

# Contents

<i>List of Tables</i>	xi
<i>List of Figures</i>	xii
<i>Foreword</i>	xiii
H.E. Ambassador Carlos Westendorp	
<i>Preface</i>	xv
Professor Ezra Suleiman	
<i>Acknowledgments</i>	xvii
<i>Notes on the Contributors</i>	xix
<b>1 Introduction</b>	<b>1</b>
<i>Derek Beach and Colette Mazzucelli</i>	
1.1 Constitutional reform or the ‘big bangs’ of European integration	1
1.2 Intergovernmental conferences in the European Union	3
1.3 Theoretical orientation – when and why leadership matters	5
1.4 Why leadership is necessary	6
1.5 The provision of leadership in EU constitutional negotiations	9
1.6 Leadership resources	10
1.7 The impact of the negotiating context	13
1.8 A typology of leadership strategies	16
1.9 Summary	19
1.10 Outline of the book	20
<b>2 The EU Presidency: France in the 2000 IGC</b>	<b>22</b>
<i>Jonas Tallberg</i>	
2.1 Introduction	22
2.2 Presidency leadership in EU negotiations	24
2.3 Leadership resources of the EU Presidency	26
2.4 Negotiating context	27
2.5 France and IGC 2000	29

2.6	The power of the chair: assessing process and outcome	33
2.7	Conclusion	36
<b>3</b>	<b>Drawing Lessons in the Chair: Assessing the Dutch Presidency's Impact during the Maastricht and Amsterdam Conferences</b>	<b>38</b>
	<i>Colette Mazzucelli</i>	
3.1	Introduction	38
3.2	Dutch preferences	40
3.3	The resources of the Dutch Presidency in the Maastricht and Amsterdam IGCs	40
3.4	The negotiation context from Maastricht to Amsterdam	44
3.5	The Dutch Presidency's impact on Treaty reform	46
3.6	Conclusions	55
<b>4</b>	<b>The EU Presidency – Comparing the Italian and Irish Presidencies of the 2003–04 Intergovernmental Conference</b>	<b>58</b>
	<i>Ben Crum</i>	
4.1	Introduction	58
4.2	The context of the 2003–04 IGC	59
4.3	The negotiation of the 2003–04 IGC	60
4.4	Conclusion	72
<b>5</b>	<b>Oiling the Wheels of Compromise: The Council Secretariat in the 1996–97 and 2003–4 IGCs</b>	<b>76</b>
	<i>Derek Beach</i>	
5.1	Introduction	76
5.2	The preferences and resources of the Council Secretariat	77
5.3	The role and impact of the Council Secretariat	79
5.4	Conclusions	90
<b>6</b>	<b>Leader or Bystander? The European Commission and EU Treaty Reform</b>	<b>94</b>
	<i>Hussein Kassim and Dionyssi Dimitrakopoulos</i>	
6.1	Introduction	94
6.2	Theorizing Commission influence in EU treaty reform	96
6.3	The Commission as a leader	99
6.4	The Commission and Treaty reform in an historical perspective	102
6.5	Conclusion	111

<b>7</b>	<b>A Formal Outsider Becomes an Effective Player: The European Parliament in the Negotiation of the Treaty of Amsterdam and the Constitutional Treaty</b>	<b>115</b>
	<i>Andreas Maurer</i>	
7.1	Supranational parliamentarism in a multi-level polity	115
7.2	The European Parliament's own preferences in constitutional reform	116
7.3	Rethinking the scope of the European Parliament's leadership role at IGCs	117
7.4	Expectations concerning the European Parliament's leadership role	119
7.5	The participation of the European Parliament in the 1996–97 IGC	122
7.6	Influencing the outcome of the 1996–97 IGC	124
7.7	The European Parliament's strategies for the 2002–04 Convention and IGC	126
7.8	The 2002–04 Convention–IGC process	126
7.9	The participation of the EP at the IGC 2003–04	131
7.10	Conclusions	131
<b>8</b>	<b>Big versus Small: Shared Leadership in the EU and Power Politics in the Convention</b>	<b>134</b>
	<i>Simone Bunse, Paul Magnette and Kalypto Nicolaidis</i>	
8.1	Introduction	134
8.2	The EU's institutional balance	135
8.3	Power politics in the Convention: the small versus big divide	141
8.4	Strategies and outcomes	148
8.5	Conclusion	155
<b>9</b>	<b>Cooperative Hegemon, Missing Engine or Improbable Core? Explaining French–German Influence in European Treaty Reform</b>	<b>158</b>
	<i>Colette Mazzucelli, Ulrike Guérot and Almut Metz</i>	
9.1	Introduction	158
9.2	French and German preferences in EU constitutional negotiations	160
9.3	The resources of France and Germany	162
9.4	French–German leadership in European constitutional negotiations	167
9.5	Closing remarks	175

<b>10</b>	<b>Britain and the European Union: A Laggard Leader?</b>	<b>178</b>
	<i>Alasdair Blair</i>	
10.1	Introduction	178
10.2	Understanding British preferences in treaty reform	179
10.3	Leadership resources	184
10.4	Negotiating strategies	188
10.5	The nature of British engagement	190
10.6	Conclusion	198
<b>11</b>	<b>The Constitutional Treaty and Poland – A New Laggard in the EU?</b>	<b>201</b>
	<i>Krzysztof Bobiński</i>	
11.1	Introduction	201
11.2	Prologue	203
11.3	The Convention and the IGC	205
11.4	Epilogue	215
<b>12</b>	<b>Is There Anyone in Charge? Leadership in EU Constitutional Negotiations</b>	<b>219</b>
	<i>Renaud Dehousse and Florence Deloche-Gaudez</i>	
12.1	The fragmentation of leadership	219
12.2	Institutional reform as a polycentric process	221
12.3	Is leadership on the wane?	223
12.4	Conclusion	225
<b>13</b>	<b>Conclusions</b>	<b>227</b>
	<i>Derek Beach and Colette Mazzucelli</i>	
13.1	Introduction	227
13.2	The findings	229
13.3	Comparing the leadership model to existing studies of EU constitutional negotiations	239
13.4	The implications – leadership in EU constitutional negotiations	243
	<i>References</i>	247
	<i>Index</i>	263

# 1

## Introduction

*Derek Beach and Colette Mazzucelli*

### 1.1 Constitutional reform or the ‘big bangs’ of European integration

Since 1985 the European Union (EU) has been marked by an almost continual formal revision of its founding treaties. These rounds of constitutional reform, also known as intergovernmental conferences (IGCs), have over time become the key forum determining the scope and direction of the Union.<sup>1</sup> Major intergovernmental conferences transformed the EU from a stagnant common market in the early 1980s into a present-day nascent quasi-federal Union. Successive IGCs led to the introduction of a single currency, the Euro, in 12 member states, and the creation of a Common Foreign and Security Policy (CFSP), which, over time, resulted in the EU having military command over several peacekeeping and policing missions. In addition, these IGCs resulted in the expansion of supranational cooperation to deal with a range of new policies, including the environment, as well as immigration and asylum policies.

The basic question is whether these history-making decisions have been a series of French-German compromises, or whether the European Commission and other actors have played a significant role. These questions have been at the core of integration theory, but the answers provided reflect the different theoretical assumptions of the theories.

Neo-functionalists argue that after the initial founding compromise, the integration process develops a dynamic, which, under certain conditions, can lead to the creation of a self-sustaining process leading to more integration that is driven by three types of ‘spillover’ (Haas 1958, 1961; Lindberg 1963). Functional spillover refers to the process whereby pressures for further integration are created by past decisions. An oft-used example was the functional spillover of the single European market, with the argument being that in order for governments to reap the full benefits of the integrated market, a further step of creating a single currency was necessary. Political spillover related to the pro-EU shifts of national actor loyalties and activities, as the locus of policymaking increasingly moved from national capitals to Brussels.

Entrepreneurial supranational institutions in the EU are viewed as playing a strong integrative role in cultivating further demands for integration by playing upon functional and political spillover mechanisms. The European Commission in neo-functionalism is viewed as the motor of integration process. The Commission is able to provide leadership that 'upgrades the common interest' by advancing and building support for creative integrative proposals.

Intergovernmentalists and realists argue, in contrast, that the governments of the largest EU member states are firmly in control of major constitutional reform negotiations. According to them, integration is the result of deliberate choices made by these governments, with outcomes determined by patterns of relative state power and preferences. Therefore, the motors of the integration process are viewed as those actors with the most power. In realist theory, the most powerful actors in the EU are viewed as the states with a preponderance of material resources (Grieco 1985; Pedersen 1998). The other main intergovernmentalist position, liberal intergovernmentalism (LI), argues, based upon bargaining theory, that actor power reflects actor dependence upon an agreement (Moravcsik 1998). Germany, while being the strongest power in the EU, was, for example, dependent upon securing a burden-sharing agreement in asylum/immigration policies, and, therefore, was not the strongest actor in negotiations addressing this policy area. Both approaches expect, however, major treaty bargains to be driven by compromises among the preferences of France, Germany and the United Kingdom.

Our volume attempts to go beyond this tired either-or dichotomy that still plagues integration theory by proposing a theory that bridges the gap. The leadership model explains under which circumstances we expect certain types of actors to be able to exercise leadership in EU constitutional negotiations. Based upon mainstream negotiation theory and rational choice institutionalism, a three-stage model is developed to explain when and why different actors are able to provide guidance or leadership in European Union treaty reform negotiations. Leadership is seen as a crucial factor in overcoming the strong collective action problems and high bargaining costs that exist within these history-making negotiations (Mazzucelli 1997, 1999; Beach 2005). Leadership is defined here relatively broadly as *any action undertaken by an actor in order to attempt to solve collective action problems through the use of leadership resources*. Although the provision of leadership is often motivated by an interest in *collective* gains, it is also directed at influencing outcomes for *private* gain.

The first stage of the model hypothesizes which types of leadership resources are relevant for treaty reform negotiations. Second, the model describes how the negotiation context impacts upon the ability of different actors to provide leadership. The final step of the model looks at whether actors choose appropriate leadership strategies to match these contexts.

The leadership model does not attempt to develop a multi-stage model similar to Moravcsik's liberal intergovernmentalism, which includes three

different mid-range theories that explain domestic preference formation, inter-state bargaining, and institutional choice by actors. The leadership model is a mid-range theory that attempts to explain why leadership can be necessary in EU constitutional bargaining, and when we should expect specific actors endowed with certain leadership resources and institutional positions to be able to provide leadership successfully.

This model serves as the theoretical baseline for the empirical contributions in this volume that are written by leading scholars in the field. The chapters assess what leadership resources are possessed by specific actors, how different negotiating contexts mattered, and then analyze what types of leadership they attempted to provide as well as the effects of their leadership attempts. In particular, the chapters analyze what factors determined the success of a given leadership attempt, and, most importantly, whether the supply of a leadership matched the demand created by the specific negotiating situation.

In the initial section of this introductory chapter, we briefly present the focus of our studies – intergovernmental conferences to address European constitutional reform. The second section presents the theoretical framework that guides the empirical chapters. The first question answered is why leadership is necessary in complex EU treaty reform negotiations. The chapter then develops the core assumptions of our leadership model, and details the three stages of the model, as well as the theoretical variables in each stage. This chapter concludes with a brief description of the content of this volume.

## 1.2 Intergovernmental conferences in the European Union<sup>2</sup>

There are currently three major EU treaties: the Treaty establishing the European Community; the Treaty establishing the European Atomic Energy Community (EURATOM); and the Treaty on European Union, otherwise known as the Maastricht Treaty. The fourth Treaty, the European Coal and Steel Community (ECSC), expired in 2002. There are also a series of minor treaties, including Accession Treaties.

No major intergovernmental conferences were held from 1957 until 1985, although minor IGCs had been convened for accessions and for other revisions, like changes to the budgetary procedure. In these minor IGCs, the substantial negotiations took place within the Council, followed by a ceremonial IGC that was convened to adopt the final Treaty. Since 1985, the EU has convened six major IGCs where the negotiations took place *within* the IGC itself. In effect, IGCs are ‘constitutional conventions,’ in which history-making decisions are taken by governmental representatives from the member states that alter the competences of the Union, its decision-making procedures, and the relative balance of power among EU institutions and between the EU and its member states (Peterson and Bomberg 1999).

IGCs are based upon Article 48 EU (ex Article N), which states that:

1. The government of any Member State or the Commission may submit to the Council proposals for the amendment of the Treaties on which the Union is founded.

If the Council, after consulting the Parliament and, where appropriate, the Commission, delivers an opinion in favour of calling a conference of representatives of the governments of the Member States, the conference shall be convened by the President of the Council for the purposes of determining by common accord the amendments to be made to those Treaties. The European Central Bank should also be consulted in the case of institutional changes in the monetary area.

The amendments shall enter into force after being ratified by all the Member States in accordance with their respective constitutional requirements.

