The Institutional Problem-Solving Capacities of the Council: The Committee of Permanent Representatives and the Methods of Community

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Abstract

The quiet evolution of the Committee of Permanent Representatives (Coreper) into a *de facto* decision-making body has received surprisingly little attention by integration researchers. Even less attention has been paid to the novel institutional form and underlying rationality of this forum at the interface between the national and Community levels. Based on extensive semi-structured interviews with members of the Brussels' permanent representations, this essay examines how Coreper maintains the performance and output of the Council through the production of a distinct culture of compromise and community-method. The result, empirically demonstrated in case studies of the 1994 local elections directive and of the 1996 Helms-Burton countermeasures, is a shared commitment to finding solutions, where membership in the collective decision-making process has become part of the rational calculus of defining and defending self-interests. These findings suggest the need to modify the instrumentalist, 'hard bargaining' image of EU decision-making.

Zusammenfassung

Wissenschaftler, die sich mit der europäischen Integration befassen, haben der Tatsache, daß sich der Ausschuß der Ständigen Vertreter (COREPER) in aller Stille zu einem De-facto-Entscheidungsgremium entwickelt hat, erstaunlich wenig Aufmerksamkeit gewidmet. Noch weit weniger Aufmerksamkeit aber wurde der neuartigen institutionellen Struktur, der ganz eigenen Rationalität dieses Forums an der Schnittstelle zwischen nationaler und Gemeinschaftsebene zuteil. Auf der Grundlage von umfangreichen, halbstandardisierten Interviews mit Mitgliedern der Brüsseler Ständigen Vertretungen untersucht diese Arbeit, wie COREPER durch die Schaffung einer besonderen Verhandlungskultur die Leistungs- und Entscheidungsfähigkeit des Ministerrates aufrechterhält. In dieser durch Kompromißbereitschaft und europäisch-supranationale Orientierung geprägten Kultur entwickeln die Mitglieder einen gemeinsamen Willen, Lösungen zu finden, wobei die Mitgliedschaft in diesem Entscheidungsgremium zu einem Bestandteil des rationalen Kalküls der Definition und Verteidigung eigener Interessen geworden ist. Fallstudien zur 1994 verabschiedeten EG-Richtlinie zu Kommunalwahlen sowie zu den Gegenmaßnahmen zum Helms-Burton-Gesetz von 1996 belegen diese Entwicklung empirisch. Im Licht der gefundenen Ergebnisse scheint das Bild vom durch instrumentalistisches, zähes Bargaining bestimmten Entscheidungsprozeß in der EU korrigiert werden zu müssen.

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1 Introduction: Two Images of EU Decision-Making

There are two distinct images of decision-making in the European Union (EU). In the first, actors are self-interest maximizers, preferences are ordered and fixed, and outcomes are determined by relative power and strategic rationality. Interest calculations are utilitarian and informed by domestic politics and the constellation of sectoral demands from major producer and consumer groups. Decision-making styles are attributed to the shadow of the vote or veto and the relative intensity of preferences, with a tendency towards lowest common denominator agreements. Size matters; bargaining outcomes tend to converge around the large state preferences of Germany, France, and Britain. Side payments and package deals balance winners and losers when such calculations can be horse-traded, aided by factors such as differential preference intensities across issue-areas. Ministerial meetings are second in importance only to the grand intergovernmental bargains and biannual summitry which set the pace and parameters of integration. The process of 'everyday' Brussels business and the national representatives working lower down the decisional hierarchy are less important for assumptional reasons of parsimony as well as purported influence. In this intergovernmentalist image of the Council, the logic of collective decision-making and the context of interaction may be influenced by the 'shadow of the future,' the threat of exclusion, or reputational concerns – but factors such as the habits of cooperation and the long-term accumulation of collective sets of norms, understandings, and values are considered "lubricants" to the process, epiphenominal or anomalous in the causal sequence.

In the second, power and self-interest also matter, but these factors alone are insufficient to understand bargaining outcomes. This image of EU decision-making takes its cues from a sociological institutionalist perspective (Katzenstein 1996; Legro 1997; Finnemore 1996). According to this view, interests and preferences are not exogenously given, but constructed through processes of social interaction (Wendt 1994), which in this case includes the context of interaction at the EU-level. As a result, communicative rationality is at least as important as instrumental rationality in this approach (Risse-Kappen 1996; Kratochwil 1993; Dierickx / Beyers 1995). Styles of decision-making and "the instinctive recourse to behave consensually are as important as the formal availability of a decision-rule permitting qualified majority voting" (Hayes-Renshaw and Wallace 1995: 565).

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Ministerial meetings and the high politics of Council summits are only the apex of a much larger collective decision-making system, including the Committee of Permanent Representatives (Coreper) and the over two hundred working-groups which account for the lion's share of 'everyday' Brussels business.

