

Negotiation Styles in the European Convention: The Impacts of Size and Culture on Negotiation Styles

Bachelor Thesis

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Executive Summary

This thesis deals with the main research problem of how EU member states and accession states are able to shape the negotiation outcome in the European Convention, which is related to the negotiation style the member states apply. The central research question is formulated as following: Why do the negotiation styles of Poland and Malta differ in the negotiations in the European Convention? The hypotheses are related to the negotiation style as the central dependent variable and to the size of a country, democratic culture and socialization processes in international organizations as the main independent variables. The hypotheses are stated as following: first, smaller EU member states are likely to negotiate softer in negotiations on important issues; second, countries having experienced a longer democratic culture are more likely to negotiate softer; and finally, the longer a state experiences membership in an international organization, the softer the negotiation style should be. The values of the independent variable are 'soft' and 'hard negotiation style'.

The methodology chosen appropriate for this research is a multiple case study with extreme instances. The cases are Malta and Poland in the European Convention, and respectively, the applied negotiation styles. The areas of analysis have been limited in order to properly compare the negotiation styles. The areas of analysis are the negotiations on the Charter of Fundamental Rights, the areas of freedom, security and justice, external actions and defence, and finally, the institutional set-up. Finally, two control variables have been added, which are the relative emphasize for a topic during negotiations by one country and relative emphasize for the government, which constitutes the importance of a discussed topic for a government.

The outcome of this analysis is mixed: in the areas of freedom, security and justice as well as on external actions, the hypotheses manage to predict the outcome. The outcome is that Poland as the larger state with less democratic culture employs a harder negotiation style than Malta. Nevertheless, on the issues of the Charter of Fundamental Rights and the institutional set-up, Malta negotiates harder than Poland. Therefore, the independent variables have some impact on the negotiation strategies employed by a country, but there are other factors present, which also influence negotiation styles. The central recommendation is to extend the number of independent variables and the number of participating states to detect other significant impacts on negotiation styles.

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List of Abbreviations

CEECs	Central and Eastern European Countries
CFSP	Common Foreign and Security Policy
ECJ	European Court of Justice
EP	European Parliament
EU	European Union
GDP	Gross Domestic Product
IGC	Intergovernmental Conference
JHA	Justice and Home Affairs
NATO	North Atlantic Treaty Organization
OSCE	Organization for Security and Cooperation in Europe
QMV	Qualified Majority Voting
UN	United Nations

1. Introduction

In the aftermath of the Treaty of Nice, it has been concluded that this treaty has not been able to reach its intention – to properly prepare the EU for the upcoming enlargement of ten new member states and to make decision-making easier and more efficient with respect to the upcoming accession in 2004 (König *et.al.*, 2006). The Treaty Establishing a Constitution for Europe should solve this dilemma, and therefore, has been negotiated in 2003 and 2004 in the European Convention on the basis of the Laeken Declaration on the Future of the European Union. The declaration gave impetus to discuss constitutional and institutional set-ups for reforming the present institutional set-up, which proved to be ineffective (König & Slapin, 2006: 416-7). In this declaration, a strong call for a more democratic, transparent and efficient Union has been brought forward (Nugent, 2006: 116; König *et.al.*, 2006), which has been revived in the European Convention.

The problem here refers to how the new member states are able to shape the negotiation process in the European Convention. The negotiation styles are of interest in this context. Of course, motivations for styles are important, but analysing these motivations remains difficult, when the actual analysis only covers the negotiation situation. A comparison between the largest country and one of the smallest accession countries will be at the core of the analysis, which relates to the factor ‘size’. Therefore, the largest accession state – Poland – is included in the analysis and one of the smallest – Malta. Both countries will be compared in terms of applied negotiation styles in the European Convention. Here, an explanatory research will be developed. The research question is formulated as following:

Why do the negotiation styles of Poland and Malta differ in the negotiations in the European Convention?

Furthermore, the different motivations have to be specified, which lead to the differences in the negotiation behaviour. There may be EU related issues as well as external issues. Internal issues may be related to specific policy fields, which are at stake in the particular countries. Therefore, the analysis will be related to the topics discussed within the European Convention. Also related is the size of the countries, as the size varies considerably between Malta and Poland. Here, it can be asked which implications size and related economic and social consequences have on the negotiation tactics. This issue is relevant, as the major aim of the Convention has been to position the participating countries on the same level, meaning that all participating countries obtain the same status, regardless of membership, economic performance, *etc.* External influences may relate to culture and history. It has to be analysed whether Poland’s Communist history still influences the political culture today and the Poland’s negotiation style. Contrastingly, Western and colonial influences in Malta can be one determinant of their negotiation style. Finally, learning processes obtained during membership in international organizations may determine to a certain extent the negotiation styles, which is related to

a socialization process. To solve these related issues, following sub- questions can be formulated:

In how far does the size relate to the negotiation styles of Malta in Poland during the European Convention?

In how far does culture play a role in cooperative negotiation style?

In how far does the length of membership in an intergovernmental organization influence the negotiation style and does it contribute to a more cooperative attitude?

The conducted research is relevant, as it provides further insides in the negotiation analysis at the European level. As this area has not been widely covered so far, this analysis will provide a step forward in analysing the motivations and decision-making modes among the EU member states and their incentives for negotiation styles. Of course, only newly accessed member states are covered, but nevertheless, this analysis will provide an analytical way to understand negotiation tactics of the member states. As Poland and Malta can be seen as extremes cases within the European sphere, the outcome of this research provides criteria for understanding negotiation styles, which can be related to size and culture. This will contribute to a broader understanding of negotiations in the EU. Furthermore, the cases analysed in this thesis present characteristics, which can also be assigned to other member states of the Union. In relation, negotiation styles related to these characteristics can bear understanding for negotiation strategies chosen by other member states with similar characteristics. Additionally, this thesis is theoretically relevant, as it contributes to the negotiation analysis literature and to academic discussion within the fields of negotiation analysis and the European studies.

In sum, the outcome of the research is mixed. To certain extend influences of the dependent variables size of a country, the length of democratic culture and the length of membership in international organizations on two of the four analysed topics can be seen. Nevertheless, these variables do not predict the outcomes of the other two topics with regard to the negotiation style. Therefore, other factors have to be present, which also influence the choice for negotiation styles. Here, an extension of this research with more cases and a larger set of variables can detect more influences on bargaining strategies.

The paper will be structured as following: first, a literature review will be given, which supports the negotiation analysis and helps to understand negotiation styles. Further, the dependent variable ‘negotiation styles’ is laid down and the applied operationalization. Third, in the theoretical framework, the hypotheses will be given. The independent variables are related to size, culture and membership in other international organizations. Fourth, the analysis will be provided, and finally, conclusions and recommendation will be specified.

2. Existing Literature

In this section, a review of negotiation analysis will be given. Regarding the research question, the explanation and at a later stage the operationalization of the dependent variable 'negotiation style' will be developed. In a broad sense, preconditions, motivation and influences on the actual negotiations are described to see the following negotiation analysis in a wider context. Within the context of negotiation analysis, it is assumed that actors act rationally as they aim at maximizing their utility. The actor's utility is highest, when the ideal point of the actor is reached (Bueno de Mesquita, 2006: 166; Shepsle & Bonchek, 1997: 83-6). The ideal point lies at the preference, or stated differently, the best solution for the particular actor. Contrastingly, actors do not accept any outcome, which does not achieve reciprocal benefit for them, and which can be named as the resistance point (Muthoo, 2000: 147-8; Odell, 2000: 26). Preferences are connected choices, which are valued against each other and against their utility for an actor (Bueno de Mesquita, 2006: 307). Preference formation then is the process by which an actor decides which option to choose in comparison to other options and thereby, choosing the option that fits best to the actor's utility. This all takes place within a negotiation space. The zone of agreement, or the negotiation space, is the set of all possible outcomes in negotiations. The outcome will be located within this range (Odell, *ibid.*), as otherwise one actor will not accept the agreement. The actual outcome then depends on the location of the actors' ideal points as well as of the negotiation strategy. This can be also related to the participants in the European Convention. The member states try to reach the best solution and to meet their preferences. Therefore, the actors behave in a rational way to maximize their utility in the negotiated agreement.

In general, negotiation strategies can be divided into hard and soft bargaining. Soft bargaining signifies a cooperative bargaining strategy, whereas hard bargaining presents an offensive behaviour in the negotiations (Hopman, 1974: 318). Hard bargaining implies actions to threaten the other negotiators and to increase their potential losses during the negotiations, while increasing own gains in the outcome. These actions include committing oneself to a certain position, threatening other actors and retractions of aforesaid statements. In addition, hard bargaining also includes making explicit statements, to negate compromises, criticizing other negotiators, forming defensive coalitions and threatening the other side (Odell, 2000: 32). Asymmetry of information is also valued on the hard bargaining sides, as it can cause strategic advantages for those possessing these information and disadvantages for those not having access to information, which can be played off against the actor without possessing the information (Sebenius, 1983: 305-7). Soft bargaining is defined as actions to increase the potential gains relative to no agreement. Soft bargaining includes proposals to give new impetus, accommodation of different positions, patience and promises to other actors. Odell (2000: 31-4) extends this list and includes flexibility, signalling, seeking for compromises and making proposals. Finally, issue-linkage has the potential to lead to joint gains and increase the bargaining space, in which the actors are located (Odell, 2000: 37). Hard and soft bargaining presents a suitable framework to evaluate different strategies and their aims. This framework will be used at a later stage

of this thesis to operationalize bargaining strategies and to evaluate the negotiation strategies seen in the European Convention.

Influences on the actual bargaining situations are the number and the character of parties involved, coalitions and domestic factors. The more actors are participating in negotiations, the more complex negotiations become. Also, third parties might change negotiators' behaviour, when third parties agree or oppose proposed actions. Manipulation via third parties might be an effective strategy to achieve some goal (Sebenius, 1983: 287). Alliances between actors can increase the probability of having an agreement as the number of the actual negotiating actors is decreased. As information is shared within the alliances, the costs of getting necessary information are also decreased (Sebenius, 1983: 308-9). Domestic factions can limit the scope of alternatives and have the ability to block an agreement, when a second level is added to a game – ratification at the domestic level (Putnam, 1988: 436; Bueno de Mesquita, 2006: 413). Therefore, the national preferences influence the international stage and vice versa. This circle is also mutually reinforcing.

3. Operationalization of the Dependent Variable

The dependent variable in this thesis is the 'negotiation style' with the values 'hard negotiating' and 'soft negotiating'. It should be noted that negotiation style constitutes a sup-part of negotiation strategies, which has been discussed earlier. This distinction is revived from Hopman (1974: 318) and the meaning of these terms has been discussed in a broader sense in the sub-section above. The distinction is further complemented by the work done by Odell who extensively elaborates on negotiation strategies and corresponding measurement. In addition, Dür and Mateo (2010: 4-5) value the distinction between hard and soft as appropriate to measure negotiation styles. Nevertheless, it has to be acknowledged that pure forms of soft and hard negotiations stand at the extreme ends of a scale. Actual behaviour in negotiations is often mixed and lies in between these poles, as certain room is left to change strategies during the negotiations (Dür and Mateo, 2010).