Intergovernmental conferences are convened either by agreement in the Council under Article 48 EU, or by a binding legal commitment included in a treaty. A proposal to convene an IGC can come from either a member state or from the Commission. The decision to convene an IGC is taken by a simple majority vote in the Council. The use of the vote was seen in 1985, when the British, Danish and Greek governments voted against convening an IGC. In that case, the three governments were outvoted, which allowed the 1985 IGC to negotiate the Single European Act to be convened. There are no formal provisions as to how the agenda for an IGC should be prepared. In the past agendas were prepared by specific committees, reflection groups, and *ad hoc* COREPER discussions. In a major break with experience until that time, the 2003–04 IGC was preceded by a European Convention, which produced an actual draft Constitutional Treaty. This relegated the IGC itself to being a tidying-up exercise with the exception of a handful of contentious issues (Norman 2003; Beach 2005; Magnette and Nicolaidis 2004; see also the chapters in this volume).

There are also no provisions in the Treaties regarding how IGC negotiations are to be conducted although a set of norms has developed – the *acquis conferencielle*. IGCs are formally outside the institutional framework of the Union, and in effect are both *international* and *intergovernmental* negotiations among national governmental representatives. Nonetheless, these conferences do draw upon and involve EU institutions to varying degrees, as analyzed in the following chapters. IGCs are chaired by the member state holding the six-month rotating Council Presidency. The Presidency prepares and chairs all the meetings, and controls the drafting process of the single negotiating text.

Since 1985, IGCs have been conducted at three or four different levels, with the exception of the 2003–04 IGC, where negotiations were formally

only at the political levels of foreign ministers and heads of state and government. The four levels are: (1) heads of state and government, (2) foreign ministers, (3) ambassadorial-level meetings within the Preparatory Group, and (4) technical meetings among 'Friends of the Presidency.'

The highest level of the IGC is the heads of state or government meeting within the European Council. It is at this level that key deals are brokered and the final treaty concluded. The next level is that of the foreign ministers, who have the overall political responsibility for the IGC. But they are often sandwiched between two levels, and lack the informational skills to follow the lower-level discussions, while also lacking the political weight of the heads of state and government to strike key deals (McDonagh 1998: 20). In the EMU IGC during 1990–91, the ministerial-level negotiations were held among economic and finance ministers (ECOFIN).

The Preparatory Group level is comprised of representatives of foreign ministers at the ambassadorial level. The group meets frequently during IGCs. Most of the IGC negotiations are dealt with at this level, with discussions focusing on detailed and technical questions in what is often characterized as a problem-solving environment. At the lowest level are the Friends of the Presidency, a forum that is used to prepare technical questions for the personal representatives. In the 1990–91 Political Union IGC, the Friends of the Presidency assisted the personal representatives by clarifying points and asking questions on key issues (Mazzucelli 1997: 61–2, 136). In the 1996–97 IGC, this group was charged with discussing questions of simplifying the treaty.

The final outcome of an IGC negotiation is a treaty that revises or replaces the existing treaties. Following the logic of two-level games (Putnam 1988), the final treaty must then be ratified by member states according to their respective constitutional requirements.

### **1.3 Theoretical orientation – when and why leadership matters**

This chapter develops a theoretical framework of inquiry for why leadership is necessary in EU constitutional negotiations, and which type of actors can successfully provide leadership in specific circumstances. The basic argument in this volume is that EU constitutional negotiations are very complex, unpredictable and messy affairs with high bargaining (transaction) costs. Therefore, leadership is often necessary in order for the parties to find and agree upon a mutually acceptable outcome. However, various types of leadership are demanded in different types of circumstances, and who provides leadership does affect the shape of the final outcome.

Two questions are answered in this initial chapter. First, why is leadership necessary in EU constitutional negotiations? The chapter then introduces a theoretical model of inquiry that puts forward hypotheses

regarding circumstances in which we expect specific actors to be able to provide leadership in EU treaty reform negotiations.

How should we define leadership? There are a variety of different definitions in the international negotiation and integration theory literature. Lindberg and Scheingold view leadership as being a 'crucial activator of coalitions,' and a 'key determinant in translating demands for integration into outcomes within the EU political system' (Lindberg and Scheingold 1970: 128). Zartman defines leadership as the management of complexity (Zartman 2003). Underdal defines leadership as an, 'asymmetrical relationship of influence in which one actor guides or directs the behavior of others towards a certain goal over a certain period of time' (Underdal 1994:178).

Leadership involves the exercise of *influence* over other actors. Yet, as Underdal and many others define leadership, it is seen as a subset of 'influence' that is differentiated from influence per se by being aimed at overcoming *collective action problems* for the *common good* (ibid; Sjöstedt 1999: 228–9). Here we agree with Lindberg and Scheingold's less restrictive definition of leadership, where the *common good* element is replaced with a broader and slightly less altruistic sounding *collective* element. In this context, the supply of leadership ensures that demands for integration deriving from *some or all* of the EU governments are translated into an agreement. Leadership in this definition has two elements. First, leadership by an actor can ensure that all of the potential gains on the table are achieved (*efficiency or integrative dimension*); yet the leader can also have private interests in pushing a specific outcome. Further, in this definition, the 'collective good' is not necessarily the 'good' of the whole group, and can merely be the collective good of a smaller coalition of actors (ibid.).

Therefore, leadership is defined relatively broadly in this volume. It is defined as *any action by one actor to guide or direct the behavior of other actors (be they the whole group or only a smaller coalition) toward a certain collective goal*. For example, in this definition of leadership, when a laggard such as the UK merely vetoes or threatens to veto an outcome, that actor is *not* providing leadership, as there is no collective element. If the laggard on the other hand attempts to build a coalition in an effort to fight for the status quo, this would be categorized as a leadership attempt. An example of this type of 'negative' leadership is analyzed in the Polish chapter. As will be seen, Poland unsuccessfully attempted to build a coalition of governments around the position of preserving the Nice compromise on Council voting weights.

#### 1.4 Why leadership is necessary

Why is leadership necessary in EU constitutional negotiations? Is the provision of leadership by any one actor redundant, as Moravcsik and other

intergovernmentalists argue? Or are EU treaty negotiations more complex affairs with a higher demand for leadership?

Realists and intergovernmentalists argue that there is usually a low demand for leadership in international negotiations since it is relatively easy for governments to sit down at the negotiating table and agree upon a mutually acceptable outcome. Moravcsik argues further that there is usually an overabundance in the supply of leadership, making the provision of leadership by any one actor redundant (Moravcsik 1999a).

The realist/intergovernmentalist arguments are based upon two assumptions about negotiations. First, national governments are viewed as being 'comprehensively' or 'fully' rational. This means that governments have close to perfect information about their own preferences across the multitude of issues under discussion, and possess the necessary analytical and substantive knowledge first to find the Pareto frontier of efficient agreements, and then agree upon an outcome on the Pareto frontier (Moravcsik, 1998: 23; Milward and Sørensen 1993). Second, they argue that negotiations have low bargaining costs, or, as Moravcsik argues, that bargaining (transaction) costs are low relative to the potential gains from agreement (Moravcsik 1999a). Governments are therefore relatively easily able to agree upon a Pareto-efficient and mutually acceptable outcome. Questions regarding the distribution of gains that exist will be resolved in favor of the most powerful actors. Therefore, grand constitutional bargains in the European Union are explained by realists/intergovernmentalists as a series of French-German compromises, with the UK acting as the brake (Grieco 1995; Moravcsik 1998, 1999a; Pedersen 1998, 2002).

If we do not accept that the realist/intergovernmentalist assumptions of low bargaining costs and comprehensive rationality are substantiated by the empirical evidence, leadership can be necessary to overcome two major bargaining impediments in treaty reform. These impediments can prevent the parties to a negotiation (governments) from achieving collective gains.

In complex, multi-party negotiations such as EU constitutional reform, it is by no means certain that parties will be able to first find a zone of possible agreements, and then subsequently agree upon an outcome within this zone (Melchoir 1998; Raiffa 1982; Sandholtz 1992: 20–8; Sebenius 1992: 338; Young 1991, 1999). Despite the large potential gains of agreement, there are also substantial bargaining costs and other bargaining impediments that can create collective action problems. This can lead either to less efficient agreements or even to bargaining failure (Hopmann 1996: 258; Stubb 2002; Tallberg 2003). Rational choice institutionalist theory also suggests that there are factors intrinsic to the negotiation process, such as the possession of a privileged institutional position, which also can open opportunities for actors to provide leadership (see Pollack 1997, 2003; Tallberg 2003).

We argue in this volume that EU constitutional reforms are complex multilateral negotiations with many cross-cutting cleavages across a range of

highly complex and technical issues. Despite extensive preparation at both the national and EU level, treaty reform negotiations are often poorly defined negotiating situations, and actors are often unclear and/or disagree about what ‘problems’ need to be solved in a given EU constitutional negotiation, what possible solutions are available, and what their own positions are along with those of others (Underdal 1983, 1994: 191; Stubb 2002).

If actors could be treated as being comprehensively rational, then these bargaining costs arising from complexity would not matter. However, in EU constitutional negotiations, as in other complex international negotiations, actors can realistically be seen as only ‘boundedly’ rational (Simon 1997; Jones 2001; Rosati 2001). This means that there are natural limits to the cognitive abilities of actors, and they do not necessarily possess the necessary substantive and analytical skills to see through the fog of uncertainty to find a mutually acceptable and efficient outcome (Underdal 1983; Kassim 2004: 275). One well-informed EU insider who has taken part in several rounds of constitutional reform describes the typical IGC negotiating situation: ‘Governments and their negotiators do not always know what they want and the situation changes unpredictably with the dynamics of the negotiations where written and oral proposals are floated around the table by all the participants at frequent intervals.’ (Stubb 2002: 27). In such circumstances, leadership is often necessary to help the parties *find* the Pareto frontier of mutually acceptable agreements (see Figure 1.1).

Once the Pareto frontier is found, there is still the question of the *distribution* of gains along the frontier (see Figure 1.1). Although competing solutions

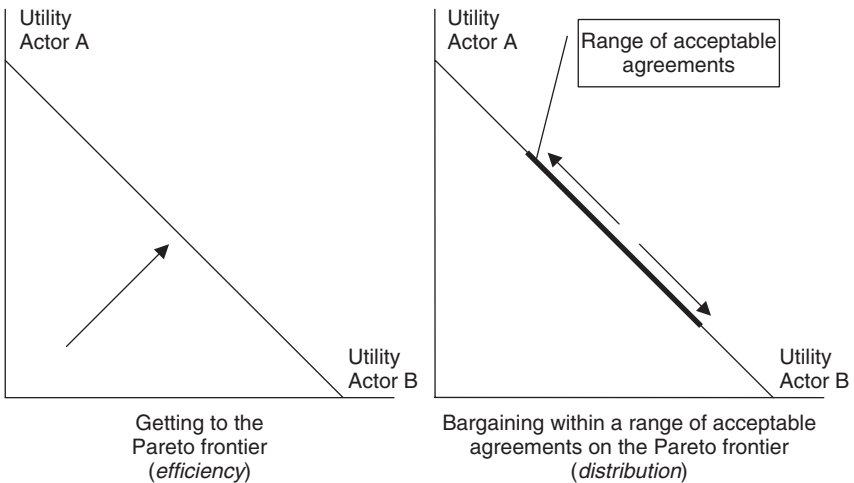


Figure 1.1 The efficiency and distributive elements of a two-party negotiation

to problems often exist along the frontier, agreement does not always emerge by itself (Krasner 1991). Leadership is often needed to create a ‘focal point’ around which agreement can converge (Garrett and Weingast 1993: 176; Tallberg 2002: 7). There are two principal problems in these types of situations: agenda instability and the negotiator’s dilemma. First, as illustrated in the rational choice institutionalist literature, it is often necessary for one actor to have formal control of the agenda in complex multilateral negotiations to prevent agenda instability (Riker 1980; Scharpf 1997: 156–61). In EU constitutional negotiations, an unstable agenda would mean that actors would continue tabling their own proposals, and in the absence of a leader possessing agenda control, the agenda will listlessly continue to cycle among these different competing proposals. The solution to this problem is to formalize control of the agenda with an actor, such as the Presidency, enabling the actor to provide leadership by creating a focal point on the Pareto frontier around which agreement can (at least potentially) converge.

Another substantial collective action problem in EU constitutional negotiations is the negotiator’s dilemma (Lax and Sebenius 1986: 29–45; Young 1991: 284). Cooperative moves in negotiations can increase the size of the pie, yet they can also be exploited by other parties through competitive moves to claim value for themselves (*ibid.*). Therefore, actors often have incentives not to reveal their true bottom-lines, and to distort information – for example, by exaggerating the value of their own concessions. In such circumstances, a trusted intervener can discuss with each party the nature and intensity of its preferences in an attempt to find the Pareto frontier of mutually acceptable agreements (Scharpf 1997: 145; Raiffa 1982; Metcalfe 1998: 424–5; Stenelo 1972: 54; Tallberg 2003). By gaining privileged information, this actor, be it a smaller EU government, the Presidency, or an EU institution, can provide leadership by crafting a mutually acceptable and efficient agreement. This inside information, however, can also be exploited to craft an agreement closer to the intervener’s preferred outcome.

