

## **The Use of Coercive Threats in EU Treaty Negotiations**

**A paper submitted for 10th Biennial Conference of European Community Studies**

**Association-Canada, Montréal, May 2014**

**Ken Takeda<sup>1</sup>**

**[Abstract]** The EU is a regional community in which the member states cooperate closely. According to the literature on EU negotiations, threats or coercive tactics, apart from the use of the veto, are seldom used, since the member states normally seek a consensus, with particular focus on the maintenance of cooperative relations. However, a close look at EU intergovernmental negotiations reveals that threats, in the form of depriving or damaging the interests of the target government, have occasionally been used to obtain compliance. Notably, however, there is no evidence that the relationships between the threatening and the threatened states have deteriorated in consequence. This paper aims to uncover the conditions under which threats can be used effectively as a bargaining means to elicit concessions from other states, but without endangering the relationship between the governments involved. To this end, this paper examines three cases in which coercive threats were indeed employed: the IGC 2000 negotiations on the size of the Commission, the Irish problem of ratifying the Lisbon Treaty in 2008, and the 2003-4 Constitutional Treaty negotiations on the definition of Qualified Majority Voting.

On the basis of the empirical findings from analysing the three cases, this paper sheds light on the significance of a set of conditions which allow certain member states to resort to the use of threats. First, the size of the country matters. Only three large states – Germany, France and the UK – can play a leading role in instigating threats. Second, the threats have to be used in conformity with the general objectives of the negotiations. Employing threats, despite its forceful nature, can be justified if the aim of the threats is to achieve the stated objectives of the negotiations. Third, the effect of threats can be enhanced if a threatening state offers some kind of minor return to the threatened states for making concessions. Returns of some sort can make it easier for the threatened states to make concessions. Fourth, threats should be used as credibly as possible. Otherwise the threatened governments can dismiss the feasibility of the threats and go their own way. These conditions, taken together, can further the chances of successfully threatening other governments without bringing about severely adverse effects on the relationship between governments involved.

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<sup>1</sup> Assistant professor, Faculty of Political Science and Economics, Waseda University, Japan.  
Email: kentakeda@aoni.waseda.jp

## **Introduction**

Since the 1980s, the founding treaties of the European Union (EU) have repeatedly been discussed and revised at a series of Intergovernmental Conferences (IGCs). Since amending the EU Treaty is likely to have a decisive impact on the course of European integration, the negotiations inevitably provoke disputes among the national governments. In the existing studies on EU treaty negotiations, it is widely considered that, when governments are in conflict with one another, their negotiations tend to settle for the lowest common denominator, reflecting the positions of the least reformist countries (Moravcsik, 1991: 25-7; Scharpf, 1988; Tsebelis & Garrett, 2001). This is primarily because states which are desperate to defend the status quo can block any agreements which they do not want by using their veto power, which the unanimity requirement guarantees.

However, negotiations do not always result in the lowest common denominator, allowing the most resistant countries to successfully block any reforms that they do not want. This is because the threats or coercive tactics which are occasionally used in the course of the negotiations have the potential to force the recalcitrant states to relax their resistance, make concessions or acquiesce. That is, when effectively used, the use of threats is expected to bring about a significant reform which goes beyond the lowest common denominator, even though some states vehemently oppose it.

Despite such a significant potential, in the existing studies on EU treaty negotiations, not much attention has been paid to threats and consequently, very little has been understood with respect to their use (see Dür & Mateo, 2010: 558). What kinds of threat can drive states to abandon or lower their resistance and make concessions? Who can employ such threats? And in what situations can threats successfully pay off by eliciting concessions from other states? By addressing these questions, this paper aims to uncover the conditions for the effective use of those threats which have a considerable effect on the processes and outcomes of negotiations.

Although various types of threat are conceivable for use in international negotiations and diplomacy (Dür & Mateo, 2010), this study is concerned exclusively with threats of a non-military nature but which still, by definition, have an 'offensive' implication. It is offensive in the sense that such threats are used with the explicit intention of forcing other states to accept a given reform, however vehemently those states are opposed to it. The offensive threats take the form of suggesting that the interests of the target government will be frustrated or damaged in some way if its intransigence continues. They should thus be distinguished from defensive threats which also can be used by governments to block agreements, typically represented by the use of the veto, with a view to defending their national interests as reflected in the status quo.

This article stresses the importance of the four following factors as the conditions for the use of offensive threats. First, the size of the country matters. Only three large states – Germany, France and the UK—can instigate threats. Second, the threats have to be used in conformity with the general objectives of the negotiations. Third, the effect of the threats can be enhanced if a threatening state offers some kind of return to the threatened states for making concessions. Fourth, threats should be used as credibly as possible. These conditions, taken together, can further the chances of successfully threatening other governments without bringing about severely adverse effects on the relationship between the governments involved. In an empirical exercise, the paper examines the significance of these factors in three cases in which the offensive threats were indeed employed: the IGC 2000 negotiations on the size of the Commission; the Irish problem of ratifying the Lisbon Treaty in 2008; and the 2003-4 Constitutional Treaty negotiations on the definition of Qualified Majority Voting.

In the following sections, I first provide a review of the existing research on EU treaty negotiations, with a particular focus on the choice and availability of various negotiating tactics in EU treaty negotiations. Next, I engage in an empirical examination of three cases in which the threats were employed and then discuss the empirical findings in light of the conditions for the use of offensive threats. In the conclusion, I argue that offensive threats are used with great care so as not to worsen the relationship between the threatening and the threatened states, and that this explains why the use of threats, despite its provocative nature, does not seriously endanger the relationship between the governments involved.

## **1. Eliminating the status quo bias of EU treaty negotiations**

EU treaty negotiations are usually subject to a status quo bias. The bias is first of all shaped by the unanimity requirement for treaty revision. The Treaty of Lisbon provides for two different procedures for treaty reform – an ordinary revision procedure and a simplified revision procedure. In either procedure, unanimity is the rule for final decisions. This obviously means that each national government is guaranteed the right of veto to block any agreements which they see as considerably damaging to their national interests.