A coding scheme is chosen appropriate to detect the negotiation styles applied within the European Convention, as only negotiation protocols are available. Again, Hopman delivers the template for this coding scheme. In his 'denominated bargaining process analysis', Hopman distinguishes between substantive behaviour, strategic behaviour, task behaviour, affective behaviour and procedural behaviour (Hopman, 1978: 322-323). Within this thesis, issues and agenda points are not discussed, and therefore, procedural and task behaviour are not detected within the negotiation protocols. Furthermore, Hopman's list of soft and hard bargaining strategies can be extended. This has been decided, as more styles and varieties are present in the negotiations than Hopman suggested, and as the field of analysis is wider. The hard and soft negotiation styles have been listed extensively in the section above. It should be noted here that Odell argues that issue-linkage occurs on either side of soft or hard bargaining and remains neutral in the way that issue-linkages occur in any negotiation (Odell,

2000: 37). In contrast, Hopman clearly values issue-linkage on the soft-bargaining sides, as actors show their willingness to make a compromise. The approach taken here follows Hopman’s argumentation that issue-linkage presents thrust by actors to find a compromise and to successfully conclude the negotiations, which is, therefore, classified as a soft bargaining strategy. Having discussed these considerations, the coding scheme to operationalize the dependent variable ‘negotiation style’ can be made as following: the two poles of the independent variables are ‘hard’ and ‘soft negotiation’. The values presented in table 3.1 are a combination of the consideration made by Hopman and Odell, which have been discussed above.

Table 3.1: Values of the Dependent Variable

Style	Values	Operationalization
<i>Soft Negotiating</i>	Initiations	An actor develops a new proposal or states substantially its own position (Hopman, 1978: 322).
	Promises	An actor predicts positive consequences, if the other actor also follows the agreed line of actions (Hopman, 1978: 322).
	Accommodations / Signalling	An actor expresses the willingness to cooperate with other actors (Hopman, 1978: 322).
	Flexibility	An actor shows the willingness to move from its ideal point in order to drive for compromises (Odell, 2000: 37-8).
	Issue linkage	An actor connects different issues at stake to increase the bargaining space and the possibility for a compromise (Odell, 2000: 37).
<i>Hard Negotiating</i>	Commitments	An actors takes a clear position, which makes his position difficult to negotiate (Hopman, 1978: 322)
	Threats	An actor prognosticates negative consequences, if another actor does not react in a particular manner (Hopman, 1978: 322; Odell, 2000: 32).
	Criticizing	An actor continuously probes and attacks a position brought forward (Odell, 2000: 32).
	Defensive Coalitions	An actor forms a group with other actors against a position brought forward (Odell, 2000)

4. Theoretical Framework

In the following section, the hypotheses and the corresponding independent variables are laid down. In total, three hypotheses are presented with the independent variables ‘size’, ‘democratic culture’ and ‘length of membership in international organizations’. The main dependent variable is the ‘negotiation style’ the countries opt for during the European Convention, which has been discussed in the previous section.

4.1 The Role of Size

There has been an emerging field in the literature on negotiation analysis dealing with small states. The leading author is Diana Panke arguing that small states face structural disadvantages due to limited bargaining power and only limited financial resources for building up expertise in negotiations (Panke, 2010: 801). Larger states have better possibilities to organize representation at the international level, which involves a higher number of representatives and larger representation in international organs due to higher expenditures on representation. It is further argued that small states can nevertheless be successful in negotiations, when they cooperate, learn from negotiation situations and develop a coherent administrative structure to employ a quick and well-functioning national administration while formulating clear preferences (Panke, 2010: 812-813). This approach is especially valuable for this thesis, as Malta is one of the smallest states in the EU. Furthermore, the differences in negotiation strategies and outcomes, which relates to size, shall also be shown in this thesis. Also Moravcsik (1993) shows at an earlier stage that especially smaller EU member states benefit from accession, as these states get involved in a considerable large market (Moravcsik, 1993: 515-6) and are better represented among the international community. Therefore, these states are likely to be in favour of accession and further integration, as the gains from the common market and community representations outweigh the costs of adopting the EU legislative framework. This may also be connected to a more cooperative behaviour within negotiations. As Panke shows, smaller member states have less strength to bargain hard because of their size and related issues, such as economic weight. To connect this to the benefits of accession pointed out by Moravcsik, small member-states are willing to be part of the EU due to economic and social reason, and therefore, the negotiations have to be successful to achieve these benefits of membership. Successful means here to achieve a positive change and cooperative negotiation behaviour is likely to increase the success of negotiations. Therefore, the first hypothesis is formulated as following:

Hypothesis 1: Smaller EU member states are likely to negotiate softer in negotiations on issues considered important to the country, whereas larger states are more likely to negotiate harder on these negotiations.

The independent variable in this case is the size of the member states. To conceptualize this, the measure developed by Panke (2010: 801) presents a suitable way to do. The distinction between small

and large EU member states is defined in terms of the average number of votes in the Council, which lies at 12.78 votes. States obtaining more votes are considered as larger member states, whereas countries having fewer votes are seen as small states. Malta falls in the category of small states with 3 votes, whereas Poland is regarded as a large member state with 27 votes. This measure includes the possible bias, which is integrated in the allocation of votes. This bias is caused by large differentiations in size and the populations of the different EU member states. In addition, different bargaining strategies and compromises in the negotiations leading to the Nice Treaty have led to an even wider bias in the allocation of votes in the Council. As only the EU is put in context here, this bias would be present in either case. Therefore, this measure still presents an adequate option to measure the size of member states.

4.2 The Role of Democratic Culture

There has been a new field of literature regarding the impact of culture on preferences, negotiation behaviour and decision-making modes in international organizations. Dür and Mateo (2010: 9) define culture as a set of different behavioural norms, beliefs and values, which are shared by a certain social group, and which determine their behaviour. The variations in the choice of bargaining strategy further depend on a combination of differences in power, preferences and cultural attitudes (Dür, Mateo & Thomas, 2010: 616). Within this context, the democratic culture is at the focus. A large difference can be seen between Poland's and Malta's political culture. Poland faced a Communist regime, and since the end of the Cold War and the Communist Regime in Poland steady transformation away from Communism takes place, and today, democracy is present in the country. This transformation includes an economic change from centrally planned economy to market economy. Furthermore, social changes involve competitiveness and finding an own distinctive culture in the aftermath of Communist uniformity. Transformation means also being weak in comparison to those countries having a stable economy and institutional set-up. Furthermore, post-Communist states mainly face strong domestic actors involved in shaping domestic politics as competition between various institutions and elites prevails within a system of steady transformation (Dimitrova, 2010: 143-4). This also holds for Poland. The impact of Communism also relates to the fact that critique at the system was forbidden. Therefore, the society might be in transition from obedience to development of free expression (Bueno de Mesquita, 2006: 150-3). In contrast, Malta faces a very different history determining the culture. Here, a western European development is combined with colonial experiences of being a British colony from 1814 to 1964 and the location in the midst of the Mediterranean Sea (Brockhaus, 2001a). Therefore, a combination of Western culture and Mediterranean organization of life can be seen. Additionally, democratic values have been flourishing and exercised for a long time. The second hypothesis can be formulated as following:

Hypothesis 2: Countries having experienced longer democratic culture are more likely to negotiate softer in negotiations on issues considered important to the country than countries having experienced Communist regimes, which are more likely to negotiate harder in negotiations.

The independent variable distinguishes between the culture and as the main feature democracy is taken. Malta and Poland are separated by the length of democracy, which is related to the date of independence; Poland has become independent after the end of the Cold War in 1989, when the constitution had been changed and the Republic of Poland has been established, whereas Malta has become independent in 1964 in the aftermath of World War II and gradual decomposition of the British Empire (Brockhaus, 2001b). Therefore, the length of democracy in Poland is 22 years, whereas Malta has been an independent and democratic state for 47 years. The dependent variable corresponds to the dependent variable in the first hypothesis and will be measured accordingly. Worth mentioning is that both Poland and Malta have a strong Christian tradition, which exemplified in the wish to include a reference to Europe's Christian heritage and corresponding values in the European Constitution (Nugent, 2006: 119).

4.3 The Role of Participation in International Organization

Following the field of negotiation analysis in the literature and two-level games, the impact of membership in international organizations on state behaviour has been further discussed. First, international organizations can be defined on a combination of three factors: International organizations are created between states, involving a legal framework – a treaty – and serving a distinct will, which is laid down in the treaty (Klabbers, 2002: 9-12). Further, it can be stated that domestic institutions have a direct effect on the state's ability to cooperate at the international level. So, if national actors oppose cooperation at the international level, this cooperation is likely to fail as support at the national level is lacking. As a result, national institutions can be seen as veto players also at the international stage (Minnich, 2005: 320). On the other hand, an impact of membership in an international organization can be detected. Taking new roles assigned to countries with the membership causes this impact. These roles affect the state behaviour, but this also takes place vice versa (Bueno de Mesquita, 2006: 493). Here, the re-enforcing cycle between the influences of national institutions on international organizations and vice versa can be clearly seen.

In addition, two major forces can be linked to state behaviour in international organizations: conditionality and socialization. Conditionality is related to rationalist argumentation – incentives are provided by membership and sanctions are imposed in case of noncompliance, but this will not be explained further in this context. Socialization refers on the other hand to a wider set of social processes relying on social norms. In this context, norms can be used to change actors' behaviour with persuasion and social influence (Kelly, 2004: 428). The impact of socialization can bring a more cooperative behaviour within the organizations, as states get used to deliberation and get to know their

counterparts in the negotiation settings. Kelly concludes that conditionality is still the major influence on state behaviour, but the impact of socialization increases with time and cannot be neglected, when analysing states' negotiation behaviour (Kelly, 2004: 453). Having discussed the general impact of socialization at the international level, special emphasize to the European level can be granted. Especially, in the Council of the European Union a set of informally institutionalized norms and standards is present within the negotiation setting. The general nature of the deliberation is oriented towards consensus and the member states accept these provisions. Here, newcomers in this setting have to learn about the nature of deliberation as well as the informal norms of negotiation (Lewis, 2008: 175). This can also be related to the research, as Poland and Malta are newcomers at the European stage, but considerable difference between the two countries can be seen in the membership in other international organizations. The international organizations used in this research and corresponding lengths of memberships are explained below. Finally, social influence is as important as the formal voting power at the European level (Lewis, 2008: 177). Applying these considerations, socialization then means to learn and apply these informal rules within the negotiation setting, which make negotiations at the European stage a distinct and consensus-oriented feature. Worth noting is that the European Convention applied the principles of equality of all participating states no matter if the states are actual member states of the EU. So, Poland and Malta have been able to participate in the negotiations, although they have not been formally accessed at the stage of the negotiations. In addition, Turkey also participated in the European Convention to demonstrate the inclusive and symbolic character of the Convention and its aim to develop a constitution for the whole of Europe.