## 1.5 The provision of leadership in EU constitutional negotiations

The basic point of the theoretical model developed in this chapter is that actors possess leadership resources that can grant them opportunities to supply leadership in order to help the parties find and agree upon a mutually acceptable outcome. This will be successful if: they meet a demand for leadership that varies according to the negotiating context; and they are able skillfully to provide the appropriate type of leadership. By providing leadership that matches the demand, the actions of the successful leader can increase the overall collective gains from agreement. The leader can, however, also exploit his/her position to increase private gains.

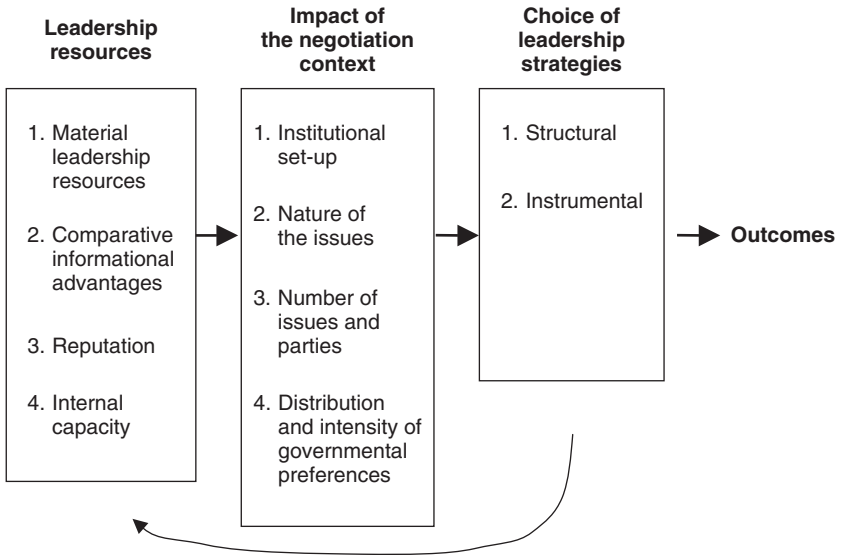


Figure 1.2 The provision of leadership in EU constitutional negotiations

The model is divided into three analytical categories (see Figure 1.2). *Leadership resources* are the relevant capacities a leader possesses, which can be used to supply leadership. The *context* of a specific treaty negotiation determines the opportunities that a given actor has to provide the different types of leadership and the size of the bargaining impediments creating a demand for leadership. In other words, the context of a given negotiation describes the level of demand for specific types of leadership. The third category focuses upon whether the specific actor actually supplied the type of leadership that was demanded in the negotiation. For example, a situation like the deadlock during the Nice European Council in December 2000 was arguably one in which structural leadership from a position of obvious strength was necessary to ‘muscle’ governments to concede in the sensitive discussions on revising Council voting weights (chapters 2 and 8). In this negotiating context, if an actor attempted to supply instrumental leadership, for example, by tabling creative compromise proposals, the supplied leadership would not match the demand, and, therefore, would be unsuccessful.

## 1.6 Leadership resources

There are four overall categories of leadership resources, which actors can potentially use to provide leadership in negotiations. Whether they are

relevant in a specific negotiation is contingent upon the demand for leadership created by the negotiating context.

### **Material leadership resources**

In order to provide what Young terms as *structural leadership*, the given actor must possess significant material resources that can be translated into bargaining leverage in order to push actors to agree to something to which they otherwise would not have agreed to (Young 1991). In the EU treaty reform context, relevant material leadership resources are resources deriving from actor capabilities such as material wealth or the ability to change other actors' dependence upon an agreement (Underdal 1994). Based upon material leadership resources, we expect that large member states, like Germany, have more leverage vis-à-vis other parties than smaller member states like Denmark or Portugal. EU institutions will only have material leadership resources when they are able credibly to link resources they control in daily EU policymaking, such as the EP's power of assent over enlargements, with outcomes in constitutional negotiations.

### **Informational leadership resources**

When there are high bargaining costs in a given negotiation, the possession of comparative informational advantages, be they substantive expertise or bargaining skills, can be a strategic asset that allows the actor to provide *instrumental leadership* in order to forge an outcome.

This is because realistically not all actors are equal regarding their levels of substantive knowledge of the issues under discussion (content expertise), their analytical skills (process expertise), and their knowledge of the state of play of the negotiations (Wall and Lynn 1993; Sandholtz 1992: 27–8; Cox and Jacobson 1973: 20; Finnemore and Sikkink 1998: 899–900). Regarding *content expertise*, technical and legal knowledge are most relevant in EU constitutional negotiations. Technical expertise is based upon the possession of detailed substantive knowledge of how a certain treaty provision works at present, and/or the anticipated consequences of possible changes. Legal expertise is the possession of extensive knowledge of the way in which EU law works, which is vital when deciding how specific constitutional provisions should be formulated.

Not all delegations in EU constitutional negotiations possess the analytical skills and negotiating experience necessary to digest the hundreds of very complicated and technical proposals on the many different issues under discussion. Another type of process expertise deals with the possession of the necessary procedural skills to steer a negotiation effectively towards an efficient outcome. These skills are usually based upon the institutional memory of a given actor, and learning curves are often present.

Finally, we turn to the importance of *information on actor preferences and the state of play of negotiations*. There are two reasons why delegates in EU treaty negotiations often do not have detailed information about the nature and intensity of other actors' preferences regarding the myriad issues under discussion. First, it is often difficult for a single delegation to keep track of different actor preferences regarding the large number of very detailed issues under discussion. Second, governmental representatives, despite publishing opinions prior to a negotiation and presenting arguments and proposals during negotiations, are often reluctant to reveal their 'true' preferences in an EU treaty negotiation.<sup>3</sup> Delegates can have strategic reasons for holding their cards, waiting to see how an issue plays out before revealing their hand, or in order to distort other actors' perceptions of their true preferences (Underdal 2002: 115; Tallberg 2003). In this situation, a trusted intervener, like the Council Secretariat or a small state Presidency, can discuss with each party the nature and intensity of its preferences in an attempt to find a mutually acceptable, Pareto-efficient outcome (Scharpf 1997: 145; Raiffa 1982; Metcalfe 1998: 424–5; Stenelo 1972: 54; Tallberg 2003). By gaining private information about the zone of possible agreement, however, the intervening actor can also craft an agreement within this zone that is closest to its own preferred outcome (Lax and Sebenius 1986).

### **Reputation**

In the third category, a further type of resource actors can possess in EU constitutional negotiations is the reputation for providing relatively acceptable leadership. Levels of acceptance can be based on recognition of the utility of the actor's contributions, the legitimacy, and/or reputation of the actor (Wehr and Lederach 1996; Bercovitch and Houston 1996: 25–7; Hampson 1995: 18; Tallberg 2003; Hopmann 1996: 225; Haas 1990: 87–8; Underdal 1994: 190). Note that 'neutrality' and 'acceptability' are not necessarily synonymous in this context, and a partial mediator/broker can be acceptable in certain circumstances.

The acceptability of an actor can be threatened if the actor is seen to be excessively partial either in the way in which he/she fulfills a specific institutional role (procedural bias), or with regard to excessively promoting a particularly unwelcome outcome (outcome bias) (Bercovitch 1996b: 5). If an actor is perceived by the parties to be excessively pursuing his/her own interests, this may undermine the actor's ability to provide leadership in a given situation. The distinction in perceptions between acceptability and excessive partiality is an invisible red line. The effects of crossing this are often very evident, as will be seen in the chapter on the Dutch Presidency (chapter 3). Actions that cross this line can have a negative impact on future attempts to provide leadership; this is modeled as a feedback loop in Figure 1.2.

## Internal capacity

The fourth category of leadership resources is the ability of a given actor to mobilize all of his/her relevant resources behind leadership attempts. The ability to mobilize resources, or, in other words, whether the actor has the actual *capacity* to provide leadership, is dependent upon the internal organization of the actor (Dimitrakopoulos and Kassim 2004). Factors relevant here are the structure of the given political system, including the number of 'veto points,' and the relative power of different domestic actors (ibid. 251–2). For example, in Germany's federal system, a power struggle evolved in the 1990s between the federation and the *Länder*, as the *Länder* increasingly attempted to have a say over what they viewed as the transferal to Brussels of their prerogatives (Beuter 2001: 101). After the introduction of Article 23 in the Basic Law the *Länder* in the *Bundesrat* had a veto power of the transfer of sovereign powers, creating many problems for German European policy-making (Mazzucelli 2001). Another example occurred during the Constitutional Treaty negotiations, where Commission President Prodi was weak internally within the Commission, which prevented the Commission from fully mobilizing all of its otherwise considerable informational resources behind one position (chapter 6). These examples clearly illustrate that the possession of strong material or informational leadership resources is not enough – one must have the capacity to be able to mobilize them effectively during the negotiations.

## 1.7 The impact of the negotiating context

The context of a specific EU treaty negotiation matters in that it determines the extent of the collective action problems that create a demand for leadership, and whether an actor possesses a privileged institutional position – in effect what *opportunities* specific actors have to supply leadership successfully.

### Institutional set-up

Looking first at the importance of the specific negotiation structure, a widely held conjecture in negotiation theory and rational choice institutionalism holds that how negotiations are structured affects how actor power resources are translated into influence over outcomes (Zartman 2002). This is particularly evident when we are dealing with highly institutionalized, multilateral negotiations like EU constitutional negotiations. Therefore, the institutional set-up of the given negotiation can matter. Actors can either start with or gain a privileged position during a negotiation. This position can grant the actor a range of powers, which can be exploited to influence outcomes (Watkins 1999: 257–8; Sebenius 1984, 1991). Examples of privileged institutional positions in EU constitutional negotiations include agenda

control or controlling the actual drafting process. Different institutional positions affect the opportunities and constraints upon the ability of actors to supply leadership. Based upon general conjectures in negotiation theory and in rational choice institutionalism, we expect the ability of actors successfully to provide leadership increases with the level of their involvement in the negotiation and drafting process. The Presidency that chairs the IGC negotiations will therefore, other things being equal, have much greater opportunities to provide leadership than a normal delegation.

### **The nature of the issues**

We take the empirically verified assumption that delegates in a constitutional negotiation often do *not* have perfect knowledge of the very complex institutional and legal implications of the many issues under discussion. This is due to high costs of gaining information and the cognitive limitations of actors. Therefore, we expect that in complex and/or technical issues there would be a stronger demand for instrumental leadership provided by actors possessing comparative informational advantages, with the aim of helping the parties sort out the issues and craft agreement (Meier 1989: 280; Pollack 1997: 126–7).

### **The number of issues and parties in the negotiations**

Thirdly, the number of issues and parties to the negotiations both can increase the *level of complexity* of a negotiation if they increase the number of cleavages in a given negotiation situation (Midgaard and Underdal 1977; Hampson 1995: 28–9). In highly complex, multilateral negotiations, characterized by many cross cutting cleavages, it is difficult for the parties to identify possible agreements. Meaningful communication among parties also becomes increasingly difficult (Hampson 1995: 28–9; Raiffa 1982; Midgaard and Underdal 1977; Hopmann 1996). In these types of complex situations, there is often a demand for instrumental leadership in order to help the parties find and craft a mutually agreeable outcome.

In a traditional IGC setting, this type of mediation and brokerage can be provided by different actors, including the Presidency, European Commission or Council Secretariat, or a specific government, usually a smaller member state. What is critical to the provision of this type of leadership is the possession of process expertise and a reputation for being ‘acceptable’ as a mediator/broker. Note again that acceptability is not necessarily the same thing as neutrality. We therefore expect the ability of actors to provide instrumental leadership increases with the number of issues and parties to a given negotiation.

### **Distribution and intensity of governmental preferences**

Governmental preferences determine at the end of the day what outcome is the result of an intergovernmental conference. However, due to high bargaining

costs and boundedly rationality, there is a considerable range within which agreement can be reached, and there is also the distinct possibility of negotiation failure. The demand for leadership to help the parties find and agree upon an outcome within this range varies according to four factors.

First, when governments have strongly held and irreconcilable positions, no zone of possible agreement exists. When faced with such a deadlock, only strong structural leadership attempts can potentially push governments towards agreement by shifting actor positions to create a zone of possible agreements. In the consensual EU, this is usually not an option for even the most powerful governments.

Secondly, the strength of governmental preferences also matters for the ability of actors to provide leadership. We can expect that very salient issues will be kept firmly under the control of materially powerful national delegations. In these high stakes issues, governments would have incentives to mobilize the necessary resources to reduce bargaining costs, thereby weakening the informational bargaining advantages of expert actors (Moravcsik 1999a). Therefore, outcomes in these issues will often reflect patterns of material power, and tend to reflect the preferences of Britain, France and Germany, as argued by Moravcsik (*ibid.*).

Further, we expect in high stakes issues negotiations will be dominated by a 'hard bargaining' atmosphere (Hopmann 1995; Elgström and Jönsson 2000), in which material leadership resources are more important than other types of resources. In less salient issues we would expect, in contrast, that EU institutional actors, as well as other actors possessing strong informational leadership resources, would have more discretion in shaping the discussions and outcomes (Epstein and Segal 2000; Meier 1989: 279).

