming). The latter attributes are not conducive to persuasiveness (cf. e.g. Checkel 2001: 563).

²² More precisely, Spain conceded to drop its market access and foreign ownership restrictions as of 30 November 1998.

²³ It should be stressed, however, that communicative action is closely related to socialization processes and identity formation. It may foster identity changes and it is one important form of norm socialization (cf. Risse 2000).

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