Stressing the significance of the veto power, much of the debate on EU treaty negotiations considers that whether the member states can agree on treaty revisions depends on the existence of convergent or common preferences among them (Moravcsik, 1991: 25-7; Scharpf, 1988). Obviously, this line of thinking corresponds to a rationalist perspective which explains the outcomes of international negotiations in terms of national interests or preferences (Tsebelis & Garrett, 2001; Tsebelis & Yatahanas, 2002). From this perspective, a theoretical argument put forward by liberal intergovernmentalism (LI) assumes prominence (Moravcsik, 1998). In this theoretical view, domestic factors shape national preferences which form the foundations for the

stances taken by national governments in international negotiations. National governments then discuss substantial issues with other governments in order to achieve their domestically defined preferences (Moravcsik, 1997: 516-20; 1998: 50-67). At the negotiation table, they can readily agree upon a given reform but only when they find common interests or ways of accommodating their divergent interests.

LI goes on to argue that where national interests diverge from one another and member states cannot find a settlement which is acceptable to all the states concerned, the outcomes reflect the relative bargaining power of governments, understood to be derived from 'the pattern of issue-specific asymmetrical interdependence' (Moravcsik, 1998: 482; Moravcsik & Nicolaïdis, 1999: 73-4). That is, national governments with the greatest reluctance to engage in reform can have more bargaining power than have reformist governments in extracting concessions so as to satisfy their preferences, whereas governments which support reforms in a given issue have to compromise most in order to overcome the resistance of recalcitrant governments for the sake of agreement (Moravcsik, 1998: 482; Moravcsik & Nicolaïdis, 1999: 73-4).

Furthermore, some scholars provide a view that, when France and Germany cooperate with each other, it can produce a driving force which is a prerequisite for further integration, as was the case with the single market programme or the Economic and Monetary Union (Mazzucelli, Guérot & Metz 2007, : 159; see also Tallberg, 2008: 688). However, this argument is conditional in the sense in which it claims that French-German leadership becomes powerful only when the two states agree on bilateral compromises which take into account the opinions of other member states, thereby bridging the conflicting opinions among member states. The important point here is that any discord between the two large states and the remaining states would preclude a major reform in the EU.

A series of quantitative studies also provides empirical analyses which corroborate this view. They claim that national governments which position themselves near the status quo are in a strong position to block any unwanted reforms (Hug & König, 2002: 466-71; Slapin, 2006: 70). The underlying logic is that domestically constrained governments can credibly persuade other states that if by any chance they accept a given reform which the constrained governments oppose, it will not be domestically ratified, thereby ruining their intergovernmental agreement (König & Slapin, 2006: 424; Putnam, 1988: 440). That is, the states which have a strong interest in maintaining the status quo can convert the existence of obstacles to domestic ratification into bargaining power in persuading other states to give up their hope of advancing the associated reforms.

In addition, as if to keep in line with the above studies, the existing studies on the use of negotiation tactics have been heavily weighted towards the use of defensive tactics. It is evident,

for example, in the study of Dür and Mateo (2010: 562-3) on various negotiation tactics available in the EU system. This lists a series of hard bargaining tactics which the authors consider might possibly be used within the EU. But, importantly, the tactics which they illustrate are threats of veto, a public commitment to not giving in, and the formation of a defensive coalition, all of which are used for defensive purposes, that is, to block unwanted agreements and fight hard in defence of the status quo.

Moreover it may be added that EU treaty negotiations are structured by specific institutionalised circumstances in which threats are in fact rare. In the first place, military threats are not used in the EU context. Neither do member states threaten one another's economic well-being, such as closing or limiting access to markets, placing tariffs or introducing some monetary measures so as to cause damage to the economy of another member state. Moreover, in this regard, it is sometimes mentioned in the literature that offensive threats or coercive tactics are seldom used because the member states usually seek consensus, attaching importance to the maintenance of their cooperative relations (Lewis, 2003; Wallace, 2005: 36-42).

In short, all the above studies share the view that the EU treaty negotiations on which the unanimity rule is imposed have a tendency to settle for the lowest common denominator, reflecting the position of the least reformist countries. This is because states with a preference for the status quo have various institutional or tactical means at their disposal to block any unwanted reforms whereas there are very few means by which to force recalcitrant states to accept treaty revisions which they strongly oppose.

However, this line of reasoning cannot be universally justified since there are instances where the use of offensive tactics can curb the status quo bias of EU treaty negotiations. In other words, there are some instances where member states can overcome the desperate efforts of other states to prevent agreement by resorting to offensive threats. However, in the studies so far, less attention has been paid to the use of offensive tactics which have the potential to produce negotiated outcomes that improve upon the lowest common denominator.

So in exploring the dynamics underlying the use of offensive tactics, the first challenge should be to specify what kinds of offensive threat are available in EU treaty negotiations. Here, two types of offensive threat are conceivable. The first is the threat of exclusion. This is a threat which, as an important exception to the current literature, Andrew Moravcsik refers to in his seminal book *The Choice for Europe* (1998: 64-5). Generally, the threat takes the form of suggesting what is often called 'closer cooperation', 'enhanced cooperation', 'flexible integration', 'two-speed or multi-speed Europe' or 'differentiated integration'. Simply put, this threat is designed to let a specific group of countries go ahead with further integration or closer cooperation in designated issues, leaving reluctant states behind. When this threat is used, the threatened states are forced to consider the costs of being excluded from the agreement. If the

threatened states consider the costs as significantly damaging to their interests, they have to respond by making concessions in order to avoid exclusion. However, even in this Moravcsik's study, the conditions in which the threat of exclusion can be effectively used remain less than clear. In this respect, the present paper seeks through the case studies presented below to improve our understanding of the dynamics of using this threat.

The second type of threat is what may be called an 'issue-linked' threat. This threat can be used with the suggestion that if some states are intransigent over a given issue, they will be deprived of or suffer damage to their interests in other issues. Its distinctive feature is that, when it is successfully used, it becomes possible to come to an agreement even in a zero-sum situation so as to clearly benefit some states while causing substantial damage to the interests of others. This sort of threat has not attracted scholarly attention so far in the EU literature and therefore it is important to specify the conditions in which it can be used effectively.