Thirdly, there is a strong demand for instrumental leadership when the parties are strongly interested in agreement and a zone of possible agreements exists, but where the parties have difficulties choosing a specific solution on the Pareto frontier (see Figure 1.1). In this type of situation, a window of opportunity is created by the demand for leadership, which can enable a trusted mediator/broker such as a EU institution or a small government to step in and broker an agreement (Young 1991; Kressel and Pruitt 1989; Carnevale and Arad 1996). This type of situation is identified as 'ripeness' in the negotiation literature, as the parties are prepared to find and agree upon a solution. Yet, they are dependent upon the provision of leadership in order to conclude agreement (Zartman 2000; Hopmann 1996).

One example of such a window of opportunity for leadership was the 1985 IGC, which negotiated the Single European Act. In these negotiations, there was a strong majority of governments that wanted to create a working Internal Market. However, there were multiple potential ways to achieve this outcome. The European Commission exploited the window of opportunity and was able to use the institutional position delegated by the Luxembourg Presidency to supply instrumental leadership. The Commission successfully

*Table 1.1* Conjectures on the impact of the negotiation context for the demand for leadership in EU constitutional negotiations

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*Institutional position*

- The more privileged an institutional position an actor possesses, the greater are the opportunities for the actor to translate his/her leadership resources into influence over outcomes.

*Nature of the issues*

- As the level of issue technicality increases, this increases the demand for instrumental leadership.

*Number of issues and parties*

- As the number of parties and issues increases in a given negotiation, this increases the demand for instrumental leadership to forge order out of chaos.

*Distribution and intensity of governmental preferences*

- When there is no zone of possible agreements, only strong structural leadership can be used to force parties to change their preferences to create a zone of possible agreements.
  - When issues are politically sensitive, governments have incentives to mobilize the necessary resources to overcome bargaining costs, thereby lowering the demand for instrumental leadership.
  - When governments want an agreement, yet are hindered in achieving it by bargaining impediments, a strong demand for instrumental leadership exists.
- 

created a focal point closer to its own preferences than the outcome upon which governments, left to themselves, would most likely have agreed (Beach 2005: 54).

In conclusion, the negotiating context matters in that it can both grant actors privileged institutional positions that can act as a platform for leadership attempts, and as variations in the context determine the level of demand for specific types of leadership (see Table 1.1). As argued above, when the negotiating context is very complex, with many technically complex issues on the agenda, we should expect there to be a strong demand for instrumental leadership. In contrast, intractable negotiating situations can often only be resolved using ‘muscles,’ forcing governments to change their positions in order to create a zone of possible agreements.

## 1.8 A typology of leadership strategies

The literature abounds with different typologies of leadership strategies. Of greatest relevance for EU constitutional negotiations are the following two overall categories of leadership strategies. Each analysis evaluates whether the type of leadership supplied by a given actor matched the demand created by the specific negotiating context. In specific negotiations, however, we will often see a mix of strategies used by different actors (Underdal 1994: 192–3).

Unilateral actions such as ‘go-it-alone’ leadership, where a hegemon or group of powerful states imposes its own institutional choices upon other actors (Gruber 2000), are not included in the following, as they are rarely, if ever, seen in the EU. One notable exception was arguably the creation by France and Germany of the EMS (*ibid.*).

### **Structural leadership**

*Structural leadership* is based upon the use of material leadership resources to forge a zone of possible agreements where none existed (Young 1991).<sup>4</sup> Types of tactics in structural leadership include the threat or use of negative or positive sanctions (sticks and carrots) in order to affect the incentives of other actors in relation to the proposed terms of an agreement, or to induce actors to make concessions (Malnes 1995; Young 1991). For these types of leadership strategies to work, actors must possess strong material leadership resources, and there must be collective action problems that prevent the achievement of consensus in the absence of structural leadership.

The provision of structural leadership can impact upon both the efficiency and distributive dimensions of a given negotiation (see Figure 1.1). An example of structural leadership upon the efficiency of an agreement could be the use of threats or side payments by a materially strong leader to ‘buy off’ a laggard in order to push an agreement away from a lowest-common denominator towards the Pareto frontier. Structural leadership usually has strong distributive effects, as materially powerful actors such as Britain, France and Germany tend to attempt to push outcomes closer to their own preferred outcomes. This was clearly seen in the endgame of the 2000 IGC, during which the French Presidency used structural leadership to push the solution on the issue of the re-weighting of Council votes closer towards its own preferred outcome (chapter 2).

### **Instrumental leadership**

The second form of leadership is *instrumental*, where the leader attempts to fulfill certain key functions such as managing agendas, crafting compromises, building coalitions, and brokering deals. Negotiating skill, substantive expertise and political vision are used first to develop possible substantive solutions and then engineer consensus, putting together a deal that eludes other actors. In order to be able to exercise instrumental leadership, the potential leader must possess strong informational leadership resources, and its leadership attempts must be broadly perceived to be acceptable by the parties to the negotiations.

The strong demand for instrumental leadership exists when there are high bargaining costs and strong bargaining impediments; for

instance, when actors have incentives to hide their true preferences. Instrumental leadership is, of course, not relevant in situations where a zone of possible agreement does not exist, as was arguably the case in the 1996–97 IGC regarding sensitive institutional questions (Underdal 1994: 192; Beach 2005).

The demand for specific types of instrumental leadership varies during the course of negotiations. Zartman and Berman split the negotiation process into three phases: (1) the diagnosis phase; (2) the construction of a possible solution in the formula phase; and (3) agreement on details (Zartman and Berman 1982).

During the diagnosis or agenda-setting phase, the agenda is often quite open, and the parties are frequently unsure of their own preferences (Stenelo 1972: 129–30). We expect the most successful instrumental leadership strategies during this phase would be attempts to create the preconditions for a favorable solution (Young 1991).<sup>5</sup> An example was the role played by the European Commission in the agenda-setting phase of the EMU inter-governmental conference, where the Commission actively attempted to link progress with the popular Internal Market program with further economic and monetary integration. This was most evident in the publication of the ‘One Market, One Money’ paper in 1988 (Dyson and Featherstone 1999; Beach 2005).

In the formula phase, the most important tactics involve attempts to craft a possible feasible solution, and also efforts to build coalitions supporting deals. Regarding crafting possible solutions, this is where we most often see the Presidency providing leadership, assisted by the Council Secretariat and/or the Commission. Once a possible solution has been crafted, however, leadership is also often necessary in order to build consensus (Young 1991; Sjöstedt 1994: 242; Metcalfe 1998: 430; Tallberg 2003; Zartman 2003).<sup>6</sup> Coalitions do not build themselves – they need direction (leadership) in order to form around specific outcomes (Zartman 2003: 185).

The final agreement stage is where actors haggle over the details of the agreement (Zartman and Berman 1982: 95, 147). The demand for instrumental leadership in the form of brokerage usually increases during this phase, and brokerage is often necessary to help the parties find a mutually acceptable outcome and remove unrealistic options from the table (Stenelo 1972: 143).

The impact of instrumental leadership usually is mostly seen on the efficiency dimension. This ensures that all possible gains are made. Instrumental leadership can however also impact upon the distribution of gains, particularly in highly complex negotiations on relatively low salience issues. Here the leader is able to craft a deal closer to his/her own preferred outcome than would otherwise have been the case.

## 1.9 Summary

The basic argument of this volume is that agreement does not come about by itself in EU constitutional negotiations. Agreement is dependent upon the provision of leadership. Leadership is often necessary to help parties find and agree upon mutually acceptable outcomes. It can be provided by numerous different actors and depends upon their resources as well as the specific negotiation context. The success of leadership attempts is dependent on whether the type of leadership supplied matches the demand for leadership created by the negotiating context. Leadership is often not neutral; therefore, who supplies leadership matters both for the efficiency of a given agreement and the distribution of gains.

In each specific EU constitutional negotiation, we can distinguish between material resource-based leadership strategies (structural), and information resource-based strategies (instrumental). For heuristic purposes, these two categories of strategy can be delineated by the following image. The supply of material resource-based leadership can be thought of as forging a zone of possible agreements where none existed. This is accomplished by changing actor preferences, in effect creating the 'outer bounds' for possible agreements (Figure 1.3). Within these outer bounds, the provision of instrumental leadership is usually necessary to find and agree upon an actual treaty during what are often very complex situations, and where strong bargaining impediments exist.

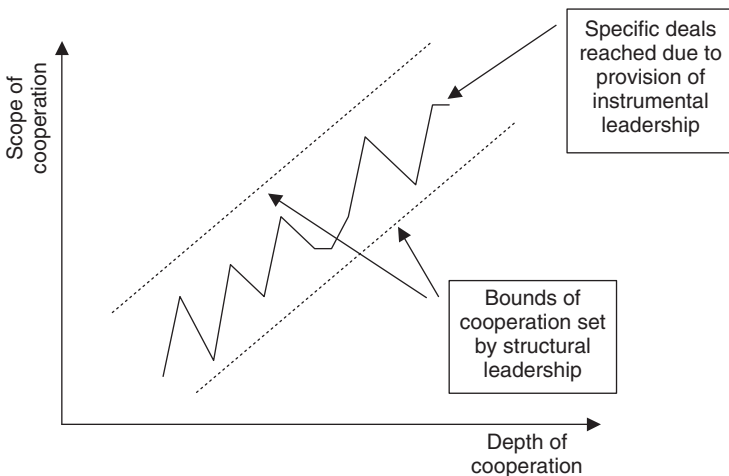


Figure 1.3 A hypothesis on the mix of leadership modes in EU constitutional negotiations

This is depicted in Figure 1.3, where instrumental leadership is crucial to find a specific deal within these outer bounds. While it is theoretically possible for one actor to provide both types of leadership, it is also hypothesized that there is often a distribution of labor, with materially strong actors, like France and Germany, usually setting the outer bounds for agreement. This is achieved through the provision of structural leadership. Then other actors, such as smaller member states, the EU Presidency, or the EU institutions, provide the instrumental leadership necessary to reach a specific agreement among many competing options.

### 1.10 Outline of the book

The chapters in this volume are grouped into two clusters: those focusing upon specific EU institutions, and those chapters analyzing individual member states. The initial chapters investigate the leadership role of the EU Presidency in recent rounds of EU treaty reform. Jonas Tallberg focuses on the French Presidency in the IGC 2000 and the extent to which the strong material resources of the Presidency were significant. Colette Mazzucelli analyses the learning curve experienced by the Dutch Presidency during the 1990–91 IGC and assesses the impact of that experience on the outcome of the 1996–97 IGC in terms of efficiency and distributive outcomes. Ben Crum compares the Italian and Irish Presidencies in the 2003–04 IGC, analyzing the results of the Italians in the Chair and the degree to which that outcome impacted upon the ability of the Irish to provide effective leadership at the helm.

In the three chapters analyzing the EU institutions, Derek Beach focuses attention on the overlooked Council Secretariat as the ‘unseen hand’ in treaty reform, whose possession of unrivaled bargaining skills and experience with EU constitutional negotiations meant that it played a key instrumental leader role, oiling the wheels of compromise. Hussein Kassim and Dionyssis Dimitrakopoulos analyze the changing influence of the European Commission in treaty reform by assessing the importance of its technocratic expertise and its reputation in this regard on the outcomes achieved. Andreas Maurer focuses on the European Parliament, the most vocal supporter of federal solutions, and assesses the extent to which its impact was dependent upon its acceptance by key member states as an IGC participant.

The chapters analyzing the EU governments ask which governments have driven the integration process. Simone Bunse, Paul Magnette, and Kalyso Nicolaïdis analyze whether small states matter in the context of the cleavage between the ‘biggs’ and the ‘smalls,’ which has increasingly dominated the debate on the institutional balance of power in the EU. Colette Mazzucelli, Ulrike Guérot and Almut Metz explain the changing influence of the French-German tandem, which has driven the integration

process for decades and is now emerging as an ‘improbable core’ unable to lead an enlarged Union. Alasdair Blair analyses Great Britain’s role in treaty negotiations, focusing upon the UK’s ‘outlier’ position, and how the UK usually succeeded in acting as a ‘laggard leader’ by applying the brake on more ambitious proposals for reform. Christopher Bobinski focuses on Poland, which, as a larger and new member state, attempted to carve out a role early on the European Convention by allying with Spain to preserve the Nice formula on weighted voting in the Council. Renaud Dehousse and Florence Deloche-Gaudez offer a perspective on the future of leadership in the European Union in the aftermath of the rejection of the Constitutional Treaty in two founding member states, France and the Netherlands, and as the Union contemplates further enlargements to the southeast of the Continent.

The use of a common framework throughout the volume allows the concluding comparative analysis chapter to provide some tentative answers to the following empirical questions: which actors have driven the European integration process in the last two decades?; and, more importantly, what factors allowed specific actors to provide leadership in a given context? These conclusions provide a major step forward in the literature on the history-making bargains in the EU, enabling us to answer with more confidence the question of *which* actors have guided the ‘big bangs’ in the European integration process in the past two decades, and *why*.

