

Normative Institutionalism and EU  
Foreign Policy in Comparative  
Perspective

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## **Normative Institutionalism and EU Foreign Policy in Comparative Perspective**

This project has challenged prevailing views on the European Union's development of foreign policy and external relations – both the Intergovernmentalists' claim that policymaking in this area is dominated (and often fatally undermined) by the Member States' hard pursuit of national interests and their critics' claim that agreement is facilitated by discursive exchanges that promote convergence in national preferences.

In particular, the project is organized around a Normative Institutional theory of EU policymaking that highlights two ways in which the Union's substantive and procedural norms, as well as its pre-existing policy commitments, enable negotiated agreements among Member States with divergent policy preferences (Thomas 2008). Entrapment is the process by which Member States find it difficult to escape the dictates of substantive EU norms and thus accept (however reluctantly) norm-consistent policies that diverge from their actual preferences. Cooperative Bargaining is the process by which veto threats are sidelined by the EU's procedural norms in favor of consultation and consensus, leading Member States to adopt common policies based on mutual compromise.

These conclusions serve three purposes. First, we give an overview of the case study findings with regard to the explanatory power of Normative Institutionalism. Second, we explore the conditions under which the normative institutionalist mechanisms of policy agreement are more or less likely to be effective. And finally, we consider the implications of our findings for the European Union's ability to promote its values and interests in world affairs.

## **Part I. Normative Institutionalism and its Alternatives**

Normative Institutionalism has proven to be a robust theory of EU decision-making on foreign policy and external relations whose explanation for the policymaking process and outcome in actual cases is generally (though not universally) superior to that of competing theories. This conclusion is based on the results of fourteen case studies examined within the project's seven empirical chapters (summarized in Table 1). Our confidence in this conclusion is bolstered by the fact that the case studies covered a broad range of policy areas and institutional settings, all of the cases exhibited clear differences in the initial policy preferences of Member States, and most of the case studies provide detailed evidence of the policymaking process.

Nine of the fourteen case studies (cases 1, 4, 6, 7, 9, 11-14) demonstrate policymaking processes and outcomes that fit one or both of the Normative Institutionalist hypotheses more closely than they do any of the alternative hypotheses. Of these, all nine exhibit significant evidence of entrapment, while four cases (cases 4, 6, 13, 14) exhibit significant evidence of cooperative bargaining. In three cases (cases 2, 3, 10), we see clear evidence of normative *dis*-entrapment, where EU actors (one or all) are not expected to behave in accordance with an existing EU norm or policy commitment because external conditions are contrary to the assumptions of the EU norm/commitment or because they have assumed a non-EU role with its own distinctive norms. If many instances of EU policymaking were to exhibit disentanglement, then the percentage of real-world cases to which Normative Institutionalism applies would be significantly reduced, undermining the theory's explanatory power. But as long as such situations remain relatively rare, as these case studies suggest, we must remember that they are actually consistent with the theory's assertions. In fact, the disentanglement of the anti-Turkey

group of Member States in the 2006 negotiations simultaneously entrapped the pro-Turkey camp into supporting a partial freeze in the accession process.

In contrast, only two cases (1997 negotiations on Turkish candidacy and Iraq war) offer clear support for Intergovernmentalism's competitive bargaining hypothesis, which asserts that negotiation among Member States will be dominated by the threat or possibility of veto and thus result either in deadlock or agreement on the lowest common denominator. In both cases, however, the prerequisites for normative entrapment were absent. Two others (Ukraine accession and ICC immunity for peacekeepers) also exhibit LCD dynamics, but in the context of normative disentanglement. This does not mean that Member States did not threaten to veto EU agreement in any of the other cases under examination. But as the second ICC case clearly demonstrates, the consequences of a veto threat are minimized when the Member State making the threat find itself entrapped by EU norms.

None of the case studies conforms to either the normative suasion or policy learning hypotheses, which posit distinctive mechanisms of policy agreement based on preference convergence. Although not encouraging for hypotheses that are so well established in the theoretical literature on foreign policy and European integration, this null finding is actually less definitive than it first appears. Both hypotheses refer to social processes that unfold over time and whose effects may not be immediately evident. In contrast, each of the case studies in this project is designed to examine policy negotiation and choice within a rather limited time period, generally measured in weeks or months rather than years from a starting point where Member State preferences were demonstrably divergent. It is thus entirely possible that while normative suasion and policy learning cannot explain short-term movements from divergent preferences to negotiated agreements, they might explain what some EU observers claim is a secular longer-

term trend toward preference convergence among Member States. Assessing that possibility, however, is beyond the scope of this project's research design.