In the following section, three cases are analysed with a view to uncovering a certain similarity in the pattern underlying the use of both threats of exclusion and issue-linked threats.

## **2. Case Studies**

### *2.1. Negotiations on the size of the Commission during the IGC 2000*

In the institutional milieu of the EU, the Commission functions as the administrative body of the EU, with the task of achieving the objectives laid down by the EU treaties and acting in the general interests of the EU (Cini, 1996: 106-11). The College of Commissioners constitutes the political executive of the Commission, and each Commissioner, as cabinet ministers at national government level do, takes charge of a specific portfolio. It has been the member governments that have selected the Commissioners. Under the terms of the EU Treaties, each Commissioner is obliged to act in the common interests of Europe, independently of specific national interests. Therefore they must neither seek nor take instructions from any government. However, in practice, the Member States often expect Commissioners to act as their national representatives and there have in fact been instances of national governments trying to influence the decision-making of the Commission by ensuring particular posts for their Commissioners or by inputting specific national interests into the Commission through their Commissioners (e.g. *EurActiv*, 30 November 2009).

Since the inception of the European Communities in the 1950s, the Commission had included two Commissioners from each of the five most populous Member States (Germany, France and Italy at first and subsequently the UK and Spain) and one from each of the others (Gerbet 1992: 16). Under this composition system, when Austria, Finland and Sweden joined the EU in 1995, the number of Commissioners reached twenty. However, there was a growing

concern at the time that it would become difficult to maintain this composition in the future, since if the existing system were maintained, there would be more than thirty Commissioners after the inclusion of countries from Central and Eastern Europe (Reflection Group, 1995: 31). With an eye to this enlargement, in 1996-7, when the IGCs started, the French government opened the debate on the composition of the Commission by insisting on a drastic reduction in the number of Commissioners (*European Voice*, 13 March 1997; CONF 3852/97: 2). An excessive increase in the number of Commissioners, it argued, would make it difficult for the Commission to work in an effective and cohesive way (Gouvernement Français 1997).

The four other large countries (Germany, the UK, Italy and Spain), which at the time had the right to have two Commissioners, also supported the French proposal (CONF 3900/96: 10-1, CONF 3863/97: 2-3). Behind this argument was their concern that, in an enlarged Union, the relative weight within the Commission of the large Member States would be reduced and the power balance among the Member States would tilt in favour of an increasing number of smaller Member States.

The proposal, however, provoked an immediate backlash from the small and medium-sized countries (CONF 3900/96: 9-10; CONF 3857/97: 2). The smaller states did agree that the size of the Commission should in principle be reduced. However, they fiercely opposed the French proposal and defended the system of one Commissioner per country (CONF 3860/96: 27). Many smaller countries considered that the Commission was their important ally and could protect their interests against the dominance of larger states (*European Voice*, 13 March 1997). Their particular concern was that if they did not have their own Commissioner, their interests would be overlooked in both the Commission and in EU decision-making as a whole (Piris, 2006: 112; see also CONF 2500/96: 109).

This conflict was so intense that the government leaders in the Amsterdam IGC could not find any feasible solution which would resolve the conflicts and the debate was postponed to the next round of treaty negotiations (McDonagh, 1998: 163; see also *Agence Europe*, no.6981, 26 May 1997). However, even after the next Nice IGC started in February 2000, the large and small states were once again found to be in confrontation (CONFER 4727/00; CONFER 4750/00; European Commission, 2000a). Thus, in order to break the impasse, the large states, led in particular by the German and British governments, made an issue-linked threat. To start with, they put forward the idea of creating a 'two-tier' Commission, on the assumption that a system of one Commissioner per state would be adopted (European Commission, 2000a: 1-4; 2000b: 2-3; 2000c: 1-2). They insisted that a 'two-tier Commission' would be desperately needed in order to maintain the effective working of an organisation with so many Commissioners.

In addition, the large states crucially went so far as to pile further pressure on the small states by suggesting that, even if the idea of a two-tier Commission was not adopted, under the system of one Commissioner per state a *de facto* 'hierarchy' would inevitably form in the Commission (European Commission, 2000a: 1-4; 2000b: 2-3; 2000c: 1-2). Here the small states quickly realised the underlying political message: the large states would reserve important posts for their Commissioners, leaving only minor posts for the Commissioners from small states; and Commissioners with minor posts would certainly be less influential within the Commission. As the large states reasoned, the system of one Commissioner per state would be unfair for the large states, since it would force them alone to make sacrifices by abandoning their second Commissioners, without any loss on the part of the small states. Therefore, the large states asserted that they should necessarily be compensated by having the more important posts for their remaining Commissioners than were available to the Commissioners of the small states (Parlement Belge, 2003: 29).

This was an issue-linked threat exercised by the large states against the small states. Here the large states brought a different issue into the negotiations, that is, the issue of allocating certain posts to certain Commissioners. In the face of this threat, the small states faced a predicament. If the idea of a two-tier Commission were accepted, the Commissioners of the small states would be excluded from the important decision-making of the Commission, since they were allocated only non-voting Commissioners. But even if the system of one Commissioner per state were installed, it would surely result in a situation where the large states would always retain important posts for their Commissioners, leaving trivial posts for the small states. Furthermore, the small states, in particular the Benelux states, had already noticed an emerging tendency for an increase in the number of Member States to lead to 'smaller states' being allocated less important posts for their Commissioners, whereas important posts were occupied by the large states. So this tendency, the smaller states anticipated, would be reinforced with further enlargement of the EU, a situation which would amount to a *de facto* introduction of 'a hierarchy' into the Commission, as large states had suggested (Interview 1).

In the face of this dilemma, eventually, the three Benelux governments came to the view that the best option would be to accept a reduced Commission combined with the introduction of a system of equal rotation (Interviews 1, 2). In reaching this view, they shared an understanding that this option would best serve their national interests, in the sense that it would allow the Benelux states to have meaningful posts for their Commissioners and at the same time to retain their voice and influence within the Commission (Interviews 1, 2).