## Notes

1. While there is considerable debate about whether the European Treaties are true constitutions, only ‘partial constitutions’, or just international treaties, we use the terms treaty and constitutional reforms as synonyms in this work. For an extended discussion of this question, see Church and Phinnemore 2002.
2. This section draws extensively on Beach (2005).
3. See above. Moravcsik (1999a: 279) points out that actors with incentives to withhold information from one another would also have incentives to withhold information from other actors such as an EU institutional actor. However, as the Council Secretariat sits at the center of a web of communications in an EU treaty negotiation, and given its reputation as a trusted insider, national governments often are more open with the Secretariat than they are with other national delegations (Beach 2004).
4. This is termed ‘coercive’ leadership by Underdal (1994: 186).
5. This aspect is defined intellectual leadership by Young.
6. Young terms this type of strategy entrepreneurial leadership.

# Index

- Acceptability 12, 14, 36, 79, 91, 165, 171, 233
- Accession (*see* enlargement)
- Acquis communautaire 53, 56, 78, 87
- Adenauer, Konrad 161
- Agenda-shaping (*see* leadership model, member states and EU-institutions)
- Agricultural policy (*see* Common Agricultural Policy)
- Ahern, Bertie 67, 68, 90
- Allen, David 145
- Amato, Giuliano 144, 150
- Amsterdam (*see also* European Council)
- Treaty 86, 124, 164, 170, 195
- Treaty IGC 1996–7 12, 18, 30, 32, 38–45, 48–57, 77–88, 90–2, 188, 237 (*see also* Council Secretariat, Netherlands)
- Reflection Group 4, 52, 59, 84, 122
- Article
- 29–39 EU 117
- 37 EC 125
- 48 EU (treaty revision procedure) 4
- 67 EU (passerelle clause for visa, asylum and immigration) 125
- 93 EC 125
- 133 EC (ex 113 EC) 87, 125
- 214 EC 125
- F (now Article 6 EU) 86
- G (now Article 8 EU) 54
- K.1 (now Article 29 EU) 117
- N (*see* article 48 EU)
- Aspinwall, Mark 182
- Assent procedure 115, 124, 125
- Asylum and immigration
- policy 1, 2
- in the 1996–7 IGC 53, 55
- in the 2000 IGC 30, 33, 35
- Athens (*see* European Council)
- Austria
- in the 1996–7 IGC 45
- in the 2000 IGC 199
- in the Convention 2002–3 147 (*see also* small state coalition)
- presidency (2006) 176
- Aznar, José-Maria 50, 71
- in the Convention 2002–3 141, 146, 172, 208, 212, 214
- Balladur, Edouard 52
- Bargaining (*see also* negotiation)
- costs 2, 5, 7, 8, 11, 15, 17, 44, 51, 96–97, 118
- failure 7, 15, 24, 36
- impediments 10, 17, 22, 24, 25 (*see also* collective action problems)
- Barnier, Michel 108–9
- Bartoszewski, Wladyslaw 203, 205
- Belgium
- in the 1996–7 IGC 124
- in the 2000 IGC 33
- in the Convention 2002–3 144, 147 (*see also* small state coalition)
- in the 2003–4 IGC 89
- Presidency (2001) 36, 126
- Benelux countries 38, 164
- in the 1996–7 IGC 123
- in the Convention 2002–3 130, 148, 150, 155, 172 (*see also* small state coalition)
- Berlin (*see* European Council)
- Berlusconi, Silvio 66, 82, 90
- Berman, Maureen R. 18
- Biarriz (*see* European Council)
- Bias (*see* acceptability)
- Big Three 38, 159 (*see also* Germany, France, United Kingdom)
- Big state coalition
- in the 2000 IGC 31
- in the Convention 2002–3 135, 141, 151, 155, 231 (*see also* Spain, United Kingdom, French–German tandem)

- Black Monday (Sept. 1991) (*see* Netherlands, Presidency 1990–1 IGC)
- Blair, Tony 183, 189, 194–5  
in the Convention 2002–3 108, 141, 150, 172, 196
- Blocking minority (BM) 71, 90, 136, 153, 204, 211, 213, 214
- Bounded rationality 8, 14, 41, 120
- Britain (*see* United Kingdom)
- van den Broek, Hans 43, 47
- Brok, Elmar 122
- Brokerage (*see* leadership model, member states and EU institutions)
- Brussels (*see* European Council)
- Brutton, John 152
- Budget procedure (*see* Financial)
- Bulgaria 177, 211
- Buzek, Jerzy 204, 205
- Capacity, internal (*see* leadership model, EU institutions and member states)
- CFSP (*see* Common Foreign and Security Policy)
- Charter on Fundamental Rights 171, 195, 196, 198  
Convention that drafted 107, 126
- Chirac, Jacques  
in the 1996–7 IGC 50  
in the 2000 IGC 32, 171  
in the Convention 2002–3 108, 141, 150, 172  
in the 2003–4 IGC 65, 209, 212
- Christianity 62, 64, 70, 110, 202
- Christiansen, Thomas 95
- Cimoszewicz, Włodzimierz 202, 206, 207, 213
- Cleavages 7, 14, 83–4, 128, 129, 159  
‘big versus small’ 134–5, 141–8, 151, 153, 155, 168, 175
- Club Med 163
- Coalition building (*see* leadership model, member states and EU institutions)
- Co-decision procedure (also called co-legislative procedure) 116  
in the 1990–1 IGC 188, 193  
in the 1996–7 IGC 124, 195  
in the Convention 2002–3/2003–4 IGC 127
- Cognitive limitations (*see* bounded rationality)
- Collective  
action problems 2, 6, 7, 9, 13, 17, 23, 24, 51, 84, 118 (*see also* bargaining/negotiation impediments)  
gains 9, 25, 36
- Committee of the Regions 145
- Common Agricultural Policy (CAP) 167  
in the 1996–7 IGC 125
- Common Commercial Policy (CCP)  
in the 2000 IGC 30–31, 33, 35  
in the 2003–4 IGC 67
- Common currency (*see* Economic and Monetary Union)
- Common Foreign and Security Policy (CFSP) 1, 116, 163, 185  
financial provisions 86  
High Representative 88, 108, 197  
in the 1990–1 IGC 193  
in the 1996–7 IGC 44, 52, 78, 83, 86, 88, 124, 125, 195  
in the 2000 IGC 195  
in the Convention 2002–3 147, 174  
in the 2003–4 IGC 64, 67, 69, 74  
Minister for Foreign Affairs 62, 63, 67, 146, 148, 149, 151, 196, 197
- Commonwealth 184
- Community  
law 42  
method 40, 46, 149  
friends of 141, 144, 150 (*see also* small state coalition)
- Confessionals, bilateral 26, 32, 34, 44, 48
- Constitutional  
Treaty 109, 131–2, 153, 162, 176, 215 (*see also* treaty IGC 2003–4 and Convention)  
preamble 62, 64, 65, 67, 70, 74, 89, 110, 202  
reflection period 244, 245  
Treaty IGC 2003–4 4, 58–75, 77–84, 88–92, 126–32, 150, 154, 169, 201, 209–210, 237 (*see also* Council Secretariat, European Commission, European Parliament, Italy, Ireland)

- informal Foreign Minister conclave meeting (2003) 63
- revision procedure 63, 67
- Rive del Garda, General Affairs Council (2003) 61, 62
- Consultation procedure 124, 125
- Convention, European 2002–3 (also called Convention on the Future of Europe) 36, 59–60, 70–1, 106–10, 128–32, 134–56, 171–5, 205–9, 237 (*see also* member states and EU institutions)
- Draft Constitutional Treaty 4, 60–1, 66, 74–5, 78, 88–9, 152, 154, 174, 196, 202, 208
- Hilton dinners 108
- institutional set up 144–5
- mandate 60, 145, 151
- participants 60, 144–5, 206
- phases 99, 128–9, 205
- Praesidium 106, 130, 131, 135, 144–5, 149, 152, 154, 155, 206, 207
- President (*see* Giscard d'Estaing)
- Secretariat 145, 154
- Secretary general 196 (*see also* Kerr)
- working groups 128, 130
- Cooperation
  - enhanced (*see* flexibility)
  - procedure 115, 125
- Copenhagen (*see* European Council)
- COREPER 4, 127
- COSAC 124, 126
- Cost–benefit calculations 39
- Council of Ministers 67, 78, 139, 139–41, 208
  - General Secretariat 26
  - headquarters in Brussels 28
  - Legal Service 23
  - Presidency 4, 105, 135, 153 (*see also* Presidency)
- Council Secretariat (General Secretariat of the Council) 12, 14, 41, 237
  - in the 1990–1 IGC 41, 44, 46, 56
  - resources 41
    - informational advantages 44; content expertise 42; knowledge of state-of-play 42; process expertise 44
  - strategies
- agenda-shaping 44
- coalition-building 44
- in the 1996–7 IGC 51, 52, 76–88, 90–2
  - influence 80, 81, 82, 87, 88, 91
  - negotiating context 84–85, 88, 91
    - distribution and intensity of preferences 83–84
    - institutional position 79–82, 91
    - issue complexity 82–83
  - resources 78–79, 91
    - informational advantages 77, 78, 79, 80, 82, 86, 88, 232; content expertise 87; legal 78, 80–81; knowledge of state-of play 79, 80, 86; process expertise 78, 79
    - reputation 79, 80, 85, 91, 233
  - strategies 84, 91
  - instrumental 83, 84, 91;
    - agenda-shaping 79, 80, 84, 85, 86, 88, 91; brokerage 79, 80, 84, 87–8, 91; coalition building 87
  - preferences 77–8, 81, 85, 87, 88,
- in the Convention 2002–3 106
- in the 2003–4 IGC 76–84, 88–92, 213
- influence 80, 81, 91
- negotiating context 89, 91
  - distribution and intensity of preferences 83–4
  - institutional position 79–82, 91
  - issue complexity 82–3
- resources 78–9, 91
  - informational advantages 77, 78, 80, 82, 86, 232; content expertise 78; knowledge of state-of play 79, 80, 90; process expertise 78
  - reputation 79, 80, 91, 233
- strategies 84, 91
  - instrumental 84, 89, 91;
    - agenda-shaping 79, 80, 84, 91; brokerage 79, 80, 84, 91
  - preferences 77–8, 81
- Legal Services 77, 81, 87 (*see also* Jean-Claude Piris)
- Cowen, Brian 69
- Cox, Pat 131
- Criminal policy 64, 67, 117

- Croatia 177  
 Customs cooperation 117  
 Czech Republic, The 50
- Dankert, Piet 43, 46  
 Declaration on the Future of the European Union (*see* European Council, Laeken)  
 Deficit procedure 70  
 Defence policy (*see* Common Foreign and Security Policy)  
 Dehaene, Jean-Luc 144  
 Delors, Jacques 102  
   in the 1985 IGC 103–4  
   in the 1990–1 IGC 47, 104–5  
 Delors Committee  
   impact on the 1985 IGC 104  
   Report 192  
 Democratic deficit/legitimacy 116, 152, 169, 245  
 Democratization 117, 124, 221  
 Demographic criterion 33, 169, 174, 204 (*see also* double majority voting system)  
 Denmark 11  
   Danish vote against convening 1985 IGC 4  
   in the 1996–7 IGC 54  
   in the Convention 2002–3 147, 150, 151  
   Presidency (2002) 36, 144  
   Prime Minister; Rasmussen, Anders Fogh 147  
 Dewost, Jean-Louis 23  
 Dinan, Desmond 122  
 Distribution dimension (*see* negotiation)  
 Dooge Committee/Report (Ad Hoc Committee for Institutional Affairs) 103  
 Double majority voting system 137, 153  
   in the 2000 IGC 169, 204  
   in the 2002–3 Convention 150, 174–5, 206, 207  
   in the 2003–4 IGC 65, 71, 210, 213  
 Dublin (*see* European Council)  
 Dumas, Roland 47
- Economic and financial ministers (ECOFIN) 5, 64, 70, 146  
 Economic and Monetary Union (EMU) 47, 48, 51, 104, 143, 159, 191, 192, 193  
   EURO 1, 163, 164  
   IGC 5  
   monetary policy 18  
   price stability 69  
   single currency 1, 39, 57, 161, 162  
   Stability and Growth Pact 64, 70, 174, 175  
 Economic and Social Committee (ECOSOC) 145  
 Economic  
   cohesion 31  
   governance 172  
   policy 18, 67, 69, 75, 108  
 Efficiency dimension (*see* negotiation)  
 Élysée Treaty, anniversary of 172  
 Employment policy 124, 164  
 Endo, Ken 105  
 Energy policy 67  
 Enhanced cooperation 29–30, 33, 34, 170 (*see also* flexibility)  
   in Common Foreign and Security Policy 31, 33, 170  
 Enlargement 201  
   Accession Treaty 3  
   conduct of negotiations 36  
   in the 1990–1 IGC 44, 45  
   in the 1996–7 IGC 44, 45, 50, 51, 57, 83, 122  
   in the 2000 IGC 167  
 Environmental policy 1  
 Equality of member states 67, 136, 139, 151, 155  
 Ersbøll, Niels 78  
 Estonia 130  
 EU Charter of Fundamental Rights (*see* Fundamental Rights)  
 EURO (*see* Economic and Monetary Union)  
 Eurogroup 146  
 Eurojust cooperation 67, 69  
 European Atomic Energy Community (EURATOM) 3  
 European Coal and Steel Community (ECSC) 3  
 European Commission  
   College 108–9, 110, 125, 139  
   in IGCs 4, 94–111