Here, the actual mechanism of socialization within a negotiation setting can be seen: taking part in the negotiations involves seeing possible informal rules, which have to be followed in the negotiations. Furthermore, learning processes take place to grasp and apply these rules. The actual negotiation behaviour by the representatives is shaped by informal behaviour rules. Lewis describes this development among deliberation in the Council of the European Union, but it can also be hypothesized that other international institutions also have developed such set of informal negotiation rules. Following, it can be assumed that membership in international organizations is determined by the national institutional set-up. Further, it can be seen that this membership has an effect on the behaviour of these national actors, which can be denominated as an impact of socialization. This process of socialization can also be linked with behaviour in negotiations. Therefore, the third hypothesis can be formulated as following:

Hypothesis 3: The longer a state experiences membership in an international organization, the softer the negotiation style should be, whereas states having experienced only a limited period in international organizations are more likely to negotiate harder in negotiations.

The dependent variable is constituted again as the negotiation style, which has been discussed in the sections above. The independent variable here is the length of membership in an international organization. The values of the independent variable constitute themselves as the years of membership in the international organizations state in the table below. Difference is then made between the total years of membership between the countries Malta and Poland. The EU as an international organization will be at focus within this analysis, as both studied countries have joined the EU in 2004. Therefore, other international organization are applied here – the United Nations, the OSCE and the Council of Europe. These institutions have been selected, as both states take part in these institutions, which makes the length of membership comparable. Other institutions, such as the OECD, are not appropriate as only one of the two states is a member.

4.4 Operationalization of the Independent Variables

Having discussed the hypotheses and the corresponding variables, a small summary of the values in the independent variables will be given. In table 4.1, the independent variables, their values and the operationalization will be listed.

Table 4.1: Values of Independent Variables

Hypothesis	Independent Variable	Values	Operationalization
Hypothesis 1	Size	Small member states obtain less than 12.78 votes in the Council Large member states obtain more than 12.78 votes in the Council	Poland: large state, as having 27 votes in the Council Malta: small state, as having 3 votes in the Council
Hypothesis 2	Democratic culture	Length of democracy in years	Malta: 47 years (Independence in 1964) Poland: 22 years (Independence in 1989)
Hypothesis 3	Membership in an International Organization	Length of membership in international organizations Measured as years of membership in UN, OSCE and Council of Europe	Malta: 171 years in all three international organizations ¹ Poland: 124 years in total ²

It can be hypothesized that Malta as the smaller state and having experienced a considerable higher amount of time in democracy would negotiate softer to achieve a positive negotiation outcome.

¹ Malta: member in the UN since 1964, member in the OSCE since 1972 and member in the Council of Europe since 1965.

² Poland: member in the UN since 1945, member in the OSCE since 1973 and member in the Council of Europe since 1991.

Contrastingly, Poland is likely to apply harder negotiation styles and presses for own positions, due to size, less democratic experience, socialization in international organizations and greater strength due to size related issues, such as the economic sector.

4.5 Control Variables

At this point two control variables are introduced. The purpose of these two control variables is to balance its effects among the cases and to see the relation between the dependent variable and the independent variables more clear (Babbie, 2006: 453). The first control variable here is the ‘relative emphasize during the bargaining process’. The underlying concept of this control variable is that actors speak more on a topic of interest to them than on a topic, which only has a marginal effect on the particular actor. This effect is caused, as actors are willing to shape the topic of interest, which requires a higher number of statements to explain and deliberate with other negotiators. The variable is measured as the percentage of statements given on one topic per country in relation to all statements delivered by this country.

The second control variable is related to the national government and the party or parties in charge. The variable ‘relative emphasize for party in government’ aims at measuring how important a government values a topic under discussion. Here, the central concept applied is that the parties in the national governments shape the negotiations at the international level according to their preferences. This can be done on several occasions: first, the parties in the government determine the position of the particular country, which is represented in the negotiations (Benoit *et.al.*, 2005: 305). A strong link between national party programs and the content of statements delivered by particular participants can be detected (Benoit *et.al.*, 2005: 307). Second, the parties in charge select the representatives for the negotiations, and thereby having an effect on the position the negotiators bring forward (Lindberg *et.al.*, 2008: 1115). These two propositions can be related to the wish for re-election at the national level, as well as for the need of ratification of international agreements at the national level (Milner & Rosendorff, 1997: 140). With regard to the measurement of the second control variable, the relative emphasize is measured as the percentage of statements in the party manifesto of the party in charge on a particular topic in the negotiations. The coded data on the party manifestos has been revived from Klingemann *et.al.* (2006) and Werner and Volkens (*n.a.*)³. Applying these data, the Polish government was formed by the Democratic Left Alliance from 2001 to 2005, as the largest party in the government. Therefore, the Democratic Left Alliance was able to shape positions considerably (Encyclopaedia Britannica, 2011; Gwiazda, 2006: 184). In the Maltese case, the pro-European Nationalist Party has been elected in 1998 and re-elected in 2003. Here, only one party forms the government, as Malta has a two-party system (European Parliament, *n.a.* a; Blavoukus, 2006: 168).

³ The coding scheme by Klingemann *et.al.* (2006) and Werner and Volkens (*n.a.*) has been used as following: on the Charter of Fundamental Rights (per201+per202+per607+per608+per705), on the Areas of Freedom, Security and Justice (per605), on External Actions (per101+per102+per103+per104+per105+per106+per107+per109), and finally, on Institutions (per203+per204+per301+per302+per303+per305)

Therefore, the data from each of these party manifestos can be analysed with respect to the frequency of statements on the issues dealt with in the European Convention.

Table 4.2: Values of the Control Variables

Issue	Poland		Malta	
	Relative emphasis for party in government	Relative emphasis during the negotiation process	Relative emphasis for party in government	Relative emphasis during the negotiation process
Charter of Fundamental Rights	7.24 %	9.68 %	6.92 %	10 %
Freedom, Security and Justice	2.61 %	17.74 %	2.18 %	15 %
External actions	2.4 %	27.42 %	1.56 %	30 %
Institutions	16.12 %	45.16 %	15.36 %	45 %

5. Methodology

This research should be comprised of a multiple case study. There are two countries involved here: Malta and Poland. As the number of issues is limited to four, the actual number of cases is eight – each country per issue. All cases occur during the negotiations of the European Convention. These cases shall be analysed applying the same hypotheses and shall be compared in the end. The spatial comparison allows seeing differences and similarities among the countries' negotiation strategies, and possibly, these results can be applied to similar cases (Gerring & McDermott, 2007: 694-695). The method is suitable for this approach, as only one negotiation situation is covered, and as the research should be limited to two countries. As the research is explanatory and qualitative in nature, a multiple case study with a spatial comparison contributes well to these two features.

The sample consists of eight cases, namely Malta and Poland and their statements on each of the topics of analysis. The unit of analysis is the negotiation situation, in which both countries find themselves. Contrastingly, the units of observation are the negotiation protocols of Malta and Poland. The sampling strategy is purposive sampling of heterogeneous instances. This is applicable, as only a small number of cases will be analysed. Heterogeneous instances are preferred over homogeneous instances, as extreme cases provide a wider variation between the cases, which can be more representative for a population when a small number of cases are present (Seawright & Gerring, 2008: 301; Shadish, Cook & Campbell, 2002). With regard to this research, the two extreme countries among the newly accessed member states of the EU are selected. Poland is the largest among these

states and takes a leading role among the CEECs. In addition, Poland has taken a leading role in the negotiations leading to the accession agreement in 2003, and therefore, it can be assumed that Poland will also take a stark position in the negotiations in the European Convention. On the other hand, Malta has been selected as one of the two smallest states in the EU, next to Cyprus. The choice fell on Malta, as the Cypriot case always relates to the conflict over territorial matters with the Turks, which made the accession negotiations in 2003 difficult (Nugent, 2006: 62-3). Therefore, Malta is regarded a better representative of the smallest member states, as their history and political development is not dominated by a single conflict situation.

The analysis has to rely on the words spoken without seeing actions of the speakers and the reactions by the audience, as only the protocols of the negotiations of the European Convention are present. Of course, this limits the analysis to a certain extent, as seeing speakers reacting can also deliver messages to the audience. Nevertheless, the protocols are appropriate, as here an exact pathway of the negotiations can be followed. This also relates to the data collection: the data is composed of the negotiation protocols of the European Convention. As part of the negotiations has been held in the building of the EP, the negotiations have been recorded and the protocols are publicly available⁴. The data will be qualitative in nature as well as the analysis. This means that interpretations based on the protocols are made with regard to the formulated hypotheses.

6. Analysis

6.1 Practical Insights on the European Convention and the Constitutional Treaty

In order to analyse the negotiations in the European Convention, a small overview of the Convention will be given. The European Convention took place in the time frame between April 2002 and July 2003. The meetings were held at the premises of the European Parliament in Brussels (European Parliament, *n.a.* b). The members of the Convention have been allocated as following: 15 representatives of the member states of the EU, 13 representatives of the candidate states – including representatives of Poland and Malta –, 30 representatives of the national parliaments of the member states, correspondingly 26 representatives of the national parliaments of the accession states, 16 members of the EP, and finally, two representatives of the European Commission. The Chairman of the Convention is Valéry Giscard d'Estaing. Finally, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman have been invited (European Convention, *n.a.*). It has been argued that the candidate states, which became members in 2004, should have been included, although these have not been official member states of the EU yet. The inclusive approach can be explained with the symbolic character of the Convention to work on a Constitution for the whole of Europe. Further, it has been argued that this treaty should be concluded with consensus aiming to show the nature of democracy and deliberation within the Union.

⁴ The data – the negotiation protocols – has been made publicly available on europarl.europa.eu/Europe2004/index_en.htm.

To refer shortly to the content of the treaty in order to see possible differences between the actual content and the positions brought forward during the convention: it sets up the European Union as a whole, replaces the existing treaties with one and gives the Union legal personality. The co-decision procedure is extended and is transformed into the ordinary decision-making procedure. The size of the Commission will be reduced to two thirds of the number of member states and establishing an equal rotation system. The triple majority introduced with the Nice Treaty is reduced to a double majority with 55 per cent of the votes and 65 per cent of the population. The most contested change is the introduction of the Union Minister for Foreign Affairs, who represents the Union externally (Nugent, 2006: 122-4). The Treaty Establishing the Constitution of the European Union has been formally signed in Rome on October 29th, 2004 (Nugent, 2006: 120).

6.2 Explication and Illustration of the Coding Scheme

In this section, the use of the coding scheme and corresponding values are explained and illustrated. First, initiations have been coded as new offers or suggestions made by the participants in order to bring the negotiations a step further. In this category, amendments to the treaty are also counted, which have been discussed in the plenary. With regard to the text work, verbs such as ‘suggest’, ‘propose’ and ‘introduce# are signals for initiations. Also certain forms of auxiliary verbs present initiations such as ‘could’ or ‘would’. Here, an example by the Maltese delegation on external actions shall be delivered held on December 20th, 2002:

“[...]I wish to suggest, constructively, is that there should be an exploration of modalities of participation in European defence operations in non-violent ways [...]”⁵

Further, an example presented by the Polish delegation on external actions presented on May 16th, 2003, should be given:

“[...]Instead of a value formulation, a reference to the Brussels Treaty could be made here as an instrument of a future EU defence policy. [...]”⁶

Second, promises are a positive prediction of an outcome by one actor when a certain action takes place by another actor. In the areas of analysis, promises have not been made. This might be caused by the large number of actors involved in the European Convention, and further, by the goal of the Convention to write a Constitution for the whole of the EU in an inclusive approach. Therefore, promises are not adequate, as a single member state might not be able to predict positive outcomes by

⁵ European Parliament (2003). *European Convention December 20th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_021220.htm.