Hence, at the informal Biarritz European Council in October 2000, the Benelux states for the first time expressed their intention to accept a reduced Commission. At the dinner table in Biarritz, the Dutch Prime Minister, Wim Kok, representing the three Benelux countries, asked

French President Jacques Chirac whether all of the five large states could accept a rotation system which ensured the equal treatment of the Member States in the allocation of Commissioners (Interview 2). Wim Kok stressed to him that the Benelux states would be prepared to accept a reduced Commission, but only if the large states accepted it. What the Benelux leaders proposed here was to reduce the number of Commissioners in two phases: first, the Commission would move to a system of one Commissioner per state, and second, after new members had acceded to the EU, the Commission would move to a new composition system consisting of fewer Commissioners than the total of Member States. Having received this proposal, Chirac quickly called for a meeting with the leaders of the other large states and managed to elicit a positive response to the rotation system. The deadlock was thus broken and from this point the negotiations gained drastic momentum towards a reduced Commission.

When we look at the statements and remarks delivered by the Benelux governments, we find that the Benelux states proposed the introduction of an equal rotation system as a means of curbing the emerging tendency to discriminate between Commissioners from large and from small states. For example, Guy Verhofstadt, the then Belgian Prime Minister, stated before the Belgian Parliament that ‘an equal rotation was the only good response which allowed us to put a brake on the move to create a Commission consisting of superior Commissioners and subordinate Commissioners’ (Parlement Belge, 2003: 28-9). He added that there was a risk that the medium-sized and small states would be allocated posts or missions of secondary importance for their Commissioners, and in this situation the Benelux states preferred to have their Commissioners, say, in one out of every two terms of the Commission, thus allowing them to keep a post which was important for them.

The Luxembourg leaders also made it clear that the government accepted the reduction in the size of the Commission on condition that all the large states accepted the principle of equal rotation (Luxembourg Government, 2004). The Prime Minister, Jean-Claude Juncker, said that the advantage of the rotation system was that ‘German and Luxembourger could stand on an equal footing in terms of the distribution of Commissioners. This rotation system can also maintain collegiality among Commissioners’ (*Deutschland Radio Berlin*, 1 March 2002). The Foreign Minister, Lydie Polfer, also stated that ‘in a Commission of 25 or more commissioners, it would be harder to find areas of competence equivalent to all members ... Smaller countries would be given less important areas, while within a smaller Commission, all countries would receive in turn the chance to have important tasks’ (Polfer, 2003).

Likewise, the Dutch government also emphasised the significance of the rotation system. In November 2000, the Dutch Foreign Minister, Van Artsen, announced before the national parliament that ‘in the long run, the Netherlands is open to discussion to set a maximum number of members of the Commission, only if a strict rotation system among Member States is

guaranteed. For the Netherlands, it is unthinkable that some Member States have a Commissioner more often than other Member States' (Nederlandse Parlement, 2000: 15-16). The Dutch government explained that if the size of the Commission were allowed to keep increasing, there would not be a sufficient number of portfolios for all the Commissioners. Therefore it argued that a strict rotation system should be introduced to ensure that France and Luxembourg would stand on an equal footing (Nederlandse Parlement, 2003: 49). This system, the government promised, would guarantee that the larger states would not be prioritised over the smaller ones. All these statements and remarks point to the fact that the Benelux states attached great importance to the equal rotation system as a means of stopping the move to create a *de facto* hierarchy within the Commission.

The change in the position of the Benelux countries had a huge impact on the course of the negotiations. With this change, the states in favour of a reduced Commission became a majority force in the IGC. Eight out of the then 15 Member States, made up of five large countries and the three Benelux countries, now favoured a reduced Commission (CONFER 4813/00: 1). Furthermore, the Benelux countries began to lead the camp of smaller states, and once the Benelux states had changed their position, the cohesion among the small states broke up (Interviews 1, 2). The other smaller states lost ground and were impelled to give up on this issue (Interviews 3, 4, 5).

Therefore, no sooner did these three countries change their views than a solution came into sight. The French presidency quickly seized this opportunity and at the final summit in Nice proposed that any state which acceded to the EU would be entitled, at the time of its accession, to appoint one Commissioner from its nationals. But from the next term of office of the Commission, it would move to a new system of fewer Commissioners than the number of Member States (CONFER 4816: 92). This proposal precisely followed the one presented by the Benelux countries. At Nice, this compromise solution settled the negotiation on the size of the Commission. The agreement was incorporated into a Protocol annexed to the resulting Nice Treaty—the 'Protocol on the Enlargement of the European Union'. This Protocol established that once the total number of Member States reached 27, a new system would be introduced in which the number of Commissioners would be 'fewer than the number of Member States'.

## *2.2. The Irish problems of ratifying the Lisbon Treaty in 2008*

In the Constitutional Treaty negotiations, more details about the reduction in the number of Commissioners were decided and, in accordance with this decision, in the future, it was to move to a system in which the Commission should consist of a number of Members corresponding to two thirds of the number of Member States. With this decision, the question of the size of the Commission seemed to have been settled. However, in the Dutch and French referendums in

2005 the Constitutional Treaty was rejected. Two years later, the Member States decided to negotiate a new treaty which would later become the Lisbon Treaty (European Council, 2007: 4). As a point of departure, there was a general understanding among the Member States that the institutional reform proposed by the Constitutional Treaty was still needed (Council of the European Union, 2007: 4). Based on this understanding, no Member State tried to re-open negotiations on the size of the Commission. Therefore, it was agreed without any problem that the reduction in the number of Commissioners scheduled by the Constitutional Treaty should be retained. By this action, the Member States agreed that the number of the Commissioners would be reduced to 18, two-thirds of the number of Member States to be appointed to the Commission in 2014.