## **Part II. Normative Institutionalism and the Conditions of Policy Agreement**

The framework paper stipulates several conditions under which rhetorical entrapment and cooperative bargaining are most likely to occur. First, entrapment is expected to overcome policy divergence if there is an uncontroversial norm with clear behavioral implications (*determinacy*) and the situation in question is consistent with the normative conditions for agreement (*relevance*). When the norm is contested, indeterminate or irrelevant, the basic conditions of entrapment are not met. In addition, entrapment is facilitated by public attention to the issue (*publicity*), prior policy commitments (*precedents*), and by a site of negotiation and deliberation in which EU norms are salient (*forum*). These conditions make it even harder for actors to escape the normative trap. If the conditions of entrapment are weak or absent, cooperative bargaining is still possible – and again most likely to occur if negotiations take place in a favorable context or forum, in which the EU's norms of cooperative bargaining are most salient. By contrast, publicity is expected to have ambivalent effects, supporting normative entrapment but undermining cooperative bargaining.

Table 1 shows the presence and absence of these conditions in the cases studied in the contributions to this volume. All cases involve situations where intra-EU negotiations sought to overcome divergent preferences among major Member States.<sup>1</sup> The “case” column displays the

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<sup>1</sup> For this reason, cases of preference convergence between the most relevant Member States (such as the decision on granting Turkey candidate status for membership) are excluded here.

demands or policy proposals in question. The values for the conditions are positive if they are expected to work in favor of a positive outcome, negative if they are likely to hinder a positive outcome. The one exception is publicity, which is supposed to favor entrapment but hinder cooperative bargaining. A positive value for *determinacy* indicates that there is a clear and uncontested norm in favor the policy proposal. A *precedent* is present if previous commitments and actions along the lines of the policy proposal exist. A positive value for *relevance* means that the situation meets the conditions under which the norm prescribes agreement on the proposal, and a positive value for *forum* indicates that decisions are taken within the institutionalized channels of negotiation and deliberation of the EU. Finally, *publicity* is present if public attention to the issue is high and/or decisions are taken in a public setting

-- Table 1 here --

Richard Youngs' study of EU policy toward Ukraine finds that entrapment produced agreement on support for democratization during the Orange Revolution. When, however, Ukraine demanded a membership perspective, the earlier rift among the member state governments reemerged and could not be overcome. In both cases, an uncontested, institutionalized norm existed: support for democracy and a membership perspective for democratic European countries. In the first case (support for democratic change), the reluctance of one group of Member States could be overcome because their focus on geopolitical interests was delegitimated by the Union's strong democracy promotion norm, the situation in Ukraine during the Orange Revolution matched the conditions for the norm to be enacted, public attention was high, there was prior rhetorical commitment to democracy in Ukraine, and policy deliberations took place within the EU. In sum, the constellation of conditions was highly favorable for effective entrapment. By contrast, conditions were less favorable when some

Member States sought to offer Ukraine a membership perspective: the EU's prior rhetorical commitment for membership had always been less strong than it was for democratization, public attention had decreased, and the country's questionable democratic development after the Orange Revolution had the effect of disentrapping un-sympathetic Member States.

Daniel C. Thomas compares two cases of EU policy triggered by US efforts to gain immunity from persecution by the International Criminal Court for its citizens and soldiers. Although the recent establishment of the ICC meant that policy precedents were weak, giving in to US demands would have meant compromising the ICC statute, which the EU had strongly supported and which all Member States had signed. The two cases are nonetheless distinguished by the different forums in which they occurred: negotiations on immunity for UN peacekeepers took place in the UN Security Council while the issue of bilateral immunity agreements fell within the policymaking scope of the CFSP. Negotiations at the UN were characterized by low determinacy (one of three EU Member States on the Council held the presidency and was thus subject to different norms) and low publicity (they were largely shielded from public view), while negotiations within EU channels were characterized by high normative determinacy (the EU was formally and collectively committed to support the Rome Statute) and high publicity (NGOs and media were fully engaged). The difference in forum, with direct consequences for normative determinacy and publicity, thus explains the emergence of LCD dynamics in the first case and a combination of entrapment and cooperative bargaining in the second.

