Chapter 25

Explaining the Treaty of Nice: Beyond Liberal Intergovernmentalism?

Finn Laursen

Introduction

In this chapter we shall discuss how to explain the Treaty of Nice. In the introductory chapter we mentioned Andrew Moravcsik's approach, liberal intergovernmentalism (Moravcsik, 1993, 1998). This approach can structure an analysis of a treaty reform like the Treaty of Nice, but many authors, including contributors to this book, have also pointed to limitations in the approach (see also Christiansen, Falkner and Jørgensen 2002).

Some of the criticisms concern the first stage, the formation of national preferences. According to Moravcsik, the main explanation of national preferences is that economic actors make demands to the politicians. These in turn supply solutions mainly to get re-elected. Moravcsik's explanation therefore downgrades the role of geopolitics, including ideas. Further, domestic institutions such as parliaments, party systems and public opinion do not play important roles.

Criticisms concerning the second stage include assumptions about the negotiation process which is based on the so-called Nash bargaining solutions (Beach 2002). Such an approach downgrades the importance of specific institutional aspects of the negotiations, including the role of EU-level institutions, especially the Commission, the European Parliament and the Council Secretariat. Nor is there any particular role for Presidency entrepreneurship (see also Christiansen 2002, and Beach 2004).

Concerning the explanation of institutional choice in liberal intergovernmentalism, i.e. credible commitments, there have been fewer explicit criticisms. But scholars who question the rationality assumption of liberal intergovernmentalism will again ask about the role of norms and ideas at this stage, too (Wind, 1997; Risse, 2004; and Schimmelfennig 2003)

Some might argue that liberal intergovernmentalism fared well when it came to explaining European integration from the Treaty of Rome in 1957 to the Economic and Monetary Union (EMU) part of the Treaty of Maastricht in 1993. This part was mostly about economic integration, where economic actors should be expected to play an important role. But Maastricht was more than EMU. It took a step towards political union, where the geopolitics of the end of the Cold War in 1989 was a very important event (Laursen, 1992). In general one can argue that it was the bipolar system of the Cold War that created a situation in Western Europe that allowed the founding Member States of the EC to start economic integration (see also Rynning's contribution to this volume)

The post-Maastricht reforms, Amsterdam and Nice – and now also the draft Constitutional Treaty – must partly be seen as a response to the new situation in Europe after 1989. First some members of the European Free Trade Area (EFTA), then the

former communist countries of Central and Eastern Europe (CEECs), started demanding membership of the EU. Would a much enlarged Union be able to function effectively? Further, the difficulties of getting Maastricht ratified in 1992-93 led to a new debate about the legitimacy of the process. The opinions of the wider public started to play a more important role. The permissive consensus of the early years was gone (Laursen, 1994). Institutional choice was now not only a matter of 'credible commitments' but also a question of legitimacy.

As long as integration in Europe was economic in nature, including the internal market and monetary integration, so-called 'output legitimacy' was sufficient. If the Communities made good decisions economic and political actors would be supportive (Lindberg and Scheingold, 1970). As long as integration was 'negative' integration, i.e. the abolishing of barriers, output legitimacy was sufficient. But as the European Communities (EC) moved towards 'positive integration', i.e. the development of common policies, the process became more politicized, and questions of transparency and democracy were now on the agenda. A concern for 'input' legitimacy emerged (Scharpf, 1999). The issue of the 'democratic deficit' was on the agenda of successive treaty reforms. The main result was the introduction of the co-decision procedure in Maastricht for internal market related legislation. This procedure made the European Parliament a co-legislator together with the Council of Ministers. The use of co-decision was subsequently extended by the Amsterdam and Nice treaties. This made the European Parliament an institutional winner in the most recent institutional reforms. This concern for input legitimacy goes beyond 'credible commitments' and can thus not be fully explained by liberal intergovernmentalism. Indeed, institutions and ideas do matter.