However, in the process of ratifying the Lisbon Treaty, the situation significantly changed after the Irish people refused to ratify the Treaty in a referendum of 12 June 2008. By then the 18 Member States had already approved the ratification through parliamentary procedures. But the Irish 'No' put the Treaty in jeopardy, since it could not come into effect until all the member states had ratified it. In their search for a way out of this situation, immediately after the referendum outcome was announced, the German and French leaders informally pressed the Irish government to hold a second referendum (*Irish Times*, 20 June 2008; Interview 6). However, the Irish government declined to mention the second referendum, since it calculated that this would produce a huge backlash at home unless they explicitly showed an attitude of respect for the will of the Irish people as expressed in the referendum (Interview 6). Despite this consideration underlying the Irish reluctance, other states started to put pressure on the Irish government in order to move forward the ratification process forward.

First, several states suggested leaving Ireland behind, by indicating a 'multi-speed' Europe or 'differentiated integration'. To begin with, on 13 June, shortly after the referendum result was announced, the French and German governments published a joint declaration calling for the ratification process to continue (*Agence Europe*, no. 9683, 17 June 2008). The other governments came into line with this call and a clear message emerged in consequence from the Brussels European Council on 20 June that the member governments would continue the ratification process without abandoning the Treaty (European Council, 2008: 1). Its political message was clear: ratify the Treaty in the other countries and then put pressure on Ireland to resolve its own problem (*Irish Times*, 20 June 2008). In fact, the ratification process went ahead in spite of the Irish 'No', starting with the approval from the British parliament on 18 June. This strong commitment contrasts with the response given to the rejection of the Constitutional Treaty in the Dutch and French referendums of 2005, where the governments suspended the ratification process and entered into a period of reflection for two years. Furthermore, the other Member States made it clear that there would never be further amendments to the Lisbon Treaty

because it would require all the states to go through their ratification process all over again (*Agence Europe*, no. 9686, 20 June 2008).

In parallel, the media in some states did not hesitate to speak of leaving Ireland behind. The German Foreign Minister, Frank-Walter Steinmeier, mentioned the possibility of going ahead with the Lisbon Treaty without Ireland (*Agence Europe*, no. 9683, 17 June 2008). In a similar vein, the Belgian Secretary of State for European Affairs, Olivier Chastel, stated, 'if it turns out that Ireland continues to be unable to ratify the treaty, then Belgium will propose looking into ways of overcoming the Irish problem with "differentiation", offering Ireland the possibility of giving up some of the steps forward contained in the Treaty of Lisbon' (*Agence Europe*, no. 9683, 17 June 2008). Furthermore, the French President, Nicholas Sarkozy, alluded to the likelihood that if the Nice Treaty remained in force, Ireland would be the country which could not nominate its Commissioner in the next Commission to be appointed in 2009 (*Agence Europe*, no. 9678, 10 June 2008; *Irish Examiner*, 8 August 2008: see also Irish Parliament 2008: 22). This remark referred to the fact that, under the Nice Treaty, at least one state would have to lose its Commissioner from 2009. Brian Cowen responded to these threats of exclusion by insisting that 'the EU should help Ireland find a solution' and 'Ireland could not be marginalised in Europe' (*Agence Europe*, no.9683, 17 June 2008). The Irish Minister for Foreign Affairs, Micheál Martin, also claimed that 'Ireland is deeply committed to EU integration and does not want to be left behind' (*Agence Europe*, no. 9683, 17 June 2008).

Here it is significant to note that the real aim of these threats was not to exclude Ireland but to urge Ireland to consider a second referendum. In the aftermath of the referendum, the German and French governments informally asked the Irish government to consider putting the Lisbon Treaty to a second referendum in 2009 (*Irish Times*, 20 June 2008). At the same time, France and Germany promised to offer certain 'guarantees' or 'assurances' to Ireland in response to various concerns expressed in the ratification campaign, with a view to enhancing the prospects for success in a second referendum (*Agence Europe*, no. 9687, 21 June 2008; no. 9689, 25 June 2008).

Hence the options available to Ireland were clear: try to ratify the Lisbon Treaty in a second referendum or allow the other states to go ahead with ratifying the Lisbon Treaty without Ireland. To Ireland, the latter option was simply out of the question, since it was desperate to avoid being excluded. The Irish government was clearly aware that if Ireland continued not to approve the Lisbon Treaty, Ireland would be altogether excluded from some parts of the EU and this would cause enormous damage to Irish interests (Irish Parliament, 2008: 22-6). This fear led the Irish government to consider that another referendum would be unavoidable if this impasse were to be resolved and its lost ground in the EU regained.

Once the Irish government made up its mind to hold a second referendum, the next step was to consider what to request in exchange for doing so. As noted in section 1, above, the government held internal deliberations on this point and considered that what it requested had to correspond to Irish concerns. Before long, the government arrived at the conclusion that maintaining one Commissioner per state would be its prerequisite for holding a second referendum (Interview 6; see also *Irish Independent*, 30 July 2008; *Agence Europe*, no. 9763, 17 October 2008). But the Irish government had to be cautious in assessing how the other governments would respond to its demand for one Commissioner per state. In the course of the informal post-Irish referendum consultations among the Member States, the Irish government, on the one hand, realised that many small states (apart from the Benelux states) and the countries from Central and Eastern Europe favoured the system of one Commissioner per state. This was no surprise, given that these states had been originally in favour of it (Interview 6).

On the other, the Irish government also had the feeling that Germany, France and Britain, which had strongly argued for a reduction in the number of Commissioners, were reluctant but not so recalcitrant as to reject the possibility of reverting to one Commissioner per state. One month after the referendum, during his visit to Dublin on 23 July 2008, Nicolas Sarkozy signalled his flexible position, remarking, 'I am not convinced that an oversized Commission could carry out its mission with the necessary efficiency' but if the Irish government demanded it, he would not exclude the possibility of maintaining one Commissioner per state (*Irish Times*, 19 July 2008). In fact, he saw the advantage of making use of the size of the Commission in order to resolve this stalemate, because one provision of the Lisbon Treaty, if ratified, would allow the Member States to change the number of Commissioners by unanimous agreement in the Council, without necessitating a formal treaty reform (*Irish Times*, 19 July 2008). The German government also expressed its positive attitude to one Commissioner per state in the informal meeting of foreign ministers in Brest, France, in August 2008 (Interview 6). The British government, for its part, initially seemed reluctant but in the end gave it a green light, after the government realised that maintaining the system of one Commissioner per state would not require the UK to start another ratification procedure, which would inevitably spark a call from Eurosceptic forces for a referendum (Interview 6).