⁶ European Parliament (2003). *European Convention May 16th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030516.htm.

the action of another single member state. Third, during signalling or giving accommodations negotiators show their willingness to cooperate. Especially, the expression of support to other negotiators, amendments and willingness for compromises present accommodations during negotiations. With regard to the choice of words, positive expressions are used *inter alia* ‘good solutions’ and verbs such as ‘welcome’, ‘promote’, ‘support’ and ‘encourage’. Here, an expression of the Polish delegation made on May 16th, 2003, on external actions should be presented:

*“[...]The creation of the EU Foreign Minister is therefore a good solution [...]”*⁷

Further, a quote from the Maltese representative on the institutions delivered January 20th, 2003, should be given:

*“[...]the need now is to seek to move towards a package which can really form the basis of consensus. The Government of Malta wants to keep its mind open to all suggestions which move in this direction [...]”*⁸

Fourth, flexibility is expressed when an actor shows the willingness to move away from aforementioned preferences. Here, other solutions are suggested in comparison to what a negotiator has presented before. It should be noted that in the European Convention initiations and accommodation have been predominantly applied on the soft bargaining side. Flexibility has only a marginal impact, as it has been shown in the analysis. To give an example by the Polish delegation delivered on April 3rd, 2003, on the areas of freedom, security and justice:

*“[...] On the right of initiative for a group of Member States, here I also have my doubts, but if we decide to go this way, I would propose the introduction of the sunset clause which would help to ensure that only legislative initiatives enjoying widespread support are tabled by the Member States. [...]”*⁹

Finally, on the soft bargaining side appears issue-linkage. Here, actors connect two or more topics in order to increase the bargaining space, and respectively, the chance to arrive at an agreement. Again, as with flexibility, issue-linkage only has a marginal effect in the negotiations. This may be caused due to the fact that only two countries have been analysed here. Seeing the European Convention as a whole, issue-linkage would have occurred in a larger number, as more countries and positions would

⁷ *ibid.*

⁸ European Parliament (2003). *European Convention January 20th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030120.htm.

⁹ European Parliament (2003). *European Convention April 3rd, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030403.htm.

have been involved in the analysis. Furthermore, the areas of competences of the Union have been dealt with separately, which might occur as a limiting factor for issue-linkage during the Convention.

In the following, hard negotiating styles are at the focus. First, during commitments an actor clearly positions himself among the other actors. Thereby, the position is stated clearly, which makes it more difficult to negotiate, as the actor does not move easily from the presented position. Next to accommodations, commitments have been used as the major negotiation strategy in the Convention. In contrast to accommodation, the choice of words points at a strong position and the application of auxiliary verbs such as ‘should’ and ‘shall’. Also expressing needs for some actions falls under this category, as well as the use of adjectives such as ‘definitely’ and verbs such as ‘emphasize’, ‘opt’, ‘believe’, ‘stress’ and ‘pressure’. A statement by the Polish delegation on the institution is shown, which has been delivered on May 15th, 2003:

“[...]the Nice compromise voting system should be fully respected [...]”¹⁰

Another statement by the Maltese delegation on external action to show commitment, which has been delivered on July 12th, 2002:

“[...]Therefore, Europe needs to be a counterbalance, a voice of reason and reasonableness; an old continent that can bring to the table collectively a wealth and diversity of experience from each of its Member States. [...]”¹¹

Second, while threatening, negotiators foresee negative consequences of certain actions proposed by another actor. Here, the threatening negotiator directly attacks another actor or proposed solutions, which pressurizes others and the negotiations as a whole. Again, threats only have a marginal effect in the analysis, which may be linked to the inclusive and cooperative approach to present a Constitution for whole EU. Here, an example presented by the Polish delegation on the areas of freedom, security and justice on December 6th, 2002, is given:

“[...] I believe that implementing, qualified majority voting as a general rule, especially during the period directly following the enlargement, does not seem to be the right solution from the Polish point of view. [...]”¹²

¹⁰ European Parliament (2003). *European Convention May 15th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030515.htm.

¹¹ European Parliament (2003). *European Convention July 12th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_020712.htm.

¹² European Parliament (2003). *European Convention December 6th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_021206.htm.

Third, when criticizing, an actor probes a position presented by other actors. Expressing criticism includes stating doubts, to condemn and denounce. In addition, the use of rhetorical questions can be related to criticisms, as here statements can be judged in a critical, sometimes even ironic or sarcastic, manner. As an example, a statement by the Polish delegation on the institutions delivered on January 20th, 2003, is considered:

*“[...]Regarding the European Parliament, I cannot, at this stage, imagine that the creation of Euro-constituencies with transnational lists will do anything to reinforce the credibility of Parliament [...]”*¹³

Another example by the Maltese delegation on December 20th, 2002, on external actions is given:

*“[...] It is strange that, in a world where battles of the mind loom so large, the role of cross-cultural dialogue appears to be completely neglected in the total picture of EU external action [...]”*¹⁴

Finally, defensive coalitions are the formation of groups among negotiators to oppose a proposal on the table. In this analysis, defensive coalitions have not occurred. This is related to the fact that only two countries are of interest here. With regard to the whole Convention defensive coalitions have occurred. When only analysing two of the member states, these coalitions do not become as apparent as in the whole negotiations, even if one of the analysed states takes part in a defensive coalition.

6.3 Comparing the Negotiation Strategies by the Delegations of Poland and Malta

With regard to the analysed parts of the protocols, in total 62 statements have been given by the Polish delegation ($N_1=62$), and only 33 have been delivered by the Maltese delegation ($N_2=33$). Furthermore, 16 issues have been deliberated in the whole European Convention. In this analysis, the number of issues will be limited due to several reasons. Due to time and feasibility, not all of these topics can be dealt with. More important, the countries of analysis value certain topics differently, so it may occur that one country values a topic highly and speaks often, whereas, the other country might stay silent. Here, a comparison between the countries cannot be accomplished. In order to compare the countries, topics are selected to which both countries expressed their positions with more than one statement per issue. In addition, relative importance of these issues to the countries is considered, meaning that issues are preferred, which are valued important to both countries. These topics concern the institutional set-up, external actions and defence, the areas of freedom, security and justice, and finally, the discussions on the Charter of Fundamental Rights.

¹³ European Parliament (2003). *European Convention January 20th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030120.htm.

¹⁴ European Parliament (2003). *European Convention December 20th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_021220.htm.

The positions of Poland and Malta in the four areas of concern should be compared here. In the areas of freedom, security and justice, can be seen as one of the most complex areas in the EU, where different competences are involved. Common goals have been formulated, but the implementation remains weak due to differing competences, national procedures and Community instruments (Zielonka, 2004: 24). Here, making prior agreements and objectives since the Maastricht Treaty legally binding was at stake in the Convention. This would mean to gradually integrate these areas in the Union framework. Also the fields of competences have been widened in the Convention now including asylum, migration and border control (Kaunert, 2005: 473). Here, both Poland and Malta support further integration due to their location at the borders of the EU and related needs to control borders and to deal with immigrants. Therefore, both countries' positions can be seen as extreme in relation to most other countries, which do not have to deal with border controlling. In the field of external action, the Union's representation at the international community is at stake. The EU has been recognized as a large trading block, but this strong appearance could not be continued within centralized external policies. It has been argued that coordinated external action would also lead to a better identification with internal matters (Everts & Keohane, 2003: 169-170). To develop coherent external policies, legal personality and proper representation for the EU are necessary means (*ibid.*). During the convention, several models of representation have been discussed ranging from a rotating presidency to a Foreign Minister for the EU. Poland's position can be related to the wish for further integration. This is valued as a balanced position, whereas Malta takes an extreme position due to the special status as a neutral state and the location in the Mediterranean Sea (Cini, 2001: 271). In general, Malta's position is dominated by a prioritization of external matters due to size and limited human and market resources in Malta (Blavoukus, 2006: 168). The issue of the institutional set-up of the Union has been discussed most controversially. Here, power relations and voting weights are at stake here (König & Finke, 2007: 167). Poland inherits an extreme position (Tsebelis, 2005: 9), as Poland is in favour of maintaining the status quo with the Nice voting rules in the Council¹⁵ (König & Finke, 2007: 159; Maignette & Nicolaidis, 2004: 393). This extreme position can be explained with the Aznar Bonus (Baldwin & Widgrén, 2004: 3), which the Polish government wants to keep (König, 2005: 260). This bonus makes Poland and Spain part of virtually every winning coalition in the Council, meaning that Poland can push for own preferences (Tsebelis, 2005: 8). This can be related to strong national campaign in favour of the Nice compromise, which peaked in the expression 'Nice or Death' (Gwiazda, 2006: 183 & 186). In addition, Malta also inherited an extreme position on institutional matters, as Malta pushed for an intergovernmentalist approach ensuring high representation for small states in the Commission and EP (Gwiazda, 2006: 172-3).

¹⁵ The Nice Compromise involves new weighting of votes as well as a new system of thresholds for voting. Thereby, a winning coalition must have at least 71 per cent of the votes in the Council, half of the member states and representing 62 per cent of the Union's total population. This compromise has been widely discussed, as it has been argued that the main objective – of making EU decision-making more efficient – has been failed. The biggest winners in the Nice compromise have been Poland and Spain, as both countries gained the most, namely 1.8 per cent, votes in comparison to the older allocation, which has also been called the 'Aznar Bonus' (Baldwin & Widgrén, 2004: 3).

The experiences in the negotiations of the Nice Treaty have shown that especially deliberations on institutional matters can be controversial and require a large amount of time to find consensus. Again in the Convention, deliberations on the institutions are controversial, as the core of the EU setup is at stake ranging from voting weights to the composition of the Commission. Therefore, the time to discuss on the institutions has been limited by the Praesidium to avoid long-lasting and controversial debates and to push negotiations forward in the direction of a unifying and coherent legislative framework (Tsebelis & Proksch, 2007: 164). The role can be extended, as the Praesidium took also influence on the number of amendments and the decision-making mode – namely to push the participants to drive for consensus (Tsebelis & Proksch, 2007: 160.). Time – and the shortage of time – plays an integral role in negotiations, as they can increase the possibility of reaching an agreement.

In general, differing patterns in the negotiation styles can be identified. The Polish preferences are strongly formulated in favour of further integration at the European level. This comes along with a strong emphasize on the ‘European People’ or ‘Demos’ making the EU more tangible for the citizens and raising understanding among the population. Special emphasize is put on foreign representation of the Union and stronger cooperation in the areas of freedom, security and justice as well as external actions. Finally, Poland presses for an inclusion of a reference to the Christian heritage and values in the Preamble of the Constitution. Contrastingly, Malta puts strong emphasize on the special circumstances of small states and related micro-economic settings. These might be conflicting to the setting of the internal market and Malta underlines the necessity for flexible solutions in order to correspond to small states’ positions. With regard to the overall negotiation strategies, the Maltese argumentation is often formulated in a wider context. The arguments are often underlined with a number of examples and considerations related to the issue brought forward. Contrastingly, the Polish statements are formulated clearly to the point and the argumentation is strongly brought forward. The use of examples is limited and precise language is used.