The Iraq crisis of 2002/03 is widely regarded as the most glaring foreign policy failure of the EU. In his article, Jeffrey Lewis compares the divisions and the breakdown of the cooperation norm among the EU Member States of the question of support for the war on Iraq with the agreement on reconstruction aid for Iraq later in the year. The initial deadlock over Iraq



policy resulted from a constellation of conditions, in which there was neither a common norm nor a policy precedent that could have generated agreement on supporting the war. In addition, cooperative bargaining was hampered by public posturing and negotiations and deliberations outside the institutionalized channels of EU foreign-policy making. By contrast, the EU eventually reached agreement on multilateral, UN-backed reconstruction aid for Iraq through a mix of entrapment and cooperative bargaining – first, because this kind of aid is in line with the commonly accepted EU norms for global involvement and, second, because the EU actors refrained from public posturing and moved to *in camera* deliberations.

In the case of Operation Artemis, writes Simon Duke, the context conditions for cooperative bargaining and normative entrapment were favorable as well. First, as a humanitarian intervention requested by the UN's Secretary General, it clearly conformed to the EU's normative requirements for a legitimate military operation under ESDP. Second, France as the main proponent of the operation, sought to conduct it in the framework of ESDP. Third, the failure of the cooperative bargaining norm during the Iraq crisis created strong pressures to conform to the norm in this case. By contrast, publicity and precedent do not seem to have played a major role. Rather, Operation Artemis was used to establish a precedent for NATO-independent joint military operations in the first place.

Frank Schimmelfennig's analysis of EU-Turkey accession negotiations consists of three cases of divergent preferences among the major Member States. In 1997, the EU decided not to grant Turkey candidate status as a first step toward accession negotiations. In 2004, the EU agreed on opening negotiations in 2005. Finally, in 2006, the negotiations were partially suspended. In all cases, the treaty-based norm that democratic European countries ought to have a membership perspective was present. In addition, the issue received high public attention and

negotiations were conducted within EU fora with the participation of the Commission and the Parliament. By contrast, consistency and precedence vary in line with the outcomes. In 1997, both democracy in Turkey and the prior commitment of the EU to start accession negotiations with Turkey were too weak to generate normative entrapment, resulting in an LCD outcome. In 2004, however, the political situation in Turkey had vastly improved and the EU had committed itself by granting Turkey official candidate status in 1999 and by vowing to follow the same procedures and criteria as in Eastern enlargement. Thus, all conditions for entrapment were present. Yet in 2006 Turkey undermined entrapment by failing to fully implement the Customs Union to Cyprus, and there was no precedent or prior commitment to continue negotiations unaltered. To the contrary, the EU had committed itself to sanctioning Turkey in this case.

In his study of the European Partnership Agreements (EPA) with developing countries, Ole Elgström compares the decisions on the negotiating mandate with that on the final offer the EU made to its negotiating partners. In contrast with the other cases analyzed in this volume, the EPA negotiations are characterized by competing normative frameworks and policy commitments: free trade and development. The negotiating mandate put little emphasis on development concerns and clearly favored the free trade agenda. This had very much to do with the strong position of the Commission in the policy-making process, a new paradigm for relations with developing countries developed in the 1990s, and weak public attention. As Table 1 in the paper shows, the mobilization of development-friendly public opinion made the difference in adding more development concerns to the EU's negotiating position. According to the analysis, public opinion and the NGO sector are less constrained by the EU's institutional and normative entrapment and cooperative bargaining mechanisms than the Member States and can thus have an independent impact on external relations.

The issue of targets and timetables in climate policy is one of a strong EU policy commitment, high public attention, and negotiations within the institutionalized framework of the EU. At the same time, it suffers from an indeterminate normative framework. Although the EU has increasingly committed itself to the protection of the global climate and to becoming the global environmental leader, and agreement on targets and timetables is the core reality test for such a commitment, the normative implications of this commitment for the distribution of emissions reductions among the EU Member States remained vague. Under these conditions, the negotiations on targets and timetables do not show clear evidence of entrapment. John Vogler's analysis suggests, however, that the strong commitment of the EU (and some of its Member States in particular) has prevented the negotiations from succumbing completely to competitive bargaining and thus from resulting in a pure LCD outcome.