Desperate to keep the Lisbon Treaty alive, the large states faced a simple fact: that without the ratification from Ireland, the Lisbon Treaty could not come into force and the Nice Treaty would remain in force. The large states saw the Lisbon Treaty as benefiting them. For instance, under the terms of the Lisbon Treaty the new definition of QMV favoured larger states because it included a population criterion. The post of permanent President of the European Council was established on the initiative of France, Spain and the UK, backed by Germany and Italy. The

post of a High Representative for Foreign Affairs was created on the initiative of France and Germany. No doubt, the large states wanted to implement these institutional reforms. The large states were also never prepared to re-open another treaty negotiation, because it would have provided some countries with Eurosceptic leaders, such as Poland and the Czech Republic, with the chance to reassert their intractable position. From the Constitutional Treaty negotiations to the Lisbon Treaty negotiations, many government leaders had grown tired of disputes with these Eurosceptic leaders which had dwelt on the definition of QMV, to give one example. Therefore, the large states saw great merit in continuing the ratification of the Lisbon Treaty even though it entailed a concession to Ireland regarding the size of the Commission.

In the run-up to the Brussels European Council on December 2008, the Irish government, backed by the French Presidency, presented a series of demands to the other governments. The Irish government asked to retain the system of one Commissioner per state as an ‘indispensable condition’ for holding a second referendum (*Irish Times*, no. 9800, 10 December 2008). The other governments accepted the Irish request and, following that, Brian Cowen announced that Ireland would hold another referendum on the Lisbon Treaty (*Irish Times*, 12 December 2008; 13 December 2008).

This negotiation process shows that after the Irish ‘No’ vote, some states employed threats of exclusion by suggesting a move forward with the Lisbon Treaty, without Ireland. With these threats of exclusion, the other governments urged the Irish government to hold a second referendum. At the same time, the other governments offered an idea of mutual concessions, by providing Ireland with the opportunity to specify the Irish concerns and propose the necessary guarantees to alleviate the Irish concerns. Importantly, the other states, apart from the Benelux states, showed a willingness to accept the system of one Commissioner per state. By signalling this, the other states made it easier for the Irish government to request it.

### *2.3. Negotiations on the definition of Qualified Majority Voting in the 2003-4 IGC*

In the EU, different legislative procedures are laid down for different policy areas. Unanimity is still required for some sensitive areas, such as defence, social security and taxation. But after a series of treaty reforms which have been carried out since the middle of the 1980s, a large majority of policy areas have moved from requiring unanimity to a special majority voting system called a ‘qualified majority voting (QMV)’.

Under the QMV system, each state is allocated a number of votes in rough proportion to the size of its population, although smaller countries have more votes per head of population than larger ones do. Under the terms of the Nice Treaty, the four largest states—Germany, France, the UK and Italy—had 29 votes each, while Malta, the smallest country, had 3 votes. In the 28-state EU, as of 2014, in accordance with the Nice formula, a qualified majority can be reached when

the following three conditions are satisfied: if a minimum of 260 votes out of a total of 352 is cast in favour of the proposal, if a majority of Member States approves (in some cases a two-thirds majority), and in addition, if a Member State can receive confirmation that the votes in favour represent at least 62 % of the total population of the EU.

In the Constitutional Treaty negotiations which started in 2002, large states, France and Germany in particular, called for the abolition of the Nice formula and pressed for the introduction of a new method called a 'dual majority voting system' made up of a certain number of member states and a population criterion. Underlying their insistence was their consideration that the decision-making of the Council, a central legislative organ of the EU, would slow down after an enlargement of the EU that would include a number of medium-sized or smaller countries. Furthermore, if the Nice formula were maintained, they argued, it might bring about an imbalance which would make it more difficult for larger countries to influence the decision-making and situations in which smaller countries, when united together, could dominate the decision-making process by passing or blocking legislative bills at their discretion.

In response to the strong insistence of the German and French governments, the draft Constitution completed in June 2003 proposed the introduction of a totally new QMV system, called a double majority voting system (see above). Under the proposed system, QMV could be satisfied when a majority of member states, representing more than 60% of the EU population, had to agree to a bill under legislation.

However, Spain and Poland voiced their strong opposition to the new system (Cimoszewicz & Ana Palacio, 2003). Under the Nice system, these two states were allocated 27 votes each, only two votes fewer than the 29 votes given to each of Germany, France, the UK and Italy. When the new system of double majority voting was accepted, the voting strength of Spain and Poland would significantly decline, while it would lend more power to the larger states, such as Germany and France, which were the most populous in the EU. Exposed to such a risk, Spain and Poland fought back against the introduction of the new system, suggesting the use of the veto to block the agreement. However, the government leaders of Germany and France responded with an uncompromising attitude on this issue.

Due to the fierce confrontation, the negotiations fell into deadlock and in fact the summit meeting which was held in December 2003 broke down. However, significantly, only one month later, from early January 2004 onwards, the political leaders of these two states softened their opposition and seemed more flexibly disposed towards the introduction of the new system (McDonagh 2007: 116-8; Interview 6). The drastic change in attitude was induced by a combination of the two types of threat, issue-linked threats and threats of exclusion, exercised by Germany and France.

First, Germany and France resorted to issue-linked threats, making full use of the

multi-annual budget negotiations which were ongoing in parallel. When the IGC negotiations were formally opened in September 2003, the government leaders of these two states repeated that the IGC and the budget negotiations were 'naturally linked' (*Agence Europe*, no. 8547, 23 September 2003). What they implicitly expressed here was that if Spain and Poland did not make any concession on the QMV issue, they would consider reducing the total amount of the EU budget, thereby decreasing the amount of expenditure that would be directed towards the regional development of these two states.