The Charter of Fundamental Rights

Poland delivers statements in favour of making the Charter binding. It has been argued that this progress would bring the Union closer to the citizens and would also contribute positively to the creation of identification with the goals of the Union. Related to these considerations, Poland often brought statements in favour of the inclusion of references to the Christian heritage forward. Poland’s negotiation style involves strong commitment to the inclusion of the Charter in the Constitution. Here, hard bargaining styles – especially commitments – prevail among the Polish bargaining style. Malta also speaks in favour of the Charter and to make it a legally binding instrument. At the same time, it has been pointed at the present situation, under which the Charter cannot be enforced at the ECJ. This can be related to the two statements, which can be classified as a hard negotiating style. Malta

especially criticizes that the Charter of Fundamental Rights is not legally binding and cannot be enforced in courts.

The strong support for the inclusion of the Charter can also be seen in the negotiation styles chosen by the countries. Malta commits itself to the Human Rights approach and criticizes the present situation, in which the Charter is not binding. With these commitments, the room for agreement is limited. Poland also commits itself to the content of the Charter, which relates to negotiating hard. In contrast, the Polish delegation is willing to increase the room for compromise by making suggestions to include the Charter in the annex of the Constitution and to move forward to a solution.

Table 6.1: Negotiation Styles in the Negotiations on the Charter of Fundamental Rights¹⁶

	Soft Negotiating		Hard Negotiating	
	Initiations	Accommodation / Signalling	Commitments	Criticism
Poland	1	1	3	1
Malta	0	0	1	1

The Areas of Freedom, Security and Justice

Malta stresses the need for territorial security of the country and the EU as a whole. This should be guaranteed and necessary steps should be taken to achieve territorial security. The protection of EU borders is of importance, as many refugees find their way to Europe via Malta (Vakili-Zad, 2006: 154). The position brought forward by Poland is more elaborated and precise. In general, Poland stresses the need for further integration of CFSP and JHA. With enlargement, preparations for new borders and new member states enforcing these borders have to be made. Therefore, sharing costs and expertise to protect EU borders have to be considered. As it can also be seen in the Mediterranean Sea, protection of the borders of the EU has to involve international cooperation and mobilization of military and police forces (Frontex, 2006), which Poland insists on. Interestingly enough, at the beginning of the negotiations on the areas of freedom, security and justice, Poland presented a strong argument against the extensions of QMV and the co-decision procedure. This argument has been brought forward with reference to the polish population and the strong wish not to be overruled on matters of inner and foreign affairs. After considerations, Poland changed the position and opted for supporting an extension of QMV and the co-decision procedure to strengthen integration and to act efficiently at the European level (compare to König, 2005: 260). Poland acknowledged the need for a more efficient procedure, whereas, unanimity voting has strong potential of long-lasting negotiations, and finally, blocking decision, especially in the field of inner and foreign affairs.

¹⁶ Only the bargaining strategies, which have been applied in the particular negotiations, have been listed in tables 6.1 to 6.4.

In Table 6.2, the negotiation styles can be seen. Again, Poland opts for commitments and even a threat is included. This relates to the strong positions brought forward by the Polish delegation and its aim to include these provisions in the Constitution. On the other hand, Malta’s positions are not as precisely formulated as the Polish position, which leaves much more room for compromises. Nevertheless, as Malta only speaks three times, a majority among the hard negotiating styles can be seen.

Table 6.2: Negotiation Styles in the Negotiations on the Areas of Freedom, Security and Justice

	Soft Negotiating		Hard Negotiating	
	Initiations	Flexibility	Commitments	Threats
Poland	1	1	8	1
Malta	1	0	2	0

External Actions and Defence

Malta points at the need to create a diplomatic agency for the whole of the EU, which is linked to the obligation to develop an effective and credible foreign policy and representation of the EU at international level. Furthermore, defence decisions can only be taken among a coalition of the willing and neutral states, such as Malta, should be accepted in their status. Contrastingly, Poland pushes for a strong external policy. The EU should speak with one voice. To achieve this, the EU should be granted legal personality. Overall, the foreign policies of the member states need to be coordinated, which can be increased with the position of a foreign minister. Furthermore, the EU should develop own military assets and stronger relations to the NATO, preferably set in an EU-NATO agreement. Finally, enhanced cooperation should be widened to external actions to act more quickly and efficient at EU level. This issue is clearly linked to the negotiations on institutions, which will be discussed below.

Again, it can be seen that the Polish preferences have been stated clearly, precisely and leaving only marginal room for discussion. Therefore, Poland chooses mainly hard negotiating styles (compare to table 6.3). Poland often commits itself to a certain position and decreases the room for compromises. Nevertheless, Poland tries to find a compromise in order to include own preferences in the Constitution. This can be seen in the number of initiations and accommodations. With regard to Malta, negotiation styles are chosen in a balanced way between hard and soft bargaining options. This relates to Malta’s status as a neutral state and to the location in the Mediterranean Sea (Cini, 2001: 271), which requires a strong position on border control next to being neutral.

Table 6.3: Negotiation Styles in the Negotiations on External Actions and Defence

	Soft Negotiating		Hard Negotiating	
	Initiations	Accommodation / Signalling	Commitments	Criticism
Poland	2	3	11	1
Malta	1	2	1	2

The Institutions

Negotiations on the institutions have been the most controversial in the Convention and the most options for changing the prior set-up have been brought forward. Poland points at a strong need for the simplification of procedures, which goes along with a general extension of QMV and the co-decision procedure. In addition, the number of community instruments has to be limited. The role of national parliaments has to be increased to reach European citizens stronger manner. Furthermore, the number of Commissioners should not be linked to the number of member states, but the premise should be located at effective and efficient work. Strong argumentation in favour of the Nice compromise of voting weights in the Council has been brought forward. Here, Spain and Poland have been the biggest winners gaining 27 votes. In Poland's view, this compromise should not be renegotiated in order to maintain the high number of votes. Finally, in relation to external actions, enhanced cooperation should be widened to make the EU more efficient and actions quicker. Malta agrees to the strong need to simplify the Community institutions and related competences and procedures. To achieve this, the co-decision procedure should become general rule. Further, Malta speaks in favour of a foreign minister for the Union and a separation of the Council for external relations. Contrary to Poland, Malta sees the need for a stronger Commission and Malta expresses the wish not to reduce the number of Commissioners to keep equality among member states and to ensure proper representation of small states. Related to this argument, Malta sees the need for a minimum threshold of representation for member states in order to overcome fears of smaller states to be overrun in decision-making. Also contrastingly, enhanced cooperation should only function as a last resort method, as another means of governance would again increase opacity of Community decision-making.

With regard to the negotiation styles, mixed results can be seen. Although Poland strongly formulates own positions, many initiations and accommodations have been made. Here, the wish for a compromise can be seen, which means that the overall goal has been the simplification of the producers and to come to an agreement with the other members of the Convention. In contrast, Malta strongly points at its position using mainly hard negotiation styles. This can be linked to commitments for a simplification of the procedures and criticisms on the prior complexity of decision-making, institutions and instruments.

Table 6.4: Negotiation Styles in the Negotiations on the Institutions

	Soft Negotiation			Hard Negotiating	
	Initiations	Accommodation / Signalling	Flexibility	Commitments	Criticism
Poland	5	6	1	9	7
Malta	0	1	0	6	2

Comparison

The results of all four topics and the percentage of soft negotiation styles have been summarized in table 6.5. Here, mixed results can be seen. In the areas of freedom, security and justice and external actions, Poland predominantly opts for hard negotiation styles in comparison to Malta. In percentages, Poland only employs 18.18 per cent soft negotiation styles in the areas of freedom, security and justice in comparison to 33.3 per cent by Malta. A similar picture is seen in the field of external actions. Here, Poland opts for 29.84 per cent soft negotiating, whereas Malta chooses a balanced negotiation style. It has been hypothesized that the larger country, additionally having less experience in democratic culture and international organizations, chooses hard negotiation styles more often. Here, the hypotheses can be confirmed. In the other areas – on the Charter of Fundamental Rights and the Institutions – these hypotheses do not hold, as Malta employs more hard negotiation styles. Zero to eleven per cent are invested in soft negotiation styles by Malta in these areas. Therefore, other determinants for the negotiation style have been present. Further, it can be seen that negotiation styles depend heavily on the issue and the importance of this particular issue to the country choosing the negotiation strategy. Nevertheless, as in two of the four topics the hypotheses in this thesis can be applied, certain influence of the size of a country, the length of democratic culture and the length of membership in international organizations and related impacts of socialization processes can be detected. In sum, the percentage of soft negotiation styles employed by Poland is considerably higher (33.87 per cent) than the corresponding account by Malta (25 per cent). This is a surprising outcome, as Poland opted in prior negotiations often for hard negotiating styles and took a leading role, especially among CEECs.

Table 6.5: Frequencies of the Negotiation Styles Employed by the Delegations of Malta and Poland¹⁷

Issue	Malta		Poland	
	Soft / Hard Negotiating	Percentage Soft Negotiation Style	Soft / Hard Negotiating	Percentage Soft Negotiation Style
Charter	0 / 2	0 %	2 / 4	33.3 %
Areas of Freedom, Security and Justice	1 / 2	33.3 %	2 / 9	18.18 %
External Actions	3 / 3	50 %	5 / 12	29.43 %
Institutions	1 / 8	11.1 %	12 / 16	42.85 %
Total	5 / 15	25 %	21 / 41	33.87 %

Having seen the frequencies of applied negotiation styles, evaluation with regard to the variables have to be made. First, all the values of the control variables remain constant for both countries. Both countries value the topics the same in their party manifestos and assign the same relative amount to discuss on these matters. With regard to the independent variables, Malta is the small country with considerable longer democracy and experience in international organizations. Poland as the larger country faces a shorter period of democracy and membership in international organizations. In the last three columns of table 6.6, it can be seen that the application of the negotiation styles is mixed between the countries and issues. Therefore, only limited impact of the independent variables can be recognized, as the independent variables can only predict the outcome on two of four issues. As a result, other factors have been present, which also have direct influence on the negotiation style next the values of the independent variables presented here. It can be further stated that the control variables do not correlate with the negotiation style, as both patterns are similar for Poland and Malta. As it has been noted above, only in two issues per country, the hypotheses can be applied (see the left column of table 6.6; table 6.6 can be found on the following page.).

The negotiation styles by Poland on institutional matters can be partly explained by the wish to ‘return to Europe’ (Gwiazda, 2006: 183). This is closely related to the change in government in Spain, which lead to a change in positions away from pressing for the Nice voting rules and in favour of a compromise and simplification of voting rules. So, Poland lost its main ally in favour of the Nice voting rules and changed also preferences in favour for a European compromise (Gwiazda, 2006: 189). This change in position and the respective compromise led to a change in the Nice voting rules. In sum, the negotiation strategies are influenced by a larger number of factors than presented here, as the hypotheses are only able to predict the outcome and the choice of negotiation styles to a certain extend.