Explaining Preferences

If, in line with liberal intergovernmentalism, we look at IGCs as 2-level games, governments have to be concerned about domestic ratification of an agreement negotiated at the EU-level (Putnam, 1988). In most Member States ratification is authorized by national parliaments, the two main exceptions being Denmark and Ireland, where ratification normally takes place through the use of referendums. In the case of the Treaty of Nice, Denmark avoided a referendum because an interpretation of the Treaty concluded that it did not extend the policy scope and would thus not fall under Art. 20 of the Danish Constitution, but Ireland did need a referendum. As we have seen Ireland had to go through two referendums to be able to ratify the treaty (see contribution by Tonra).

Given the fact that political elites tend to be more pro-European than the wider public a parliamentary ratification will usually be easier than ratification by referendum. However, it sometimes is the case that a parliamentary ratification runs into problems, as the British ratification of Maastricht did in 1992-1993. In the case of Nice the Labour government had a comfortable majority and ratification was fairly easy. Anyway, governments have to anticipate parliamentary reactions to the agreements they bring home. We have for instance seen this in the case of Spain and Nice (see Basabe's contribution to this volume). Despite the Aznar government's parliamentary majority, the government felt that it needed to return with a 'victory'. So even if criticism back home does not threaten ratification, governments have a wider concern to limit criticism and maintain a good image. A government with weak parliamentary support will be particularly sensitive to such concerns.

Various domestic institutional factors can play a role in preference formation.

One domestic-politics factor that had some impact on the Nice negotiations was the fact that during the French Presidency, France had *cohabitation* with a Gaullist president and a Socialist Prime Minister. This situation contributed to make it difficult for President Chirac to be a neutral president of the negotiations among the Heads of State and Government in Nice.

In a negotiation like the Nice negotiations, where formal EU institutions are changed, symbols and national prestige can play a great role. As we have seen France wanted to stay on par with Germany in the re-weighting of votes in the Council. Belgium compared itself with the Netherlands, Portugal with Spain, etc. Since leaders had to return to their national capitals and defend the outcome, they could not ignore these factors. As suggested in the chapter on Belgium, the Belgian leaders had to ask themselves how the reaction to front page news 'Netherlands – Belgium, 12-10' would be (see contribution by Kerremans in this volume).

On one of the issues on the Nice agenda, the extended use of qualified majority voting (QMV), liberal intergovernmentalism retains some explanatory power. Where Member States insisted on retaining unanimity they often did so for economic reasons. This was clearly the case when Britain resisted QMV for taxation and social policy issues. Austria wanted to retain unanimity for some issues related to environmental policy. This included water resources, an important concern in Austria, and energy, as there is strong opposition to nuclear energy in the country (see Kathrin Blanck's contribution). Denmark's insistence on unanimity for certain aspects of social policy was due to a fear that migrant workers and their dependants might undermine the tax base of the social welfare system. France's insistence on unanimity for the audiovisual and cultural sector was a defence of the French film industry as well as a defence of the French language. But countries favouring a large extension of the scope of QMV, such as Belgium, at least partly did so because of pro-European or federalist ideology. Interestingly, however, as mentioned by Bart Kerremans, the Belgians sided with the French on the cultural part of services, language being an important element of the Belgian federal system.

Other countries that favoured a much extended use of QMV included Italy, the Netherlands and Finland. In the Italian case, a pro-European ideology played a role. In the Dutch case, such an extension was promoted by the Foreign Ministry with some opposition from other Ministries. But the expectation was that other Member States would limit the extension, as indeed happened (see contribution by Luitwieler and Pijpers). That Finland too was in this group indicates that Finland, contrary to the two other Nordic EU Member States, has moved to a core position in European integration. But still Finland did want to keep certain budgetary decisions and defence outside QMV (see contribution by Antola).

That Greece defended unanimity for maritime transportation and structural policy fits in with liberal intergovernmentalism. On maritime transportation Denmark was an ally and on structural policy Spain and Portugal were allies of Greece (see contribution by Tsakaloyannis and Blavoukos). That Ireland defended national rights to determine taxation levels can also be explained by Moravcsik's approach (see contribution by Tonra). Ireland's low corporate tax had been an important element in the country's impressive economic growth in recent years.