After the summit meeting at the Intergovernmental Conference collapsed in December 2003, France and Germany exercised further pressure on Spain and Poland. Only two days after the breakoff, France and Germany, along with the four other states (the UK, the Netherlands, Sweden and Austria), sent a letter to the President of the European Commission which called for a substantial reduction in the EU budget from the then 1.24 % to less than 1% GNI (gross national income) (*Agence Europe*, no. 8608, 17 December 2003. *El Pais*, 16 Diciembre 2003). All these six states were at the time net contributors to the EU budget and, for this reason, they had a stronger voice in the process of budgetary planning. By making full use of their advantageous position, they put pressure on Spain and Poland to concede on the QMV issue.

The other threats wielded were threats of exclusion. When it became evident that it was impossible to reach final agreement on the Constitutional Treaty at the summit meeting in December 2003, France and Germany, along with Italy and the three Benelux states, showed a motion to issue a declaration announcing that they would advance a differentiated Europe (*Agence Europe*, no.8606, 15 December 2003). These states actively approached other states, encouraging them to join the declaration but they eventually refrained from making such a declaration. However, the leaders of these states repeatedly made clear their intention to move towards a multi-speed Europe. For example, Gerhard Schröder, the then German Chancellor, when asked about the possible failure in reaching consensus by the media, answered 'then two-speed Europe would be the logical consequence. We do not want this, but we are prepared to do so' (*Agence Europe*, no. 8606, 15 December 2003). Likewise, the French President Jacques Chirac also stated in the media that 'Europe is built on solidarity and not on blocking capabilities ... within a Europe of 25, soon to be 27 and more, we cannot all proceed at the same pace. The most reluctant should not slow down those who are determined to go further and faster. Germany and France are naturally at the heart of the pioneer groups. I am forming the wish that we can go forward with the other founding countries, plus Great Britain, and all those old and new Member States who want to give extra soul and strength to the European Union' (*Agence Europe*, no. 8627, 21 January 2004). The pressure on Spain and Poland further intensified, since the other states and EU institutions had also sided with France and Germany in suggesting a move towards a multi-speed Europe.

Having received such a series of threats, Spain and Poland, within only a month of the December summit meeting, started to show more flexibility. In January 2004, in a TV broadcast, Leszek Miller, the Polish Prime Minister, announced ‘we are not going to show the white flag but we are ready to find compromise and common solutions’ (*AFP*, 10 January 2004: translated by the author). Likewise, the Polish Foreign Minister, Włodzimierz Cimoszewicz also stated through French media ‘we are not blind to the reasons, arguments and expectations of our partners ... it is with close attention that we shall now listen to the arguments of our partners on the most important issues’ (*Agence Europe*, no.8624, 16 January 2004). The Spanish Foreign Minister, Ana Palacio, also sent a message in a cooperative tone, stating that the government was now open to ‘constructive proposals’ (*AFP*, 19 January 2004).

Keeping in line with these statements, the Spanish and Polish governments also began to take a more accommodating stance. The Irish government, which held the Presidency in the first half of 2004, hosted intensive bilateral consultations with its Spanish and Polish counterparts with the objective of resolving the deadlocked treaty negotiations. In the course of the consultations, the Irish government noted that both the Spanish and Polish had become more positive about the introduction of the double majority voting system, which these two stated they had adamantly refused to accept hitherto (McDonagh, 2007: 101-14). In the wake of the shift in their negotiating stance, the Irish government began to feel that it would surely be possible to resolve the impasse in the negotiations, by a solution on the basis of the system of double majority voting.

On 11 March 2003, train bombers attacked Madrid. This incident was widely believed to have had a crucial impact on the outcome of the general elections three days later. In the elections, the Popular Party led by the long-serving Prime Minister José María Aznar López suffered great losses and a new Socialist government headed by José Luis Rodríguez Zapatero was formed. The new administration made it clear that, as their general guideline in foreign policy, they would re-establish relations with France and Germany, against which the previous government had created a confrontational atmosphere ever since the split between them over the Iraq War. As part of this, the new Prime Minister clearly stated that he would aim to collaborate with Germany and France in reaching consensus on the Constitutional Treaty, and would itself accept the system of double majority voting. Following Spain, the Polish government also admitted publicly that it would accept the voting system.

The EU member states gathered together at Brussels in late March 2004 and decided to re-open the negotiations on the Constitutional Treaty with an eye to concluding their negotiations at the June summit meeting. As Spain and Poland had already announced a change in their stance to accepting some sort of double majority voting system, the focus of the debate then shifted to what should be given to these two states in return for their concessions. Their

biggest concern was that Germany, France and the UK would reinforce their voting strength under the proposed double majority system due to the extreme size of their populations, while Spain and Poland would suffer significant loss in their voting power. Here, in order to alleviate this concern, it was agreed to raise the population threshold from 60% to 65%, and to introduce a clause in the new treaty that at least four member states must be required block the passage of a legislative bill (Piris, 2007: 101-14). These two measures, it was expected, would enhance the blocking power of Spain and Poland in the decision-making, and at the same time would somewhat reduce the influence of the largest countries in the decision-making of the Council. In addition, it was also agreed to raise the threshold for the number of states from 50% to 55% to increase the voting power of smaller states. It was agreed that the new voting system would be introduced in 2014 or later.

The Spanish and Polish leaders recall the process leading to this conclusion as follows. The Polish President Kwasniewski, for example, explained the reasons behind their concessions: that he himself had refrained from breaking up the negotiations so as not to damage the Polish standing in the budgetary negotiations and the Constitutional Treaty negotiations (*Euractiv*, 24 June 2004). As regards the move towards a multi-speed Europe, he mentioned that such a move would in the future lead to differentiation between a core group of states and the others, and ‘such a two-tier design’ was ‘in fact most dangerous’, in the sense that it would widen the gap between the old and new member states (*AFP*, 19 December 2003). The Polish Minister for European Affairs, Danuta Hubner, also revealed that Poland ‘would have preferred not to have parallel discussions on the Constitution and the budget’ (*Agence Europe*, no.8606, 15 December 2003). All these statements indicate that the exercised threats had an effect on breaking down to some extent the intransigence of these two states.