¹⁷ The percentages of soft bargaining strategies are calculated on the basis of all negotiation strategies applied by one of the countries on one issues. The total number of negotiation strategies for an actor on one issue is the sum of hard and soft bargaining strategies, which can be seen in tables 6.1 to 6.4.

Table 6.6: Summary of Cases and Variables

Country	Area	Saliency government (1-3)	Saliency negotiation (1-4)	Size (0/1)	Democratic Culture (0/1)	Membership (1/0)	Negotiation Style (0/1, 1=Hard)	Negotiation Style (1-4, 1=Hard)	Confirming central hypotheses
Malta	Charter	2	1	0	1	1	1	1	No
Malta	FSJ	1	2	0	1	1	0	3	Yes
Malta	External Action	1	3	0	1	1	0	4	Yes
Malta	Institution	3	4	0	1	1	1	2	No
Poland	Charter	2	1	1	0	0	0	3	No
Poland	FSJ	1	2	1	0	0	1	1	Yes
Poland	External Action	1	3	1	0	0	1	2	Yes
Poland	Institution	3	4	1	0	0	0	4	No

7. Concluding Remarks

The European Convention should demonstrate closeness among the member states, but should also signalize openness to the accession states joined in 2004. It has been attempted to treat each participating country in the same manner and aiming at consensus when writing the Constitution. This thesis aimed at showing that differences between the member states could still create different negotiation styles. The outcome of the research is mixed. On the one hand, there are influences of the size of a country, the length of democratic culture and the length of membership in international organizations and related impacts of socialization processes seen in two of the analysed topics. On the other hand, these hypotheses do not predict the outcomes of the other two topics. This means that there are other factors present, which influence the choice for a negotiation style. Referring to the control variables, national preferences set in party manifestos and the relative importance of issues during negotiations are constant for the countries and do not present possible explanations for these differences. Therefore, it can be hypothesized that preconditions, negotiation settings, differing national suppositions and qualifications also play an integral role in the choice for negotiation styles. Additionally, it is surprising that Poland opted in total more often for softer negotiation styles than Malta. It has been hypothesized the other way round. Again, other influences than size and democratic culture have been present to show these differences. These differences might be related to psychological impacts on negotiations, such as personality and experiences, but also to national positions and respective coherence. In the Polish case, large differences in the negotiation styles can be partly related to the position. Especially in the negotiations on the institutional set-up, Poland relied on the Spanish government, which shared the Polish position. After the change in the Spanish government and the respective change in the Spanish position, Poland lost its major negotiation partner. In order to keep track to the other member states, Poland was forced to find a compromise and smooth the position. Of course, this had an impact on the negotiation style, which can be seen in the use of softer negotiation styles on institutions. All this can be related to the Polish wish to be part of Europe again after a long time of experiences as a Communist country (Gwiazda, 2006: 183 & 189).

In correspondence to the content of the European Constitution, it should be evaluated whether the preferences of both states have been integrated. The Charter of Fundamental Rights has been included in part II of the text. Therefore, it has been made legally enforceable, which means that both states have met their preferences. Second, the areas of freedom, security and justice have been subject to further integration, but still the specific objectives brought forward by Poland have not been included. An open approach has been taken to leave room for the member states' initiatives that cooperation can easily develop. Third, on the CFSP objectives, further integration is welcomed and the member states shall ensure a common approach. Procedures have only partially been simplified, as still the European Council has to decide unanimously whether QMV can be used in the Council in this area. Therefore, the Polish preferences have been met only partially. Finally, decision-making has been simplified in the Constitution, which means that co-decision procedure has been extended. The voting rules in the

Council shall be changed into a double majority representing 55 per cent member states and 65 per cent of the population. This means that Poland has not been able to defend the Nice compromise. Interestingly, Poland first vetoed this compromise, but after a change in government in Spain, Poland acknowledged that the position cannot be defended and changed the veto to support (Cameron, 2004: 377 and 387). The Union Minister of Foreign Affairs has been included in the text to ensure homogeneity in external representation. Again, the preferences of both states have been met. In addition, enhanced cooperation has been specified in the Constitution meeting the preference brought forward by Poland.

With regard to the strengths and weaknesses of the thesis, it should be noted that it has been possible to – partly – show the impacts of the size of a country, the length of democratic culture and the length of membership in international organizations on negotiation styles. This is relevant in further analyses of negotiation behaviour in the European context and to the contribution to the academic discourse on negotiation theories. Nevertheless, the thesis has not the ability to determine the full range of factors, which influence the choice for particular negotiation strategies. The limited number of cases, and further, the limited number of independent variables causes this. Therefore, the central recommendation can be seen in the extension of both cases and independent variables to develop a more complete and comprehensive understanding of choices for negotiation strategies in the European context.

8. List of References

- Babbie, E.R. (2006). *The Practice of Social Research*, 11th Edition. Belmont, CA: Wadsworth.
- Baldwin, R. & Widgrén, M. (2004). *Council Voting in the Constitutional Treaty – Devil in the Details*. Centre for European Studies Policy Brief No. 53, Brussels.
- Benoit, K., Laver, M., Arnold, C., Pennings, P. & Hosli, M.O. (2005). Measuring National Delegate Positions at the Convention on the Future of Europe Using Computerized Word Scoring. *European Union Politics* 6: 291-313.
- Blavoukus, S. (2006). Malta – The Importance of Being Unimportant. In König, T. & Hug, S. (Ed.). *Policy-Making Processes and the European Constitution – A Comparative Study of Member States and Accession Countries* (167-175). London: Routledge.
- Brockhaus (2001a). Malta. In *Brockhaus*, Bd.14, pp. 123-126, Leipzig: Brockhaus GmbH.
- Brockhaus (2001b). Polen. In *Brockhaus*, Bd.17, pp. 275-288, Leipzig: Brockhaus GmbH.
- Bueno de Mesquita, B. (2006). *Principles of International Politics – People’s Power, Preferences and Perceptions*. Washington: CQ Press.
- Cameron, D.R. (2004). The Statement in the Constitutional IGC over the Definition of a Qualified Majority. *European Union Politics* 5(3): 371-391.
- Cini, M. (2001). The Europeanization of Malta: Adaption, Identity and Party Politics. In Featherstone, K. & Kazamias, G. (Ed.). *Europeanization and the Southern Periphery* (261-295). London: Frank Cass Publishers.
- Dimitrova, A.L. (2010). The New Member States of the EU in the Aftermath of Enlargement: Do New European Rules Remain Empty Shells?. *Journal of European Public Policy* 17(1): 137-148.
- Dür, A. & Mateo, G. (2010). Choosing a Bargaining Strategy in EU Negotiations: Power, Preferences and Culture. *Journal of European Public Policy* 17(5): 680-693.
- Dür, A., Mateo, G. & Thomas, D.C. (2010). Negotiation Theory and the EU: the State of Art. *Journal of European Public Policy* 17(5): 613-618.
- Encyclopaedia Britannica (2011). *Poland*. Retrieved on April 8th, 2011, from <http://www.britannica.com/EBchecked/topic/466681/Poland>.
- European Convention (n.a.). *Organization*. Retrieved on March 28th, 2011, from <http://european-convention.eu.int/organisation.asp?lang=EN>.
- European Parliament (n.a. a). *Country Profile Malta*. Retrieved on April 8th, 2011, from http://www.europarl.europa.eu/enlargement_new/applicants/pdf/malta_profile_en.pdf.
- European Parliament (n.a. b). *Debates on the Convention*. Retrieved on March 28th, 2011, from http://www.europarl.europa.eu/Europe2004/index_en.htm.

- European Parliament (2003). *Verbatim Report of the Proceedings of the Convention's Plenary Sessions and Summaries of Debates*. Retrieved on March 28th, 2011, from http://www.europarl.europa.eu/Europe2004/index_en.htm.
- Everts, S. & Keohane, D. (2003). The European Convention and EU Foreign Policy: Learning From Failure. *Survival* 45(3): 167-186.
- Frontex (2006). *About Frontex*. Retrieved on March 28th, 2011, from http://www.frontex.europa.eu/more_about_frontex/.
- Gerring, J. & McDermott, R. (2007). An Experimental Template for Case Study Research. *American Journal of Political Science* 51(3): 688-701.
- Gwiazda, A. (2006). Poland – The Struggle for Nice. In König, T. & Hug, S. (Ed.). *Policy-Making Processes and the European Constitution – A Comparative Study of Member States and Accession Countries* (181-191). London: Routledge.
- Hopmann, P.T. (1974). Bargaining in Arms Control Negotiations: The Seabed's Denuclearization Treaty. *International Organizations* 28(3): 313-343.
- Kaunert, C. (2005). The Area of Freedom, Security and Justice: The Construction of a 'European Public Order'. *European Security* 14(4): 459-483.
- Kelly, J. (2004). International Actors on the Domestic Scene: Membership Conditionality and Socialization by International Institutions. *International Organizations* 58: 425-457.
- Klabbers, J. (2002). Trying to Define International Organizations. In *An Introduction to International Institutional Law*. Cambridge: Cambridge University Press.
- Klingemann, H.D., Volkens, A., Bara, J., Budge, I. & McDonald, M (2006). *Mapping Policy Preferences II. Estimates for Parties, Electors, and Governments in Eastern Europe, the European Union and the OECD, 1990-2003*. Oxford: Oxford University Press.
- König, T. (2005). Measuring and Analysing Positions on European Constitution-Building. *European Union Politics* 6(3): 259-267.
- König, T. & Finke, D. (2007). Reforming the Equilibrium? Veto Players and Policy Change in the European Constitution-Building Process. *The Review of International Organizations* 2: 153-176.
- König, T. & Slapin, J.P. (2006). From Unanimity to Consensus – An Analysis of the Negotiations at the EU's Constitutional Convention. *World Politics* 58: 413-445.
- König, T., Warntjen, A. & Burkhart, S. (2006). The European Convention: Consensus without Unity?. In König, T. & Hug, S. (Ed.). *Policy-Making Processes and the European Constitution – A Comparative Study of Member States and Accession Countries* (23-34). London: Routledge.
- Lewis, J. (2008). Strategic Bargaining, Norms and Deliberation. In Naurin, D. & Wallace, H. (Ed.). *Unveiling the Council of the European Union* (165-184). New York: Palgrave MacMillan.