- influence 1, 14, 18, 94, 95, 97, 99, 101, 102, 105
- negotiation context 111
  - institutional position 102, 111
- resources 97–8, 100, 111
  - informational advantages 95, 111; content expertise 100; legal 100; technical 97, 100; process expertise procedural skills 100–101
  - internal capacity 95, 102, 111
  - reputation 111, 102
- strategies
  - instrumental 95, 97; agenda-shaping 97, 99, 100
- officials 26
- in the 1985 IGC
  - influence 94, 100–1, 103, 104
  - negotiating context
    - institutional position 15
  - resources
    - reputation 233
  - strategies
    - instrumental 104, 105; agenda-shaping 103
- in the 1990–1 IGC 18, 38, 94, 103
  - influence 48, 104, 105
  - resources
    - informational advantages 41
    - content expertise; technical 105
    - strategies 103; instrumental 105
    - preferences 46
- in the 1996–7 IGC 38, 44, 86, 105
  - influence 51, 104
  - resources
    - informational advantages 41, 82, 87, 88
- in the 2000 IGC 105
- in the Convention 2002–3 144, 147, 206
  - influence 94, 102, 106, 109, 145–6, 152
  - negotiating context 106–10
  - distribution and intensity of preferences 106
  - institutional position 107
  - resources 106
    - informational advantages; content expertise 106, 107, 108; process expertise 107, 108
    - internal capacity 106–10, 235
    - reputation 105–6, 108, 109
  - strategies
    - agenda-shaping 106, 206
    - preferences 110
    - Task Force 108
- in the 2003–4 IGC 62, 110
  - influence 95, 105–6, 110
  - negotiating context 110
    - institutional position 111
  - resources
    - informational advantages 13, 232; content expertise 78
    - internal capacity 13
- issue of size/composition
  - in the 1996–7 IGC 46, 49–51, 83
  - in the 2000 IGC 29–31, 32–5, 167–8
  - in the Convention 2002–3 139, 148, 172, 202
  - in the 2003–4 IGC 62, 63, 64, 65, 66, 67, 70–1, 200
- issue of elected Commission President
  - in the Convention 2002–3 146, 147, 149, 156, 173
- Legal Services, Commission 44, 48
- preference formation 96, 110
- President 95, 102, 105, 125
  - Delors, Jacques 102
    - in the 1985 IGC 103–4
    - in the 1990–1 IGC 47, 104–5
  - Prodi, Romano 13, 107, 146
    - in the 2000 IGC 105
    - in the Convention 2002–3/2003–4 IGC 105–10
  - Santer, Jacques 105, 108, 109
  - Secretariat General of the 100
- staff 100, 101
- European Commissioners
  - for External Relations 108
  - Barnier, Michel 108–9
  - Lamy, Pascal 109
  - Vitorino, António 107, 108, 109
- European Community 3, 38
- European Constitutional Treaty (*see* Constitutional Treaty)
- European Convention 2002–3 (*see* Convention)
- European Convention on Human Rights (ECHR) 90

- European Council 142, 150, 155  
 Presidency/president (*see*  
 Presidency)
- European Councils 189  
 Amsterdam (1997) 45, 48, 49, 53, 54,  
 87, 194  
 Athens (2003) 152  
 Berlin (1999) 167  
 Biarritz, informal (2000) 30, 31  
 Brussels  
 (2003)  
 October 63  
 December 63, 65, 67, 68, 73, 74,  
 82, 89–90, 150, 154, 210,  
 212–13  
 (2004)  
 March 67, 214  
 June 69, 70, 72, 197, 201, 214  
 Copenhagen (2002) 202, 206, 208  
 Dublin (1996) 85  
 Florence (1996) 85  
 Fontainebleau (1984) 178  
 Hannover (1988) 104  
 Laeken (2001) 126, 195  
 Declaration 60, 131, 145, 151, 171  
 Maastricht (1991) 47  
 Nice (2000) 10, 30, 31, 32–3, 167,  
 195, 203–4, 211  
 Noordwijk, informal (1997) 49, 50  
 Thessaloniki (2003) 61, 62, 208
- European Court of Justice (ECJ) 53, 67,  
 69, 139
- European integration theories 1, 2  
 Intergovernmentalism 2, 7, 83, 91,  
 117, 120, 132, 160, 235  
 assumptions 7, 121  
 Liberal 2, 94–102, 240–1 (*see also*  
 Moravcsik)  
 Asymmetric Interdependence  
 163–4  
 Principal–Agent theories 80, 242 (*see*  
*also* rational choice  
 institutionalism)
- Rational choice institutionalism 2, 7,  
 9, 13, 14, 23, 25
- Realism 2, 7, 242
- Sociological approach 39, 41
- Supranationalist approaches 83,  
 94–6, 98–9, 235–6  
 Historical institutionalism 119  
 path dependency 39, 118–20  
 Neo-functionalism 1, 91, 236  
 Neo-institutionalism 118  
 Structurationist approaches 118, 119
- European Monetary System (EMS) 17
- European Ombudsman 145
- European Parliament (EP) 117, 139  
 Conference of Presidents 131  
 Constitutional Affairs Committee  
 130, 131  
 elections 60, 61, 72  
 in IGCs 115–22  
 influence 118, 120, 131–2, 222  
 negotiating context 117,  
 121, 122  
 institutional position 118,  
 121, 132  
 resources 120, 121, 122, 132  
 informational advantages 121–2;  
 content expertise 120;  
 process expertise 120, 121  
 internal capacity 121  
 material 118, 120–1, 132  
 reputation 117, 120  
 strategies 117, 122, 132  
 instrumental 122, 132;  
 agenda-shaping 119, 121;  
 coalition-building 118, 133  
 structural 122, 132
- in the 1985 IGC 100  
 issue of powers of EP 103
- in the 1990–1 IGC  
 influence 122
- in the 1996–7 IGC 115, 122–5  
 influence 124–5  
 negotiating context  
 institutional position 122,  
 123, 124  
 resources 123  
 informational advantages;  
 content expertise 123;  
 process expertise 123  
 material 122, 123, 124, 231  
 reputation 122, 123, 233  
 strategies  
 instrumental 123;  
 agenda-shaping 123  
 structural 123  
 preferences 124

- in the Convention 2002–3/2003–4
  - IGC 126–31, 144
- influence 120, 130, 145, 147, 152
- negotiating context 126, 128–9
  - institutional position 129
  - issue complexity 129
- resources
  - informational advantages 130, 232; process expertise 121
  - internal capacity 130
  - reputation 233
- strategies
  - instrumental 126, 127, 128, 130; agenda-shaping 121
  - preferences 127–9
- issue of size/composition of 62, 64, 65, 67, 70, 139, 200
- MEPs 122, 124, 131, 145 (*see also* Brok, Hänsch, Guigou, Méndez de Vigo)
  - power of assent 11
  - preferences 116–17, 119
  - President of 43, 123, 131 (*see also* Cox and Hänsch)
  - Report on the Council 127
  - Resolution on the Council 127
  - Resolution on the Nice Treaty 126
- European People's Party 130
- European Security and Defence Policy (ESDP) 62, 63, 67, 172
- European Socialists 130
- European social partners 145
- Expertise (*see* leadership model, informational advantage)
- Financial
  - budget procedure 3, 64, 67, 70, 127
  - discharge 127
  - framework 64, 67, 70, 129
  - own resources 67
  - perspective 2007–2015 175, 202
  - provisions
  - spending (obligatory vs non-obligatory) 129
- Finland
  - in the 1996–7 IGC 45
  - in the 2000 IGC 199
  - in the Convention 2002–3 147 (*see also* small state coalition)
  - Presidency (1999) 35
- Fischer, Joschka 107, 162, 171, 172, 219
- Flexibility 161 (*also called* enhanced cooperation)
  - in the 1996–7 IGC 39, 40, 42, 46, 48, 51–3, 56, 77, 82, 85–6, 88, 91, 105, 198
  - in the 2000 IGC 170–1, 199, 203
- Florence (*see* European Council)
- Focal point (*see* negotiation)
- Foreign and Security Policy (*see* Common Foreign and Security Policy)
- Founding Fathers 46
- Fontainebleau (*see* European Council)
- France 2, 15, 17, 20, 38, 40, 184
  - empty chair policy 1965–6 159, 161
  - Foreign Minister 148, 206
    - Dumas, Roland 47
    - de Villepin, Dominique 172
  - Foreign Ministry (also called Quai d'Orsay) 164
  - French 'no' to the Constitutional Treaty 156, 160, 162, 176, 219
  - in IGCs 158–60 (*see also* French–German tandem)
  - influence 41
  - resources
    - informational advantages 164–5
    - internal capacity 235, 245; structure of political system 166, 187
    - material 158, 163, 231
    - reputation 165–6, 233
  - strategies
    - structural 167
  - in the 1985 IGC 17, 166
  - in the 1990–1 IGC 47, 48, 105
  - in the 1996–7 IGC 49, 50, 87, 88, 122, 123, 166
  - in the Convention 2002–3 135, 154, 171–5, 206 (*see also* French–German tandem)
  - influence 142, 148–9, 155
  - negotiation context
    - distribution and intensity of preferences 146–8
  - institutional set up 144–5

France – *continued*

- resources
  - informational advantages 144;
    - content expertise 144;
    - process expertise 144
  - material 135, 143, 155
  - reputation 135, 143–4, 148, 155
- strategies 148–50
  - agenda-shaping 135
  - coalition-building 135
  - structural 135
  - preferences 146, 172, 175,
- in the 2003–4 IGC 65, 72, 203, 209, 212
- preferences 160–1
- Presidency
  - in the 2000 IGC 17, 30–7, 57, 170, 199 (*see also* Nice Treaty, French–German tandem)
  - influence 33–5, 40, 166, 169
  - negotiation context 33, 167–8, 170
  - resources; informational advantages 33, 169, 171; procedural powers 33, 169; material 231; reputation 171, 233; acceptability 171; neutrality 22, 35, 36, 171
  - strategies; agenda-shaping 33, 168, 171; brokerage 30, 35, 171
  - preferences 30, 34, 35, 16, 169, 169–70, 171
- President
  - Chirac, Jacques
    - in the 1996–7 IGC 50
    - in the 2000 IGC 32, 171
    - in the Convention 2002–3 108, 141, 150, 172
    - in the 2003–4 IGC 65, 209, 212
  - de Gaulle, Charles 50, 143
  - Mitterrand, François 105
- Prime Minister 176
  - Balladur, Edouard 52
- French–German tandem (*see also* France and Germany)
  - compromises/proposals 1, 7, 53, 142, 159, 172, 173
  - crises 164, 167, 171, 172, 174
  - in 2000 IGC 167–71
  - in the Convention 2002–3 135, 142–4, 148–50, 152, 153, 155, 171–5
  - leadership 17, 158–77, 231, 233
  - parity on voting weights 169, 174
  - sub-system 158, 165–6
- Frattini, Franco 62
- Freedom, Security and Justice 54, 125
- Free movement 53, 55, 184
- Friends of the Presidency Group 5
- Full rationality/comprehensive rationality 7
- Gama, Jaime 204
- GATT 87
- de Gaulle, Charles 50, 143
- General Affairs Council 30, 61, 63, 127, 148, 186
- General Secretariat of the Council (*see* Council Secretariat)
- Genscher, Hans Dietrich 47, 104
- Geremek, Bronislaw 204
- Germany 2, 11, 15, 17, 20, 38, 40, 50, 184
  - Basic Law 162
    - Art 23 13, 166
  - Bundesrat 13, 166
- Chancellor
  - Adenauer, Konrad 161
  - Kohl, Helmut 103, 161, 162
    - in the 1990–1 IGC 105, 163
    - in the 1996–7 IGC 50, 54
  - Merkel, Angela 176
  - Schröder, Gerhard 32, 150, 161, 163, 212, 214
- federal system 13, 162, 164
- Foreign Minister 148, 206
  - Fischer, Joschka 107, 162, 171, 172
  - Genscher, Hans Dietrich 47, 104
- general elections (2005) 176
- in IGCs 158–60, 161–2, 164 (*see also* French–German tandem)
  - resources
    - informational advantages 164–5
    - internal capacity 235, 245;
      - structure of political system 166–7, 187
    - material 158, 163, 231
    - reputation 165–6, 233