Spain had a fairly long list of demands for unanimity: structural and cohesion funds, external borders (because of Gibraltar), taxation (low corporate taxes), social security, water resources (aspects of environmental policy). Also the United Kingdom had a long list. Apart from treaty reforms and enlargements, where there was wide support

for retaining unanimity, the British wanted to retain unanimity for taxation, border controls (Schengen opt-out), social security, defence and 'own resources' (see contribution by Larsen). Liberal intergovernmentalism can explain most of this, but Gibraltar and defence take us into high politics where sovereignty issues dominate.

In the case of Member States having federal systems, Germany, Austria and Belgium, the regional governments did make some demands. As we saw in Christian Engel's contribution to this book it was the German *Länder* which formulated the demand for a declaration attached to the Nice Treaty about the post-Nice agenda, including in particular the question of delimitation of competences. Belgium and Italy joined Germany on this.

The German *Länder* also had some influence on Germany's policy on the scope of QMV. A couple of issues falling under the *Länder*'s competence were affected. Germany insisted on unanimity for cultural support programmes (Art. 151(5)) and training and conditions of access for self-employed persons (Art. 47(2)). The threat of non-ratification – given the representation of the *Länder* in the *Bundesrat* - was sufficiently credible to secure that unanimity was retained for these two articles (see Christian Engel's contribution).

Other domestic political institutions have played various roles. All Member States have to coordinate IGC policies among ministries, and some do this more than others (see also Wessels, Maurer and Mittag, 2003). Demands for retaining unanimity in certain policy areas often came from the responsible ministries. Interest groups may have made demands, or the Ministries may simply have anticipated future problems, if QMV were to be introduced. In many Member States interest groups do not seem to have been very active in connection with the Nice negotiations (see for instance the contribution on Sweden by Karlsson and Svensson). But officials and politicians do anticipate possible demands.

In some Member States the European Affairs committees of the national parliaments have expressed their views and made demands to the governments (see also Maurer and Wessels, 2001). In the case of Denmark this process normally includes a negotiation mandate to the government, which was also the case for Nice.

The role of extreme right wing parties in some Member States was to have a special influence on the Nice negotiations. In the case of Austria, which had been exposed to sanctions from EU-14 when Jörg Haider's party (FPÖ) entered the Austrian government, this led the IGC to give high priority to getting Art. 7 TEU amended to avoid a similar case in the future. On the other hand Belgium had been a driving force in the decision to impose sanctions against Austria because the Belgian political elite feared their own extreme right party, the *Vlaams Blok.* We learn from Kerremans' contribution that the issue almost became a personal crusade for Louis Michel, the Belgian foreign minister. The issue also became a problem in Denmark, where it was exploited by EU-sceptical parties and groups in the euro referendum, which in turn affected the Danish determination to avoid a referendum on the Treaty of Nice. What we have seen then is that specific domestic events can reverberate through the whole EU system.

Although liberal intergovernmentalism seems able to explain much about the extension of the scope of QMV, the same approach faces greater difficulties for positions on other aspects of the Nice agenda.

Although there were cracks in the groups of large and small Member States the issues of re-weighting of votes in the Council and the composition of the Commission were very much small-vs.-large-Member-States issues, especially the question of the Commission.

These issues were about influence and relative power. Member States did compare themselves with other states of comparable size. They all approached the issue with a sense of fairness. Relative gains and losses did matter and the leaders were concerned about the domestic reaction to a bargain. Defining the 'national interest' in these matters did not depend on demands from interest groups. Politicians did not need the help of experts. It was simply a matter of maximizing future influence in an enlarged EU. Governments could easily calculate gains and losses. 'Realist' scholars can explain interests in this area without resort to complex theories.

Explaining the Bargaining Process

Concerning the bargaining process we have to ask about influence. Was it asymmetric interdependence that formed the basis? Some countries were more eager about enlargement than others. Which threats of veto or exclusion existed and were they credible? What influence did EU-level actors have?

Moravcsik mainly studied France, Germany and the UK. Is that sufficient? Shouldn't we at least include Spain in the case of Nice as well as the small Member States that formed a large coalition in support of retaining a member of the Commission and avoiding too much re-weighting of votes in the Council in favour of the larger members? It seems fair to say that just studying the three big ones would be inadequate for the Treaty of Nice.