Can we generalize the findings across the case studies? Are the entrapment and cooperative bargaining hypotheses supported? Which conditions of entrapment and cooperative bargaining are relevant either alone or in combination with others? Are there necessary and/or sufficient conditions of entrapment and cooperative bargaining emerging from this set of case studies? To answer these questions, we propose a cross-case analysis based on the summary findings presented in Table 1.

First of all, the extreme cases reveal broad support for the normative institutionalist framework. As the cases of democracy promotion in Ukraine and the decision to open accession negotiations with Turkey (in 2004) reveal, the presence of all five conditions hypothesized to promote entrapment has indeed resulted in policy agreement through entrapment in spite of initial preference divergence among the Member States. Conversely, the Iraq war case with

negative scores for all conditions (except for the theoretically ambiguous publicity condition), is the case of the most obvious failure of entrapment and cooperative bargaining.

Moving on to the individual conditions, the results are more complex. In logical terms, *determinacy* and *relevance* OR *precedent* and *relevance* is the theorized cause of agreement through entrapment in cases of divergent member state preferences. That is, we expect entrapment if there is either a clear and uncontested norm or a clear policy commitment that applies to the situation at hand and requires support of the policy proposal at hand. Indeed, a relevant and determinate norm emerges as a necessary and sufficient condition of the five cases of unambiguous entrapment (cases 1, 4, 6, 7, 9). Where there was a lack of *determinacy*, or if a clear and uncontested norm was not relevant to the situation at hand (cases 2, 3, 5, 8, 10-14), the result was no entrapment, disentanglement or only weak and selective entrapment.

A relevant precedent proved a sufficient condition of entrapment when determinacy was present as well (cases 1 and 9) but only produced weak entrapment effects when determinacy was absent (cases 13 and 14). It must be said, however, that negotiations on targets and timetables are likely to have resulted in even more competitive bargaining without the EU's prior commitment to the reduction of greenhouse gas emissions in the latter pair of cases. On the other hand, a relevant and determinate norm did not require precedents in addition to bring about entrapment (cases 6 and 7). Thus, *determinacy* (in combination with *relevance*) proved more important than *precedent* (in combination with *relevance*).

We theorized *forum* and *publicity* as non-essential but facilitating conditions for entrapment and as essential conditions of cooperative bargaining. At first glance, the evidence here is mixed. Of the twelve cases that transpire within EU forums, nine (cases 1, 4, 6, 7, 9, 11-

14) exhibit significant evidence of entrapment, which suggests a strong relationship. Neither of the two cases of negotiations outside the EU (cases 3, 5) produced entrapment or cooperative bargaining – but we must be careful about drawing strong conclusions from such a small sample. Of the eleven cases that feature high publicity, only six (cases 1, 4, 9, 12-14) exhibit significant evidence of entrapment, which hardly suggests a strong independent effect for this variable.

However, the results are more striking with regard to the respective pairs of conditions that we expect would support the entrapment and cooperative bargaining hypotheses. There is strong evidence for the expectation that entrapment would be most likely when negotiations transpire within EU forums and when publicity is high. In fact, of the eight cases that fit this description, six (cases 1, 4, 9, 12, 13, 14) exhibit significant evidence of entrapment. Of the remaining six cases, only three (cases 6, 7, 11) exhibit significant evidence of entrapment. In short, the likelihood of entrapment rises from 50% to 75% when the hypothesized conditions are present.

On the other hand, the evidence contradicts the expectation that cooperative bargaining would be most likely when negotiations transpire within EU forums and when publicity is low. Of the four cases that exhibit cooperative bargaining, only one (case 6) fits the expected conditions. The other three cases of cooperative bargaining (cases 4, 13, 14) occurred in EU forums but amidst considerable publicity.

The effects of *forum* and *publicity* are most clearly evident in the paired comparison of observations on the same issue – especially when *determinacy*, *precedent*, and *relevance* remain constant. First, they help to explain the difference in outcome in the two ICC cases. In contrast with the case of immunity for UN peacekeepers in Bosnia-Herzegovina, the EU negotiating

channels and the higher public attention in the case of the bilateral immunity agreements clearly contributed to normative entrapment and cooperative bargaining among the Member States. Second, the absence and presence of publicity best explains the different outcomes in the EPA cases: whereas weak public attention in the early stages of formulating the negotiation mandate favored the 'free trade' norm supported by the agenda-setting institutional actor (the Commission), the subsequent involvement of a pro-development NGO public accounts for the rebalancing of the final offer to the developing countries.