- strategies
  - structural 167
- in the 1985 IGC 17
- in the 1990–1 IGC 47
- in the 1996–7 IGC 49, 87, 123, 167
- in the 2000 IGC 32, 33
  - German–Italian initiative 171
  - influence 168, 170–2
  - preferences 168, 169
- in the Convention 2002–3 135, 154, 171–5, 206 (*see also* French–German tandem)
  - influence 142, 149, 155
  - negotiation context
    - distribution and intensity of preferences 146–8
  - institutional set up 144–5
- resources
  - informational advantages 144
    - content expertise 144
    - process expertise 144
    - material 135, 143, 155
    - reputation 135, 143, 148, 155, 172
  - strategies 148–50, 172
    - agenda-shaping 135
    - coalition-building 135
    - structural 135
    - preferences 172, 175
- in the 2003–4 IGC 65, 72, 162, 203, 209, 212
- Länder 13, 54, 162, 165, 166
- preferences 161–2
- Presidency
  - (1988) 104
  - (1999) 167
  - (2007) 176
- ratification of the Maastricht Treaty 43
- reunification 162, 163, 164
- Giscard d'Estaing, Valéry 60, 105–8, 109, 144–5, 149, 151, 152, 154, 155, 174, 220
- Greece
  - Foreign minister; Papandreou, George 152
  - Greek vote against convening 1985 IGC 4
  - in the 1990–1 IGC 163
    - in the Convention 2002–3 152
    - Presidency (2002) 60, 144
  - Guigou, Elisabeth 122
  - Gulliver syndrome 134
  - Hain, Peter 149, 183, 196
  - Hannover (*see* European Council)
  - Hänsch, Klaus 123, 131
  - Hierarchy of legal acts 85, 127, 129, 130
  - High Representative (*see* Common Foreign and Security Policy)
  - Hübner, Danuta 205, 206, 207
  - Hungary 50
  - IGC 1, 3
    - agenda 4
    - conduct of negotiations 4, 198
      - acquis conferencielle* 4
      - tour de table 65, 74
    - definition 4
    - involvement of EU institutions in 4 (*see* EU institutions)
    - levels of 4
    - minor IGCs 3
    - Monitoring Committee 131
    - Preparatory Group 5, 30, 31, 32
    - Representatives Group 123
  - Influence 6 (*see also* leadership model, EU institutions and member states)
    - private gain 9, 23, 59, 95
  - Informational advantages (*see* leadership model, EU institutions and member states)
  - Institutional
    - Affairs Committee (*see* European Parliament)
    - balance 134–5, 135–41, 211
    - procedures 25
    - reform
      - in the 1990–1 IGC 40, 45
      - in the 1996–7 IGC 40, 44, 45, 48, 49, 51, 82, 83
      - in the 2000 IGC 167
      - in the Convention 2002–3/2003–4 IGC 62–7, 69–71, 72–4, 129, 153, 172
  - Integration
    - dynamics of 159
    - theories (*see* European integration theories)

- Intergovernmental  
 bargain, EU as a 96, 129 (*see also*  
 European integration theories)  
 negotiations 4, 22, 28
- Intergovernmentalist approach (*see*  
 European integration theories)
- Internal market 15, 18, 31, 163
- 'Ioannina compromise' 72, 90, 122
- Iraq war 151, 172, 173, 174, 175, 209,  
 209
- Ireland  
 Foreign Minister; Cowen, Brian 69  
 in the 1990–1 IGC 163  
 in the Convention 2002–3 147 (*see*  
*also* small state coalition)
- Nice Treaty referendum 68, 108, 205
- Presidency  
 (1996) 44, 52, 54, 79, 85  
 in the 2003–4 IGC 47, 58–60,  
 67–75, 90, 175  
 influence 74–75  
 negotiating context 59–60  
 institutional position 59  
 preferences 74–5  
 Progress report 67, 69  
 resources  
 informational advantages  
 process expertise  
 procedural powers 59  
 material 231  
 strategies 67–9, 72–3, 74–5  
 agenda-shaping 59, 67–8, 73
- Prime Minister; Ahern, Bertie 67, 68,  
 90
- Italy 50, 184, 245  
 Foreign Minister; Frattini, Franco 62  
 in the 1990–1 IGC 48, 105  
 in the 1996–7 IGC 123, 124  
 in the 2000 IGC 169  
 German–Italian initiative 171  
 in the Convention 2002–3 144, 146
- Presidency  
 in the 2003–4 IGC 47, 58–66,  
 72–5, 82, 89–90, 175  
 influence 74  
 negotiating context 59–60, 72;  
 institutional position 59;  
 issue complexity 67  
 resources; informational  
 advantages; process expertise;  
 procedural powers 59, 63;  
 material 231; reputation  
 66  
 strategies 60–3, 66, 72–5;  
 instrumental 72;  
 agenda-shaping 59, 62–4,  
 66, 68, 72–3  
 preferences 62, 68, 74  
 (1996) 79, 85  
 Prime Minister; Berlusconi, Silvio 66,  
 82, 90
- Justice and home affairs (JHA) 116, 159  
 in the 1990–1 ICG 286  
 in the 1996–7 IGC 44, 52, 53, 82,  
 105, 125, 161  
 in the Convention 2002–3 146, 172  
 in the 2003–4 IGC 68, 69, 75
- Justus Lipsius 77 (*see also* *Piris*)
- Keller-Noëllet, Max 89
- Kerr, John 145, 154, 196
- Knowledge of state-of play (*see*  
 leadership model, EU institutions  
 and member states)
- Kohl, Helmut 103, 161, 164, 191  
 in the 1990–1 IGC 105, 163  
 in the 1996–7 IGC 50, 54
- Kok, Wim 44, 54
- Labour market policy 184
- Laeken (*see* European Council)
- Lamers/Schäuble Paper 52
- Lamy, Pascal 109
- Latvia 130
- Leadership  
 definition of 2, 6  
 fragmentation of 219–21  
 model 2–3, 9–19, 239–43 (*see also* EU  
 institutions and member states)  
 assumptions 14  
 feedback 12, 220  
 influence 6, 13–14, 16  
 negotiating context 2, 3, 9–10,  
 13–16, 19, 235–8  
 distribution and intensity of  
 preferences 10, 14–16, 240  
 institutional position 3, 10, 13,  
 15, 18, 237, 241  
 issue complexity 10, 14, 16, 237  
 resources 3, 9–13, 19, 230–1

- informational advantages 10, 11–12, 13, 14, 15, 17, 231–2;
  - content expertise 11, 17;
  - technical 11; legal 11;
  - knowledge of state-of play 12; process expertise 11;
  - analytical skills 11;
  - procedural skills 11
- internal capacity 10, 13, 235;
  - structure of political system 13; internal agreement 13
- material 10, 11, 13, 17, 19, 231
- reputation 10, 12, 14, 17, 233;
  - acceptability 12, 14;
  - outcome bias 12; procedural bias 12
- neutrality 12, 14, 27
- strategies 2, 10, 16–18
  - instrumental 10, 11, 14–16, 17–18, 39, 237;
  - agenda-shaping 13, 17, 18;
  - brokerage 14, 15, 17;
  - coalition building 17–18
- mix of 16
- structural 10, 11, 15, 17, 19–20, 40, 237, 243
- unilateral 17
- negative 6
- shared 134, 135, 139, 151, 155
  - (*see also* French–German tandem)
- Learning curves 11, 38 (*see also* Netherlands)
- Legal
  - basis 26
  - Experts, Group of 61, 64, 65, 81, 89
  - personality 85, 86, 87, 127, 130
  - Service (*see* Council Secretariat, European Commission and European Council)
- Legislative Council 63, 64, 78, 127
- Lindberg, Leon N. 6
- Lithuania 130
- Lubbers, Ruud 43, 48
- Luxembourg
  - Compromise 159–60
  - Draft Treaty (1991) 46–7
  - in the Convention 2002–3 147 (*see also* small state coalition)
- Presidency
  - (1985) 15, 104
  - (1991) 46
  - (1997) 49
- Maastricht (*see also* European Council)
  - Treaty 3, 43, 101, 103, 104, 115, 116, 191
  - Treaty IGC 1990–91 38–48, 52, 55–7 (*see also* Netherlands)
- Majj-Wegen, Hanja 147
- Major, John 181, 183, 187, 191, 193, 198
  - in the 1990–1 IGC 47, 104, 182, 188, 194
  - in the 1996–7 IGC 52, 188, 194
- Majority voting (*see* QMV)
- Malta 130
- Marek, Belka 214
- Material resources 2 (*see also* leadership model, member states and EU institutions)
- McDonagh, Bobby 52
- Méndez de Vigo, Inigo 131
- Menon, Anand 146, 198
- Merkel, Angela 176
- Miller, Lescek 71, 202, 205, 206, 208, 209, 210, 212, 214
- Minister of Foreign Affairs, EU (*see* Common Foreign and Security Policy)
- Ministerial conclaves 30, 31, 63
- Mitterrand, François 105
- Moravcsik, Andrew 2, 7, 15, 76, 95, 96–8, 99–101, 240, 245
- Moscovici, Pierre 32
- Multi-annual Financial Framework 70
- Multilateral surveillance 64, 67
- Nash, John 96
- National
  - governments 121 (*see under country name*)
  - parliaments/parliamentarians
    - in the Convention 2002–3/2003–4 IGC 120, 124, 128, 130
    - ratification (*see* ratification)

- NATO 179, 184, 193, 202, 244
- Negotiation (*see also* bargaining)
- bilateral 24, 26, 27, 32, 48, 55, 68, 68, 69, 72, 73, 79, 90, 135 (*see also* confessionals)
  - context (*see* leadership model, EU institutions and member states)
  - costs 2, 5, 7, 8, 11, 14, 15, 17, 44, 51, 96–7, 118
  - decision rules 25, 29, 35
  - distribution dimension 7, 8, 17, 18, 19, 23, 25, 35, 36, 39, 48, 59, 83, 88, 91, 158, 159
  - efficiency dimension 7, 17, 18, 19, 23, 25, 36, 39, 48, 59, 74, 88, 89, 91, 158, 159
  - failure 7, 15, 24, 36
  - focal point 9, 65, 69, 81, 86, 90, 104, 131, 142, 148, 155, 159, 177
  - impediments 10, 17, 22, 24, 25 (*see also* collective action problems)
    - Negotiator's Dilemma 9
  - leverage 11, 120, 122, 123, 155
  - package-agreement 29
  - side-payments 17, 26, 29, 33, 34, 35, 98
  - strategy (*see* leadership model, EU institutions and member states)
  - theory 2, 13, 15, 23, 24, 79, 80, 98
  - two-level games 5, 98
  - zone of possible agreements 7, 12, 15, 16, 17, 18, 19, 22, 59, 83, 84, 88, 229
- Negotiator's dilemma (*see* negotiation impediments)
- Neo-functionalism 1 (*see also* European integration theories)
- Neutrality 12, 14, 22, 27, 35, 234, 220, 226
- Netherlands, The 245
- cabinet 43
  - Christian-Democrats (CDA) 43
  - Dutch 'no' to the Constitutional Treaty 56, 156, 162, 219
  - Foreign Minister; Dankert, Piet 43, 46
  - Foreign Ministry 43
  - in the 2000 IGC 33
  - in the Convention 2002–3 147, 149 (*see also* small state coalition)
- learning curves 38, 41, 44, 46, 47, 55, 57
- Permanent Representation in Brussels 43
- Presidency
- in the 1990–1 IGC 12, 38–48, 55–7, 193
  - 'Black Monday' 38, 39, 41, 43, 44, 46, 52, 56
  - Draft Treaty 46, 54
  - influence 40, 48, 55–6
  - negotiating context 44–6, 55; distribution and intensity of preferences 45–6; institutional position 44, 56; issue complexity 44–5
  - preferences 38, 40, 42–3, 46, 47; 'federalist' preference structure 38
  - resources 40–4, 55–7; informational advantages 41–2, 44, 48, 232; content expertise 41; knowledge of state-of play 42, 44; process expertise 41; internal capacity 42–4, 46, 235; reputation 42, 47, 233; acceptability 36, 42, 47; procedural bias 42; outcome bias 42
  - strategies 40, 56; instrumental 38, 41, 44, 46, 47, 55–7; agenda-shaping 39, 47; brokerage 48; coalition building 47, 56
  - in the 1996–7 IGC 12, 38–46, 48–57, 79, 86, 88
  - Draft Treaty 49, 54
  - influence 40, 51, 55–6
  - negotiating context 44–6, 55; distribution and intensity of preferences 45–6; institutional position 44, 56; issue complexity 44–5
  - resources 40–4, 55, 57; informational advantages 41–2, 44, 51, 53, 55, 232; content expertise 41; knowledge of state-of play 42, 44; process expertise 41;