- Lindberg, B., Rasmussen, A. & Warntjen, A. (2008). Party Politics as Usual? The Role of Political Parties in EU Legislative Decision-Making. *Journal of European Public Policy* 15(8): 1107-1126.
- Magnette, P. & Nicolaidis, K. (2004). The European Convention: Bargaining in the Shadow of Rhetoric. *West European Politics* 27(3): 381-404.
- Milner, H.V. & Rosendorff, B.P. (1997). Democratic Politics and International Trade Negotiations: Elections and Divided Governments as Constraints on Trade Liberalization. *Journal of Conflict Resolution* 41(1): 117-146.
- Minnich, D.J. (2005). Veto Players, Electoral Incentives and International Commitments: The Impact of Domestic Institutions on Intergovernmental Organization Membership. *European Journal of Political Research* 44: 295–325.
- Moravcsik, A. (1993). Preferences and power in the European Community: A liberal Intergovernmentalist Approach. *Journal of Common Market Studies* 31(4), 473-523.
- Muthoo, A., (2000). A Non-Technical Introduction to Bargaining Theory. *World Economics* 1(2): 145-166.
- Nugent, N. (2006). *The Government and Politics of the European Union*. New York: Palgrave MacMillan.
- Odell, J.S. (2000). *Negotiating the World Economy*. Ithaca, NY: Cornell University Press.
- Panke, D. (2010). Small States in the European Union: Structural Disadvantages in EU Policy Making and Counter-Strategies. *Journal of European Public Policy* 17(6): 799-817.
- Putnam, R.D. (1988). Diplomacy and Domestic Policies: The Logic of Two-Level Games. *International Organization* 42(3): 427-460.
- Seawright, J. & Gerring, J. (2008). Case Selection Techniques in Case Study Research. *Political Research Quarterly* 61(2): 294-308.
- Sebenius, J. (1983). Negotiation arithmetic: adding and subtracting issues and parties. *International Organization* 37(2): 281-316.
- Shadish, W.R., Cook, T.D. & Campbell, T.C. (2002). *Experimental and Quasi-Experimental Designs for Generalized Causal Inference*. New York: Houghton Mifflin Company.
- Shepsle, K.A. & Bonchek, M.S. (1997). *Analyzing Politics – Rationality, Behaviour and Institutions*. W.W. Norton & Company.
- Tsebelis, G. (2005). *The European Convention and the Rome and Brussels IGCs: A Veto Player Analysis*. Working Paper 2005/217. Retrieved on April 17th, 2011, from http://www.march.es/ceacs/ingles/publicaciones/working/archivos/2005_217.pdf.

Tsebelis, G. & Proksch, S.-O. (2007). The Art of Political Manipulation in the European Convention. *Journal of Common Market Studies* 45(1): 157-186.

Werner A. & Volkens, A. (n.a.). *Manifesto Coding Instructions*. Retrieved on April 6th, 2011, from <http://manifestoproject.wzb.eu/documentation/Handbookv3.pdf>.

Vakili-Zad, C. (2006). Counting the Homeless in Malta. *Journal of Housing and the Built Environment* 21(2): 141-157.

Zielonka, J. (2004). Challenges of EU Enlargement. *Journal of Democracy* 24(4): 22-35.

9. Annex

9.1 Exemplary Quotations by the Delegation of Poland

In the following section, exemplary quotations delivered by the Polish representatives on all four topics are presented. Here, the positions and bargaining styles are presented in exemplary manner.

The Charter of Fundamental Rights

Representative of the Polish Parliament Fogler on May 31st, 2003¹⁸: *“I am not sufficiently satisfied with the draft of the Preamble. I appreciate the reference to the influence of the Greek and Roman civilisations and to the Enlightenment in Europe, as well as to respect for reason, but there is one very important factor missing: Christianity or the Christian/Judaic roots of Europe. To be honest to our history and heritage we have to mention the role of Christianity in Europe. It seems to be incomparable with the achievements of the 18th century philosophers.*

[...]

Generally I have no objection to Parts II and IV of the Constitution, although I would be in favour of regarding the Charter of Fundamental Rights as legally binding, constitutional law, but annexed to the Constitution instead of being inserted in it.“

The Areas of Freedom, Security and Justice

Representative of the Polish Government Hübner on June 6th, 2002¹⁹: *“Mr President, in Poland, we appreciate the need for citizens within the Union to feel free but safe. Obviously the great bonus of freedom of movement within the enlarged Union must be accompanied by measures to ensure that cross border crime does not eventually destroy the freedoms we have created for ourselves.*

I want briefly to underline three points: Firstly, the need to carry citizens with us in the development of policy on Justice and Home Affairs - the delicate balance between liberty and control. Secondly, the need to concentrate on cross-border issues. Thirdly, the particular challenge posed by enlargement.

Of all the policy areas in the Union, Justice and Home Affairs is the one, which has developed the most rapidly and furthest, in the last few years. Recently, it has been given a further impulse by the global fight against terrorism. The Union has not simply made plans for the future, but starting from Tampere, has also made solid progress in implementing these plans. However, there is no other area, which is less well known to our citizens and is less transparent than JHA. I fear a major backlash against Union action in this area unless a far greater effort is put into information and open discussion.

The balance between liberty and control is very delicate and can only be successfully achieved if there is general support for the principles on which it is based.

On the need to concentrate on cross-border issues, I would like to say that the debate on competence, which we have had, should also be reflected in the debate on Justice and Home Affairs. The Union should concentrate on those areas of internal security in which value-added is contributed. Essentially, this means tackling first of all cross-border issues. This is also reflected in the results of the last Euro barometer poll quoted in the background paper for this meeting.

¹⁸ European Parliament (2003). *European Convention May 31st, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030531.htm.

¹⁹ European Parliament (2003). *European Convention June 6th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_020606.htm.

People obviously expect the Union to tackle the fight against terrorism, trafficking in human beings, organised crime and drugs. These are all clearly cross-border issues, and citizens understand very well that they cannot just be tackled nationally. In many ways, Justice and Home Affairs are fundamentally different from other areas of Union policy but they are similar in two ways. Firstly, this is a logical whole and the problem is to know where the cut-off point between Union level and national action comes. Secondly, it is dependent on mutual trust.

On the challenges posed by enlargement, I would like to say that being a Polish citizen I cannot omit the issue of protection of the Union's external borders. In the near future Poland will be responsible for protecting a considerable part of these borders. This is why I believe that it is necessary to develop further the existing forms of cooperation aimed at strengthening operational capacity in this domain and consider the proposal of a well-balanced joint border guard system as one form of strengthened cooperation. Timely common understanding on these issues would contribute immensely to improving the security of people in Europe.“

Representative of the Polish Parliament Grabowska on June 6th, 2002²⁰: *“[...] I believe that the objectives set out in Tampere should be the focal point in implementing a foreign policy for refugees and displaced persons. However, I believe that implementing, qualified majority voting as a general rule, especially during the period directly following the enlargement, does not seem to be the right solution from the Polish point of view.*

The second problem I would like to raise is the development of an integrated system of border management. [...] Poland believes that the European border control services should cooperate with, but not replace, national border control services. However, we opt for unification of the national border control units both in the sphere of procedures as well as training systems. We should also consider setting up joint working teams composed of experts from particular border services aimed at fighting cross-border crime. [...]

The third aspect I should like to underline is the principle of solidarity and joint responsibility in all of the above-mentioned issues. After enlargement Poland will be the country with the longest external border. Protecting such a border constitutes considerable costs. My country will be the first one to be visited by numerous immigrants into the Schengen area. As a consequence Poland will be responsible for the accepting and considering lots of asylum applications, the cost resulting from the asylum procedures and the cost of a potential expulsion of such persons to their home countries will therefore have to be borne by Poland. So we heartily welcome the principle of solidarity in sharing costs, as proposed by the working group. It would enable an equal distribution of the financial burden connected with migration control and border protection. Finally, we need to strengthen Europol, providing it with additional power in this sphere, broadening its scope and activity. We believe it is a reasonable and good idea.“

External Actions and Defence

Representative of the Polish Parliament Wittbrodt on July 11th, 2002²¹: *“Mr President, playing the role of a key force in the global arena requires a strong external policy in terms of both economic and foreign and security policy. Europe must clearly respond to the challenge of the globalisation process. We do not want to be, as has already been mentioned here, an economic giant and a political dwarf.*

²⁰ European Parliament (2003). *European Convention June 6th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_020606.htm.

²¹ European Parliament (2003). *European Convention July 11th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_020711.htm.

Therefore, reform of the common foreign policy and security area should follow the integration process within the First Pillar of the European Union, and move towards an ever-closer Union. I am convinced that when the European Union acts collectively on the global stage and speaks with one voice, the benefits will be much greater than we suppose. The Union should speak with one voice and, if possible, one face on the most important global questions.

In order to enhance external representation, the European Union should have a legal personality. The Community method should be applied to policy made under the current Second Pillar, with the exception of issues of European security and defence policy. All matters which relate to common foreign and security policy in the Council should be voted on using a qualified majority voting procedure, but maintaining the possibility of opt-out. The position of High Representative and a European Commissioner for External Relations should be unified in the European Commission. In order to increase legitimacy, the role of the European Parliament in formulating an assessment of the common foreign and security policy should be strengthened. [...]

Finally, I would like to mention that from the point of view of the applicant countries, like Poland, we will be strong if we are in a strong and efficient Union.“

Representative of the Polish Parliament Olesky on July 11th, 2002²²: *“Mr President, everybody agrees that European Union enlargement and the consolidation of its position in the international arena is one of the most difficult challenges the European Union faces at the beginning of the 21st century. An enlarged Union which is politically stable and economically strong has a much better chance of gaining a position in the international arena that corresponds to its aspirations and economic and population potential.*

The European Union has, in recent years, made significant progress in the area of the common foreign and security policy. Is that progress sufficient, however, to face the new threats and challenges of a globalised world? My answer is no. In order to build a coherent and effective foreign policy, the structures and the instruments at the Union's disposal need to be improved. An increase in the coordination of Member States' foreign policies seems to be needed.

A common framework for such coordination will, in turn, have to consider bringing the functions of the External Relations Commissioner and the High Representative closer. Improving the synergy of what the Commission and the Council do in external relations should primarily be based on drafting joint action and common projects. Such an approach should proceed gradually, through evolution.

The role of the Council in shaping foreign policy needs to include a clearer distinction between the areas of Council activity and its co-ordinating functions in general affairs. In that context, the Seville Summit decisions are the first step in the right direction. This right direction, in my opinion, is also to create more Community areas in the field of common foreign and security policy.

Poland's ambition is to strengthen and more precisely define the Union's external role. This concerns, most of all, its eastern dimension. We want to become a bridge between the Union and its future eastern neighbours, sharing with them our experience and know-how from the transitional period. We should also make the Union's eastern policy more open-minded and constructive. I believe that our experience, the level of our development and the infrastructure of economic and administrative co-

²² European Parliament (2003). *European Convention July 11th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_020711.htm.

operation with our eastern neighbours can and will contribute to the development of the EU's eastern policy.

To conclude, I wish to stress that as the Union is being reformed, its common foreign and security policy must definitely be strengthened. The Union's position and its international initiatives must be more than the sum of the positions of individual Member States. The world needs a new European presence.“

The Institutional Set-up

Representative of the Polish Parliament Olesky on January 20th, 2003²³: *“Mr President, it is wise to recall that the development of the integration process has consisted in the gradual widening of the Community map. The scale of the new enlargement does not only follow on from the experiences of the past; the conclusions from the past should help us to imagine the future Union. The most important criteria in our considerations are efficiency and immediacy. The effectiveness of the decision-making process will not be achieved without further extension of the qualified majority vote. It should become the general rule, with exceptions clearly defined, and parallel clarification should also concern the substance of the procedure. We should think of simplifying three steps, or conditions, for a qualified majority voting decision to be taken.*

The legislative process based on qualified majority voting must, in turn, be accompanied by co-decisions of the European Parliament. It is the second rule that will render the decision-making system more democratic. In fact, our debate focuses on defining the sources of legitimacy of the Union. One is the European Parliament, with its power to appoint the executive and make the Commission stronger. The second is the national vote, with the national parliament forming its government, which represents the country in the Council and as such is controlled by this Parliament. [...] Enlargement will offer all Institutions the capacity to act. Our task is to increase their efficiency, but our obligation is to guarantee that the situation does not get worse and the institutional balance is maintained.“

Representative of the Polish Parliament Wittbrodt on January 21st, 2002²⁴: *“Mr President, when discussing the institutional reforms of the European Union we have to remember the main principles of solidarity and subsidiarity and take into account the level of efficiency in order to respond to the challenge of competition in a globalised world.*

The most important discussion touches on the question of the European Union having a president who could coordinate the work of the European Community and represent the Union externally. It should answer the question: to whom does the European Union speak? For the Union's current and future Member States, it is of crucial importance where the president is situated. Is he in the Commission or in the Council? Does this strengthen the Union?