In sum, to generate foreign policy agreement in situations of divergent member state preferences, it would certainly be ideal to have a relevant and determinate norm, a relevant policy commitment or precedent, negotiations within the institutionalized channels of the EU, and high public attention. However, a determinate and relevant policy norm stands out as the crucial variable: a necessary and sufficient condition. This finding mirrors the results of other studies using a normative institutionalist framework (e.g. Schimmelfennig 2003; Rittberger and Schimmelfennig 2006).

### **Part III. Implications for the EU as a Global Actor**

Skeptics often deride talk of an EU common foreign policy as little more than wishful thinking. As a leading journalist put it, "national self-interest will consistently trump the EU's formation of unified policy."<sup>2</sup> Similarly, The Economist suggests that "[m]anners may come and go, but national interests still drive the inner life of the European Union."<sup>3</sup> Glaring breakdowns

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<sup>2</sup> John Vinocur, "A chance for Europe to face the New Truth," International Herald Tribune, 23 June 2008.

<sup>3</sup> Source...

in EU unity, such as that evident most recently regarding Kosovo's declaration of independence, seem to support such skepticism. But the pursuit of a 'common' approach to foreign policy, to which the Member States are formally committed, is not the same as a 'single' foreign policy based on unified institutions, to which only the most ardent Europhiles aspire. The distinction is critical.

This study provides real reason to doubt the Intergovernmentalist assertion that EU unity in world affairs will progress no faster or further than the 'slowest' Member State, which can always threaten to veto any initiative it finds unacceptable. In fact, the study shows that EU Member States often reach agreement by pursuing their national interests in a manner that takes into account the values and commitments that have already articulated together. As the case studies demonstrate, it is often this tendency, and not any convergence (coincidental or purpose-built) of Member States' policy preferences, that allows the EU to reach agreement on common policies and thus to exert influence on the world stage.

How robust is this tendency? As shown by the utter collapse of EU unity over whether or not to support the US-led invasion of Iraq in early 2003, pre-existing norms do not prevent determined national governments in the EU from breaking ranks when they see fit. However, many of the case studies show Member States reaching agreements on common policies that depart significantly from their particular policy preferences. In fact, as shown in the second Iraq case study, the EU's substantive and procedural norms sometimes enable Member States to re-establish unity even when policy preferences remain divergent. But EU governments that want the Union to finally exert an international influence commensurate with its vast population and wealth would be wise to remember that however tempting it may be to break ranks on a

particular issue, the normative foundation of agreement on common policies is more easily broken than rebuilt.

*Table 1: Conditions of Entrapment and Cooperative Bargaining*

<i>Case</i>	<i>Determinacy</i>	<i>Precedent</i>	<i>Relevance</i>	<i>Forum</i>	<i>Publicity</i>	<i>Outcome</i>
<b>1) Ukraine: support for democratization</b>	+	+	+	+	+	Entrapment
<b>2) Ukraine: accession prospect</b>	+	-	-	+	-	Disentrapment -> LCD
<b>3) ICC: immunity for UN peacekeepers</b>	-	-	N/A	-	-	Disentrapment -> LCD
<b>4) ICC: bilateral immunity agreements</b>	+	-	+	+	+	Entrapment & cooperative bargaining
<b>5) Iraq: support for war</b>	-	-	N/A	-	+	LCD then deadlock
<b>6) Iraq: reconstruction aid</b>	+	-	+	+	-	Entrapment & cooperative bargaining
<b>7) ESDP: Operation Artemis</b>	+	-	+	+	-	Entrapment
<b>8) Turkey: accession negotiations 1997</b>	+	-	-	+	+	LCD
<b>9) Turkey: accession negotiations 2004</b>	+	+	+	+	+	Entrapment
<b>10) Turkey: accession negotiations 2006</b>	+	-	-	+	+	Disentrapment
<b>11) EPA: negotiation mandate</b>	-	-	N/A	+	-	Selective entrapment
<b>12) EPA: negotiated offer</b>	-	-	N/A	+	+	Selective entrapment
<b>13) Climate change: Berlin mandate</b>	-	+	+	+	+	Weak entrapment and cooperative bargaining
<b>14) Climate change: post 2012 regime</b>	-	+	+	+	+	cooperative bargaining

*Notes: (1) When both 'determinacy' and 'precedent' are coded negative, 'relevance' is automatically not applicable ('N/A'). (2) Publicity is expected to promote entrapment but to undermine cooperative bargaining.*



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