- internal capacity 42–3;
- reputation 42, 55, 233;
- acceptability 36, 42, 55;
- procedural bias 42;
- outcome bias 42; strategies 40, 56; instrumental 51, 52, 53, 54, 55, 57; agenda-shaping 39, 49, 51, 53, 56; brokerage 51, 55; coalition building 49, 51, 53, 56
- (2004) 56
- preferences 38, 39, 40, 54, 87
- Prime Minister; Lubbers, Ruud 43, 48
- Socialists, The 43
- State Minister for Europe (*see* Dankert)
- Nice (*see also* European Council)
  - Formula 21, 169, 175, 202, 205, 206, 207, 208, 209–10
  - Treaty 34, 61, 150, 169, 170, 171, 173, 195, 205, 206
  - Treaty IGC 2000 30–7, 135, 149, 167–71, 203, 237 (*see also* France)
- Nieman, Peter 43
- Noordwijk (*see* European Council)
- Notes au Président 26
- Objectives of the Union 67, 69
- Olechowski, Andrzej 211
- 'One Market, One Money' paper 18
- Opt-in 47, 48
- Opt-out 46, 48, 193
- Papandreou, George 152
- Pareto
  - efficient outcome 7, 12, 42, 159
  - frontier 7, 8, 9, 15, 17, 25, 159
  - optimality 96–7, 175
- Path dependency 39, 118, 119 (*see also* European integration theories)
- Patijn, Michiel 44, 53, 56
- Patten, Chris 110
- Pedersen, Thomas 242–3
- Penelope document 109, 146
- Pillar structure (*see* structure)
- Piris, Jean-Claude 77–8, 81, 82, 86, 87, 89, 90 (*see also* Council Secretariat Legal Service)
- Poland 6, 40, 50, 201–15
  - accession
  - negotiations 206, 208, 210
  - referendum 205, 206, 207, 208, 210, 211–12
- Foreign Minister
  - Bartoszewski, Wladyslaw 203
  - Cimoszewicz, Wlodzimierz 202, 206, 207, 213
  - Geremek, Bronislaw 204
  - Olechowski, Andrzej 211
- Foreign Ministry 206, 209, 213, 215
- in the 2000 IGC 203–5
- in the Convention 2002–3 150, 154, 205–9
- representative; Hübner, Danuta 205, 206, 207
- in the 2003–4 IGC 61, 65, 71, 72, 90, 175, 209–14
- compromise 215
- resources; internal capacity, internal agreement 202, 210, 210–11; material 201, 231; reputation 209
- strategies 203, 212; coalition building 208, 212, 214
- preferences 202, 208, 210–11, 213 (*see also* Double majority voting system, Nice)
- opposition to the center-left government (2001–5) 202, 210–12, 215
- Parliament 206, 211, 212, 215
  - Senate (upper house) 206, 214
  - Sejm (lower house) 206, 210
- President: Walesa, Lech 205
- Prime Minister 90
  - Buzek, Jerzy 204, 205
  - Marek, Belka 214
  - Miller, Leszek 71, 202, 205, 206, 209, 210, 212, 214
- Police cooperation 117
- Political Union
  - IGC 5 (*see also* Maastricht)
- Pollack, Mark 242
- Portugal 11
  - Foreign Minister: Gama, Jaime 204
  - in the 1990–1 IGC 163
  - in the Convention 2002–3 130, 147 (*see also* small state coalition)
  - Presidency (2000) 30, 204

- Presidency, European Council (*see also* member states)  
   influence 9, 14, 22–9, 43, 45, 159, 177, 243  
   negotiating context 27–9  
     institutional position 22, 27–9, 237  
   resources  
     informational advantages 22, 23, 24, 26–7, 36  
     knowledge of state-of play 42  
     process expertise; procedural powers 22, 23, 24, 28, 36  
     reputation 27  
   strategies  
     instrumental 18, 20, 23  
       agenda-shaping 23, 24  
       brokerage 23, 24, 27, 28, 36, 42  
     structural 17  
   issue of permanent vs rotating  
     presidency 135, 139–41, 142, 146–7, 149, 150, 154, 155–6, 172, 173, 175, 196, 197, 205  
     ABC proposal 141, 149, 172, 173  
     Benelux proposal 148, 149, 150, 172, 173  
     dual EU Presidency 146, 147, 148, 150  
     preferences 36  
     Tour des capitals 26, 32, 34  
 Process expertise (*see* leadership model, EU institutions and member states)  
 Prodi, Romano  
   Commission 13, 107, 146  
   presidential approach 107  
   ministerial approach 107, 109  
   in the 2000 IGC 105  
   in the Convention 2002–3/2003–4 IGC 105–10  
 Proportionality, principle of 134  
 Protocols; Denmark, Ireland, United Kingdom 54, 56  
  
 Qualified majority voting (QMV) 136  
   in the 1985 IGC  
     extension of 103, 188, 191  
   in the 1990–1 IGC  
     extension of 188  
   in the 1996–7 IGC  
     extension of 46, 49, 50, 54, 78, 83, 105, 124, 195  
  
   in the 2000 IGC  
     definition of 169, 205, 206 (*see also* Nice Formula)  
     extension of 29–31, 32–5, 169–70, 195  
   in the Convention 2002–3  
     definition of 150, 174, 175 (*see also* Double majority voting system)  
   in the 2003–4 IGC  
     definition of 62, 65, 66, 67, 68, 70–72 (*see also* Double majority voting system)  
     extension of 62, 63, 64, 67, 69, 74, 83, 136, 197  
  
 Rasmussen, Anders Fogh 147  
 Ratification of Treaties  
   by member states 5, 110  
 Rational  
   actor 7, 8, 39, 96, 121  
   choice institutionalism (*see* European integration theories)  
   theory 24, 39  
 Reputation (*see* leadership model, EU institutions and member states)  
 Resources (*see* leadership model, EU institutions and member states)  
 Romania 177, 211  
 Rome, Treaty of 61  
  
 Sanctions 26  
 Santer, Jacques 105, 108  
   Commission 109  
 Schengen agreement 39, 40, 42, 46, 48, 53, 55, 56, 57, 86, 87, 88, 164  
 Schröder, Gerhard 32, 150, 161, 163, 212, 214  
 Shared leadership (*see* leadership)  
 Shonfield, Andrew 219  
 Side-payments (*see* Negotiation)  
 Single currency (*see* Economic and Monetary Union)  
 Single European Act (SEA) 4, 94, 100, 103, 104, 115, 160, 183  
   1985 IGC 4, 15, 101, 103–5, 191, 233–4  
 Single Market 1, 104, 159, 182, 191  
 Slovakia 130  
 Slovenia 144

- Small state coalition  
 in the Convention 2002–3 135, 150, 152, 153, 172  
 negotiation context 144–8  
 resources  
 informational advantages 144  
 material 143, 155  
 reputation 144  
 strategies  
 coalition-building 150, 152  
 preferences 141–2, 147–8, 154  
 unity of 152
- Social  
 Agreement 47  
 Chapter/Protocol 48, 104, 108, 192, 193, 195  
 cohesion 31  
 policy  
 in the 1990–1 IGC 47–8, 104  
 in the 2000 IGC 33, 35  
 in the 2003–4 IGC 64, 67, 68
- Sociological approach 39, 41 (*see also* European Integration theories)
- Soviet Union 47
- Spain  
 bomb attack in Madrid 2004 214  
 elections  
 (2003) 71  
 (2004) 214  
 in the 1990–1 IGC 163  
 in the 1996–7 IGC 50  
 in the 2000 IGC 33, 35, 170  
 in the Convention 2002–3 141, 146–7, 150, 154, 174, 207  
 in the 2003–4 IGC 61, 65, 71–2, 175, 202, 212–13  
 Presidency  
 (1995) 79, 84–5  
 (2002) 144, 146  
 Prime Minister  
 Aznar, José-Maria 50, 71, 214  
 in the Convention 2002–3 108, 141, 146–7, 172, 208  
 Zapatero, Jose Louis Rodriguez 214
- Spill-over (*see also* European integration theories) 1  
 functional 1  
 political 1
- Stability and Growth Pact 64, 70, 174, 175 (*see also* Economic and Monetary Union)
- Strategy (*see* leadership model, EU institutions and member states)
- Structure of EU treaties  
 in the 1990–1 IGC 46–7, 48, 56  
 in the 1996–7 IGC 48, 53–5  
 first pillar (supranational) 40, 42, 53, 54, 55, 170  
 second pillar (CFSP) 46  
 third pillar (JHA) 46, 55, 56, 159, 170  
 three-pillar structure (temple) 46, 54  
 unified treaty structure (tree) 40, 41, 46, 54
- Structural funds 33, 35, 170
- Stubb, Alexander 52
- Sub-system (*see* French–German tandem)
- Supranational institutions 2, 76–133, 134, 136–40
- Sweden  
 in the 1996–7 IGC 45  
 in the 2000 IGC 199  
 in the Convention 2002–3 130, 147, 151
- Taxation issue  
 in the 1996–7 IGC 78, 125  
 in the 2000 IGC 33, 35  
 in the 2003–4 IGC 64, 67, 68, 197
- Technical expertise (*see* leadership model, EU institutions and member states)
- Thatcher, Margaret 191, 198, 205  
 in the 1985 IGC 103–4, 183, 182, 188
- Thessaloniki (*see* *European Council*)
- Three Wise Men report 27
- Tour de table (*see* IGC)
- Tourism policy 67
- Trade policy, common  
 in the 1996–7 IGC 87, 125
- Transparency 36
- Treaty  
 Accession 3  
 Amsterdam, 1996–7 IGC (*see* Amsterdam)  
 Constitutional Treaty (*see* Convention, Constitutional Treaty)

Treaty – *continued*

- EC Treaty (*see* European Community, Treaty establishing)
- European Coal and Steel Community (ECSC) (*see* European Coal and Steel Community)
- Maastricht Treaty (*see* Maastricht)
- Nice Treaty (*see* Nice)
- on Political Union 48
- on European Union (TEU) (*see* Maastricht)
- Rome, Treaty of (*see* Rome)
- Single European Act (SEA) (*see* Single European Act)
- Triple majority voting system (*see* Nice Formula)
- Turkey 177, 184
- Two-level games (*see* negotiation)
  
- United Kingdom 2, 6, 15, 17, 38, 40, 50, 159, 165, 178–200
  - accession 178, 181
  - ban on the export of British beef 178, 194
  - British vote against convening 1985 IGC 4
  - Conservative government 104, 181, 191, 194
  - Conservative party 188, 192, 193, 194
    - party leaders 181
    - intra-party conflict 181–2
  - electoral system 182
  - entry negotiations 178, 181
  - Foreign Ministry (also called Whitehall) 185–6
  - general elections (1997) 49, 182, 188, 192, 194
  - in IGCs 183–4, 200
  - influence 185, 189, 190–1, 193, 198
  - negotiation context 187, 199
  - resources 184–7
    - informational advantages 185, 187, 232; knowledge of state-of play 184, 186, 187
    - internal capacity 245; structure of political system 182, 187, 188; internal agreement 181–2, 187, 188, 235
    - material 184, 193, 231
    - reputation 189, 190
    - strategies 188–90
      - coalition building 190, 193
  - in the 1985 IGC 188, 182, 183, 191
  - in the 1990–1 IGC 47–8, 104, 188, 191–4
    - strategy 182, 191, 193
  - in the 1996–7 IGC 54, 87, 122, 123, 188
    - strategy 194
  - in the 2000 IGC 33, 35, 169, 170, 195, 199
  - in the 2002–3 Convention 141, 146–7, 149, 174, 195–6
  - in the 2003–4 IGC 63, 68, 72, 89, 110, 197–8
  - Labour government 178, 181, 194, 198
    - Europe Minister; Peter Hain 149, 183, 196
  - Labour party 181, 182
    - intra-party conflict 181–2
  - Permanent Representation (UK Rep) 186
  - Permanent Representatives 186
    - Kerr, John 145, 154, 186, 193
    - Wall, Stephen 186, 188, 194
  - Parliament (also called Palace of Westminster) 179, 187, 188
    - House of Commons 182, 187
  - Preferences 179–84, 188, 193, 197
  - Prime Minister 186, 187
    - Wilson, Harold 181
    - Heath, Edward 181
    - Thatcher, Margaret 191, 198, 205
      - in the 1985 IGC 103–4, 183, 182, 188
  - Major, John 181, 183, 187, 191, 193, 198
    - in the 1990–1 IGC 47, 104, 182, 188, 194
    - in the 1996–7 IGC 52, 188, 194
  - Blair, Tony 183, 189, 194–5
    - in the Convention 2002–3 108, 141, 150, 172, 196
  - Referendum on membership 178
  - Underdal, Arild 6

- United Nations (UN) 163, 179, 184
- United States of America 179, 183, 184, 209
- Values, Union's 67
- Verhofstadt, Guy 110
- Veto
  - points 13, 166, 225
  - power 202, 203
  - threats in the 1991 IGC
    - France 48
    - Italy 48
    - UK 48, 104
  - threats in the 1996–7 IGC, EP 123, 124
  - threats in the 2003–4 IGC, Poland 201
- de Villepin, Dominique 172
- Vitorino, António 107, 108, 109
- Voting
  - parity 32, 34, 35
  - weights in the Council 10, 17, 29–31, 32–5, 199
    - development of 136–8
    - in the 1996–7 IGC 46, 49, 51, 83
    - in the 2000 IGC 169, 203
    - in the Convention 107, 150, 155
    - in the 2003–4 IGC 65, 82, 90
- Walesa, Lech 205
- Wall, Stephen 186, 188, 194
- WTO 87
- Yugoslavian conflict 43, 47
- Young, Oran R. 11, 37, 40
- Zapatero, Jose Louis Rodriguez 214
- Zartman, I. William 18
- Zone of possible agreements (*see* Negotiation)