[...] Therefore, I suggest that the president should be situated in the European Commission and that he should be elected by the European Parliament. He may choose other Commissioners from people proposed by the Council, if there is not a standing presidency. I suggest a solution to the reform of the presidency similar to that suggested by Mr Meyer. The presidency should apply the rules of efficiency and continuity. Therefore if its term needed to be made longer – 18 months, for example – it could be held by three countries combined on the basis of their size. The number of Councils and their

²³ European Parliament (2003). *European Convention January 20th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030120.htm.

²⁴ European Parliament (2003). *European Convention January 21st, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030121.htm.

responsibilities should be in accordance with the Spanish presidency's conclusions, and it is clear that we need internal reform of the Council.

In this project, the balance between Institutions is maintained with a shift to the Community method. The European construction is a sensible one, so it should protect small- and medium-sized states. We need stronger presidencies in conjunction with a strengthened Commission and a person responsible for external representation. This does not triple the functions.

In response to the question to whom the EU relates, the Union acts in the interests of all its Members. In the institutional triangle, we have also to strengthen the position of the European Parliament. We should apply the co-decision rule to the whole decision-making process in the Union. The European Parliament must also cooperate in an effective way with the national parliaments. This would increase the visibility and public recognition of this Institution. We have uniform procedures for the election of the European Parliament. This question should be discussed in the near future. The process of creating one list of European candidates seems to be too difficult today. The European demos still does not exist.“

Representative of the Polish Parliament Wittbrodt on May 15th, 2003²⁵: *“[...] I am in favour of election of the President of the European Commission by the Parliament. I am in favour of a reformed Presidency, which should reflect the rules of efficiency and continuity. Therefore we should make it longer, extended to two-and-a-half years for example. It could be held by three or four countries combined, on the basis of their size.*

From the point of view of efficiency and quality, the number of commissioners should not depend on the number of countries. Member States can be represented by commissioners and their deputies. We do not need to set up a new institution. Also, the project of setting the Convention and then having IGCs is a way to make the decision-making process longer. In order to respond to the institutional challenge of the biggest enlargement yet, we do not need any strange compromises. We need to have a very clear and brave vision of how a Union of nearly 30 countries is to be managed as well as an efficient decision-making process.

Finally, the Nice compromise voting system should be fully respected.“

Representative of the Polish Parliament Olesky on May 30th, 2003²⁶: *“Mr President, the logic behind enhanced cooperation, from the moment it was created, was based on the correct assumption that the integration process needs a certain degree of flexibility. The tendency towards flexibility derives from the heterogeneous character of the Union, where particular national interests may differ in an obvious way. Such diversity will further increase after enlargement. We must answer the question of how to reconcile flexible integration with the fundamental principle of solidarity and the responsibility of all the Member States for the fate of the integration process.*

The Praesidium of the Convention has made an attempt to simplify the wording and the structure of the current provisions on enhanced cooperation. The proposed modifications retain many of the principal elements, which include: consistency with other Union policies, respect for the institutional framework, and the open and inclusive nature of such a reinforced form of integration. The last

²⁵ European Parliament (2003). *European Convention May 15th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030515.htm.

²⁶ European Parliament (2003). *European Convention May 30th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030530.htm.

element is particularly vital for the newcomers. Enhanced cooperation must be perceived as an element of gradual integration which remains open for all Member States both at the time it is established and subsequently.

I agree with establishing a single procedure for authorising enhanced cooperation. That is a direct consequence of the decision to give up the current pillar structure. It is for the European Commission, as the guardian of the common interest, to play a leading role in initiating and implementing enhanced cooperation. This should apply to both the initial authorisation procedure and the procedure applied to the participation of other Member States at a later stage of enhanced cooperation.

*The proposed articles strengthen the conviction that there is a clear need to find areas in which enhanced cooperation would be possible and desirable without at the same time harming the whole integration process, which should in no case suffer from fragmentation. In that context it must be a source of concern that security and defence issues, up till now excluded from enhanced cooperation, are governed by different provisions to enable structured cooperation between Member States that fulfil higher criteria for military capabilities. [...]*²⁷

9.2 Exemplary Quotations by the Delegation of Malta

In the section below, significant citations by the delegation of Malta are presented on the issues of external actions and the organization of the institutions and procedures reflecting the positions and negotiation styles.

External Actions and Defence

Representative of the Maltese Government Serracino Inglott on December 20th, 2002²⁷: “[...] *Since the end of the cold war the distinction between neutrality and non-alignment has been sharpened. Neutrality now tends to mean more and more a qualified pacifism, that is, a reluctance to resort to violent means even to resolve violent situations. Hence what I wish to suggest, constructively, is that there should be an exploration of modalities of participation in European defence operations in non-violent ways, for instance, by the provision of services in the medical sphere, or possibly even of transport or logistical services. Perhaps a dialogue should be started with the neutral countries to explore these possibilities, in order to avoid too wide a separation between two groups of members of the Union, some with and others without enhanced cooperation. I suggest that the formulations in the constitution should at least leave room for this possibility.*”

Representative of the Maltese Government Serracino Inglott on December 20th, 2002²⁸: “*Mr President, I am speaking merely to support in the present context a proposal made elsewhere [...]. The proposal is to include, among the objectives of the external action of the Union, promotion and recognition of cultural diversity. It is strange that, in a world where battles of the mind loom so large, the role of cross-cultural dialogue appears to be completely neglected in the total picture of EU external action.*”

It might be objected that such an explicit reference is not necessary because it is sufficiently implied wherever the proposed text speaks of values recognised by all Europeans. These values certainly include cross-cultural dialogue, exalted by both the Christian and the Enlightenment European

²⁷ European Parliament (2003). *European Convention December 20th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_021220.htm.

²⁸ European Parliament (2003). *European Convention December 20th, 2002*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_021220.htm.

traditions. However, the absence of any explicit reference makes one consequence pretty inevitable: that the various actors to whom the working group report attributes enhanced roles in European external affairs will underplay the importance of the cultural dimension in the promotion of Europe's function in the world, which is certainly not to establish any kind of hegemony, but definitely includes providing an alternative model to the present predominant pattern of globalisation. [...]"

The Institutional Set-up

Representative of the Maltese Parliament Frendo on January 21st, 2003²⁹: *"Mr President, the European Union has been successful to date because it adopted a Community method based on a balance between Member States and the Institutions and a decision-making process in which every stake-holder has a part. [...]"*

The Laeken Declaration asks us to explore enhancing the authority of the European Commission. We need a stronger Commission at this particular time when the European Union is widening, and the integration process for ten of its Members is only just starting in real terms. We therefore need to strengthen, not weaken the position of the Commission and the equilibrium between the Institutions to ensure continued success for the Union. The democratic legitimacy of the European Commission needs strengthening. The election of its President by an electoral college, composed of national and European parliamentarians, could contribute to that, while at the same time limiting the politicisation that would inevitably occur with elections.

On the other hand, the creation of a permanent presidency of the European Council would inevitably, de facto, weaken the Commission. This would occur even if legally one were to ensure the Commission was not subservient to the Council.

What we need for continuity and visibility is surely a European minister for foreign affairs, using the double-hatted model, who presides over the External Affairs Council, and a secretary-general to preside over the General Affairs Council. In this context, rotation at other levels, particularly in the specialised Councils of Ministers, should still be maintained.

We should also give a role to the national parliaments, without creating another institution, by ensuring their scrutiny of European legislative proposals, their involvement in constitutional conventions, such as this one and perhaps, also, by having the national parliaments endorse each Member State's nomination of a Commissioner.

With regard to the European Parliament, co-decision must become the system of legislating throughout. [...]"

Representative of the Maltese Government Serracino Inglott on May 15th, 2003³⁰: *"[...] Our amendments, which incidentally coincide with those submitted by Mr Brok of the PPE-DE group, are not intended to be a departure point for proposing the re-opening of Nice. We only think that if blatant errors and anomalies are discovered, they can and should be corrected, as has already been done in one or two cases. Basically, we agree with the Benelux proposals on this topic. Principles underlying the Nice Treaty should not be put into question. The same, however, does not apply to matters that do not significantly affect those principles. The principle in question here is that of the equality of states.*

²⁹ European Parliament (2003). *European Convention January 21st, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030121.htm.

³⁰ European Parliament (2003). *European Convention May 15th, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030515.htm.

You, Mr President, have rightly remarked that this principle has to maintain a balance with that of the equality of citizens. I am not surprised that many speakers in this discussion have spoken of the equality of states and hardly anyone has mentioned the equality of citizens, because it is the equality of states that is being threatened, not the equality of citizens.

[...]

Speaking on behalf of the small countries, we still hope that the Convention will overcome what the media at the time of Nice called 'the Lilliput complex', that is, the strange fear that seems to have struck or afflicted the large states, the fear that they might be overwhelmed by the influx, nine-strong, of small countries. Once it has been agreed not to extend the powers of the Commission into the field of external affairs, it really is not necessary for us - the small states - to be rendered completely toothless for the good of Europe. We therefore subscribe wholeheartedly to the letter sent to you, signed by the representatives of a clear majority of the governments represented at the Convention."

Representative of the Maltese Parliament Frendo on May 31st, 2003³¹: *"Mr President, I believe that in a Europe of 25 and beyond enhanced cooperation is required as a safety valve. It must not become a method of normal governance. That is one of the preoccupations that must be emphasised.*

If we were to have enhanced cooperation as another method of governance of the Union, then we would be contributing to a disintegration process, not an integration process. It must be a last resort method. I emphasise last resort because I do not agree with the suggested changes in the Praesidium document, which proposes clarifying the measure of last resort by having it simply resolved through an authorisation decision by the Council. The issue of last resort should remain a principle of enhanced cooperation and also be ascertainable judicially; it should not simply be a matter of the Council determining it one way or the other. As a measure of last resort, as a safety valve, that change could therefore have a negative effect on enhanced cooperation by making it a method of normal governance. It should not be a tool of governance. [...] In brief, I say 'yes' to enhanced cooperation as a tool of last resort, but 'no' to enhanced cooperation as a means of governance."

³¹ European Parliament (2003). *European Convention May 31st, 2003*. Retrieved on April 3rd, 2011, from http://www.europarl.europa.eu/Europe2004/textes/verbatim_030531.htm.