Looking at the question of extended scope of QMV, the UK was an important 'minimalist' country insisting on unanimity on many issues and the UK power may have increased after the St. Malo bilateral summit with France in 1998 which started the development of ESDP, which in turn made the UK a more important actor in the EU (see chapter by Larsen). So threats of exclusion of Britain were less credible than they had been in the Single European Act (SEA) negotiations in 1985. And on most issues the UK had a number of allies. So the bargain on the scope of QMV was very much a lowest common denominator agreement as Moravcsik would expect.

The bargaining process on the Commission saw two coalitions facing each other. Neither side could use threats of exclusion. Both sides could use threats of veto. A compromise had to be found, one where both sides could claim to have won, but which in reality largely postponed the decision.

The bargaining process on the re-weighting of votes was the most difficult one. It cannot be explained without an analysis of the role played by the French Presidency. With France insisting on parity with Germany, Belgium could rightly expect parity with the Netherlands. The process was further complicated by the Spanish problem and the French decision to treat Spain well – possibly to have an influential southern ally in the future eastward-enlarged EU, but possibly also to silence a difficult negotiation partner (see Basabe's contribution to this volume). The French treatment of Spain had repercussions for the position of neighbouring Portugal. In the end veto threats from Portugal and Belgium had to be seen as credible. The two countries were partly bought off with more seats in the European Parliament, each getting 22 seats, while two future members of comparable size, the Czech Republic and Hungary got 20.

So the third ingredient in Moravcsik's interstate bargaining, linkage strategies, were used at the margin. But the narrow agenda limited the possibility of linkages.

Institutional Choice

Was institutional choice then because of 'credible commitments'? Yes, to some extent, it can be argued. To the extent that the concern was to have credible institutions after the impending Eastern enlargement such an explanation can be used. And there is no doubt that many Member States saw Nice as an enlargement treaty. At least the UK and the northern Member States clearly saw the treaty that way.

Especially the expanded scope of QMV can be explained by 'credible commitments'. So could the changed provisions on the Court of Justice and Court of First Instance, making sure that the judicial system will work in an efficient way in the future. The reform of the judicial system, interestingly enough, avoided politicisation and was largely handled by legal experts. Some may argue that the effort to reduce the size of the Commission could also be seen as a 'credible commitments' question, but others might argue that the larger Member States that insisting on a smaller Commission had a hidden agenda of decreasing the legitimacy of the Commission, making it easier for them to dominate the agenda setting through the intergovernmental European Council.

Nice was more than a question of credible commitments. It was also, as we have argued, about legitimacy. The extended use of co-decision – albeit limited to only six areas – can only be seen as a response to the 'democratic deficit.' The EP powers were also increased by giving the EP the power to bring actions before the ECJ concerning the legality of acts (art, 230 TEC) and to seek an opinion from the ECJ concerning the validity of international agreements (Art. 300(6) TEC). Further, the EP can now take the initiative in charging a Member State with breach of fundamental rights (Art. 7(1) TEU) (see Neuhold's contribution to this volume). Increased influence for the European Parliament does not fit well with Moravcsik's 'credible commitments'.

Nor is it easy to see re-weighting of votes as a question of credible commitments. It was a question of relative power that enlargement forced on the agenda.

The Limits of Liberal Intergovernmentalism

Overall it can be argued that liberal intergovernmentalism still retains a fair amount of explanatory power in relation to QMV when we study the case of Nice. But we have also seen some shortcomings. Some national preferences did have economic roots, but others were due to geopolitics and ideology. Pro-European ideology still plays a certain role in some Member States, including Belgium, Italy and possibly to a lesser extent Germany and the Netherlands, but now also to some extent Finland. In the bargaining process there were elements of asymmetrical interdependence and linkages were made to find compromises. But given the narrow agenda of the Nice IGC the use of linkage strategies was rather limited. Threats of exclusion may not have been used in the negotiations, but such threats may become more credible in the future because of the new provisions on enhanced cooperation. On the other hand the easier opportunity to use enhanced cooperation will reduce the credibility of threats of veto in the future.