### **3. When Can Threats be Used?**

On the basis of the empirical findings from these three cases, we find a certain set of patterns in the use of threats. First, all three cases have in common the fact that a large state—Germany, France or Britain—had taken the lead in exercising the threats. Although there were cases where other states joined in using threats in order to step up the pressure on a targeted state, it was the large states which played a leading role in uttering the threats.

Second, it should be noted that in every case, all the threats were employed in conformity with the general objectives of the negotiations. In the case of the size of the Commission, one of the main objectives of the Nice IGC was to reform the EU so as to make it work smoothly after an enlargement. The reduction in the number of Commissioners corresponded to this objective. At the time, it was anticipated that if the number of Commissioners increased, its internal decision-making process would slow down and the cohesion among the Commissioners would

also be weakened. To address this concern, the large states threatened to force small states to accept the reduction in the number of Commissioners. Next, in the case of the Irish problem, Member States faced a situation in which the Lisbon Treaty could not come into effect unless it was successfully ratified in Ireland. The Lisbon Treaty was originally elaborated with the objective of enhancing various aspects of the EU, such as the quality of its democracy, the effectiveness of its working and its external policies. Threats were used against the Irish government for the purpose of ratifying the Lisbon Treaty. In the case of the negotiations on the definition of QMV, France and Germany resorted to threats to ensure the introduction of the double majority voting system. The new voting system, it was believed, would strengthen the decision-making capacity of the Council, even after many new countries acceded to the EU. In short, all these threats were used in order to address important problems faced by the EU. In this sense, it can be said that the large states made use of these threats since doing so, if successful, would serve not only their interests but also the general interests of the EU.

Third, these three cases also have in common that some returns were granted to the threatened states for their concessions. On the issue of the size of the Commission, the large states put pressure on the small states, but at the same time, the large states accepted the introduction of the rotation system in order to somewhat alleviate their concerns. In the case of the Irish problem, the large states pressed strongly on the Irish government and in return proposed to maintain the system of one Commissioner per state. On the definition of QMV, after the Spanish and Polish positions softened, it was agreed to raise the decision-making power of these two states, to some extent.

Finally, we also notice in all these cases that efforts were made to enhance the credibility of the threats. In the case of the size of the Commission, the large states threatened that important posts would not be allocated to Commissioners from smaller states if these smaller states refused to reduce the number of Commissioners they could appoint. This threat was credible, since the small states were aware that the tendency to exclude small states from important portfolios had already started to emerge, and that the level of importance of the posts given to the small states, after a series of enlargements of the EC/EU, was declining. In the case of the Irish problem, the Irish government eventually agreed to hold the second referendum but behind this acceptance was their strong fear that, if the Lisbon Treaty were left unratified, Ireland would be isolated here and there in the EU. Their concern was aggravated by the fact that even in the face of the Irish 'No', the other member states, led by France and Germany, actively continued the ratification process by making clear that they would never abandon the Treaty. On the QMV issue, threats of exclusion were first wielded against Spain and Poland, which still strongly resisted the new QMV system, but at this stage, it remained unclear how the other states would go ahead without these two states in legal terms and therefore the threats of

exclusion were not seen to be credible, as such. As well as proposing to compensate for their weakness, then, the large states also piled further pressure on them by making another threat, which suggested reducing the amount of regional development subsidy allocated to them.

## **Conclusion**

On the basis of the empirical findings from analysing these three cases, we can thus infer a set of conditions which allow certain member states to resort to the use of threats. First, the size of the country matters. Only three large states—Germany, France and the UK—can play a leading role in instigating threats. Second, the threats have to be used in conformity with the general objectives of the negotiations. Third, the effect of threats can be enhanced if a threatening state offers some kind of return to the threatened states for the concessions that they make. Minor returns of some sort can make it easier for the threatened states to make concessions. Fourth, threats should be used as credibly as possible. Otherwise the threatened governments can dismiss the feasibility of the threats and go their own way. These conditions, taken together, can further the chances of successfully threatening other governments without bringing about severely adverse effects on the relationship between them and the government uttering the threats.

It should be noted that in all the three cases, there is no evidence that the relationships between the threatening and the threatened states have deteriorated in consequence of the use of threats. In this respect, it may be possible to say that, for one thing, the use of threats was ‘justified’ in each situation, since the objective of the threats was to achieve the stated objectives of the negotiations. None of the threats used in these cases violated the existing rules of the EU and, in this sense, the use of threats did not express any intention on the part of the threatening states to deny the existence of the EU as a whole. Rather, the threats were exercised in order to address various problems facing the EU. It can be said that because their legitimacy can be in some ways conceded, the use of threats did not invoke considerably hostile sentiments on the part of the threatened states. Furthermore, there is also the possibility that some minor return which was given to the threatened states for their concessions also successfully contributed to reducing the risk of worsening the relationship between the governments involved. It can be considered that the returns had some effect on saving the face of the countries which succumbed to the threats and on decreasing the substantial loss incurred by them, thereby successfully limiting to a minimum the risk of deterioration in their relationships.

In the literature on EU treaty negotiations, there is a view that national governments can block reforms which they do not want by resorting to their right of veto. There is also the view that the outcomes of EU treaty negotiations tend to come close to the lowest common denominator, since the member states usually seek consensus, with the aim of maintaining a

cooperative relationship. As opposed to such views, the analysis provided in this paper suggests that in certain conditions, large states can advance reforms in the EU by overcoming even strong resistance from other states, by means of threats of exclusion or issue-linked threats. The empirical analysis above reveals an important aspect of the bargaining power which can be exercised by large states. In this paper, the empirical focus rested only on three cases. For future studies, it is important to consider whether the insights provided in this paper can be generalised by accumulating further case studies. It is also important to consider the generalisability of the present argument by extending our empirical perspective to other international or regional organisations.

### **Interviews**

Interview 1: Belgian government official, 11 April 2012, Brussels.

Interview 2: Dutch government official, 13 April 2012, The Hague.

Interview 3: Finnish government official [1], 10 May 2012, Helsinki.

Interview 4: Finnish government official [2], 10 May 2012, Helsinki.

Interview 5: Greek government representative to the Nice IGC, 6 March 2012, Athens.

Interview 6: Irish government official, 10 June 2012, London.

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