Liberal intergovernmentalism is especially limited when it comes to the study of the role of the Commission, the European Parliamement and the Council Secretariat. The Commission has been involved in IGCs since the SEA negotiations in the 1980s. The European Parliament is not formally involved but has increased its informal involvement and had two observers who took part in the Preparatory Group in the Nice negotiations (see contribution by Neuhold). The Council Secretariat – to the extent it

assists the Presidency – has been able to gain some influence through drafting some of the provisions. In the case of Nice these non-Member State actors were somewhat handicapped because of the way the French Presidency tried to control the process from Paris. This reduced the opportunity for third party entrepreneurship and brokerage (see contribution by Beach). Nevertheless, the Commission did have some influence on the reform of the judicial system, the strengthened internal role of the President of the Commission, article 133 TEC on commercial policy, article 7 TEU on the early warning system in cases of breach of democratic principles by a Member State, as well as the new provision on European political parties. The Council Secretariat also contributed to the compromise on the services part of commercial policy, required by France especially, and the declaration on the future venue of European Council meetings, a bargaining exchange to Belgium in the endgame in Nice.

Liberal intergovernmentalism is especially poor when we study the parallel process of ESDP. ESDP can first of all be explained by geopolitics. It was very much a response to the unfolding of events in ex-Yugoslavia, including disagreements with the USA on how to handle the crisis in Kosovo in 1998-99 (see Rynning's contribution to this volume).

Neither can the other parallel process, the Charter of Fundamental Rights, be explained by credible commitments. The concern for fundamental rights must be seen as a question of legitimacy as the process of European integration was becoming more political after the end of the Cold War (see the contribution by Pineda Polo and den Boer in this volume).

There is a further criticism. Liberal intergovernmentalism sees preference formation and interstate bargaining as sequential processes. In reality Member States do not always have clearly defined preferences when they go into interstate negotiations. This also implies a certain amount of uncertainty during the negotiations, which makes it impossible to define the bargaining space. Especially when new issues are placed on the agenda, like flexibility in the Amsterdam negotiations, can negotiations become a long learning process, where preferences are formed during the process (Stubb 2002). Also during the Nice IGC we see that preferences in respect to 'enhanced cooperation' changed during the negotiations (see Olsen's contribution to this volume).

The limits of liberal intergovernmentalism can, thus, be found at both the level of national preference formation and at the level of interstate bargaining. At both levels there is a need to include institutions, such as political parties and parliaments at the national level and the Community institutions at the level of bargaining. The way IGCs have become 'institutionalized' must also be taken into account. Also ideas and individuals must sometimes be brought into the picture, be they national diplomats, like the Italian ones who have been involved in a number of IGCs and who have traditionally been fairly pro-European (see Bindi's contribution to this volume). Even representatives of the Member States taking part in European negotiations may go through a socialisation process. However, the nature of the issues, especially re-weighting of votes in the Council, and the way the French Presidency handled the endgame in Nice, made the Nice IGC a hard zero-sum bargaining game where 'national interests' triumphed.

Concluding Remarks

Due to the limited agenda and the focus on institutional issues, Nice may not be the best case study to test liberal intergovernmentalism. A longer process, such as the

whole Amsterdam, Nice and Constitutional Treaty process, would give a better basis for a more extensive critique of liberal intergovernmentalism. It would be a real process, a moving picture, not just a snapshot (Pierson, 1996). It would not only study the 'summit' but also the 'valleys' in between (Christiansen and Jørgensen, 1999). One IGC would only be a peak in a wider landscape (see Maurer's contribution to this volume). Nice was about the Amsterdam left-overs. Nice itself started a post-Nice process, which has now produced a Constitutional Treaty. Whereas Nice was poorly prepared and rushed, the Constitutional Treaty process was well prepared by a Convention with a much wider input of ideas and a period of deliberation, not bargaining, before the final bargaining process in IGC 2003-04. During the Convention the power of arguments and ideas was decisive. And during the ensuing IGC the Irish Presidency played the role of a neutral policy entrepreneur, not the partisan role played by France in 2000 (Dür and Mateo, 2004b).

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