This image insists there are two crucial components rationalist approaches overlook or discard *a priori*. As Peter Katzenstein (1996) argues, this includes the cultural-institutional context of policy-making on the one hand, and the constructed identity of actors on the other (4). This image also draws analytical leverage from the 'return of the state' literature such as Rueschemeyer and Evans' (1985) insight that:

> Goals, priorities, and commitments – the elements of action that function as reference points in the rational calculus and thus tend to be taken for granted in utilitarian analysis – are reshaped in effective processes of institution building and collectivity formation, at least for the pivotal sets of actors.
> (Rueschemeyer / Evans 1985: 72)

Thus the epistemological concerns of this alternative image of the Council focus on actor socialization, the processes of collective rationality formation, and what Kreps (1990) has described as a "corporate culture." This includes the formation of collective templates, cognitive maps and the 'frames of meaning' which guide and inform human behavior (Hall / Taylor 1996: 14–17; Ruggie 1993: 157–160).

Why is this debate important? Put simply, there is growing attention to the disjuncture between competing theoretical images of the Council measured against "the empirical reality of European decision-making" (Van Schendelen 1996: 532; Hayes-Renshaw / Wallace 1997). And the debate over different images of EU decision-making is an empirically tractable 'laboratory' to test competing theories of European integration. It is my contention that the explanatory power of the parsimonious intergovernmentalist image becomes significantly qualified when one examines the complexities of EU decision-making in closer detail. Examining the processual and informal attributes of EU decision-making can shed new insights on the institutional problem-solving capacities of the EU system. The remainder of this essay explores this alternative image of Council decision-making and summarizes the main findings from two case studies extracted from an ongoing research project of Coreper's role in the EU system.

2 Coreper in the EU System

2.1 A Novel Representational Form

At first glance, Coreper appears to be one of the modern world's more arcane international institutions, an opaque and secretive talking-shop of diplomats who prepare ministerial meetings of the Council. Upon closer examination, Coreper is a *de facto* decision-making body at the institutional and cognitive interface between the national and Community levels. As such, Coreper has evolved into an important feature in the EU's unique version of supranationality.[1] But Coreper remains a 'black-box' in our theories of EU decision-making. There are partial exceptions to this point. Recent studies address several features of Coreper's role in the EU system (deZwaan 1995; Westlake 1995; Hayes-Renshaw / Wallace 1997; Hayes-Renshaw 1990; Hayes-Renshaw et al. 1989). And Dinan (1994: 250) for example, attributes the relationship between Coreper and the Commission's secretariat-general as "a key ingredient in the Community's transformation in the late 1980s and early 1990s". Even periodic media attention such as Lionel Barber's "Men Who Run Europe" article in the *Financial Times* (March 11–12, 1995), Rory Watson's feature in *European Voice* (May 2–8, 1996), and a recent piece in *The Economist* (March 8, 1997) suggests that although Coreper operates outside of the limelight, there is some recognition of the type of institutional clearing-house this body signifies in the EU system.

According to Article 151 (TEU), Coreper is "responsible for preparing the work of the Council and for carrying out the tasks assigned to it by the Council." In hindsight, Article 151 is among the more remarkable acts of political empowerment in the history of the Community / Union. Whether Coreper's central placement in the system was a purposive act of institutional innovation or an unintended consequence is open to interpretation. But the quiet evolution of Coreper's power and influence in the EU system is one of the least documented institutional developments in the history of the EU. As Bieber and Palmer (1975: 313) noted, "A very great deal of completely undefined power has been handed over to the Permanent Representatives". In today's system, Coreper's role in maintaining the Community and Union's single institutional framework is deeply ingrained in the EU's decision-making machinery and interinstitutional balance.[2]

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1 Other supranational institutional forms include the German *Zollverein* and the European Danube Commission. The classic study distinguishing these cases is Hay (1966). On the *Zollverein*, see Henderson (1959). On the Danube Commission, see Chamberlain (1923).

2 William Nicoll, British Deputy Permanent Representative 1977–82, describes this role as supported by "cast-iron Treaty authority" (1994: 195).

Very briefly, Coreper is the institutional arena of the permanent representations of the fifteen member-states (ambassadors, deputies, and their staff[3]). Coreper meets weekly to prepare each upcoming ministerial meeting. Because of their workload, weekly sessions last the entire day, often continuing late into the evening or a second day. Since 1962, Coreper has been bifurcated according to a functional division of labor. The ambassadors compose Coreper II, and they handle the more sensitive political files, working mainly to prepare the monthly General Affairs Councils. This also closely involves them in recurrent or on-going negotiations covering budgetary packages, structural and cohesion funds, accession, and association agreements to name a few. The deputies make up Coreper I and preside over the so-called 'technical' Councils, including the Environment, Social Affairs, the Internal Market, Transport, Fisheries, Consumer Protection, Education, and Culture.[4]

What is perhaps most striking about the role of Coreper in the EU system is its development into a *de facto* decision-making body. A crude indicator is the prolific A-point procedure. A-points are "Agreed points" sent to the ministers *en bloc* and passed without discussion as their first item of business. By some counts, nearly 90 percent of Council decisions are made this way.[5] But the 90 percent figure can easily be misleading, since quantifying A- and B-points requires interpretation (e.g. is the local elections case presented below "really" an A- or B-point?) and substantive agenda items often have components agreed on at more than one level (e.g. the Helms-Burton case discussed below).[6] However, the image of proposals starting in the working-group, filtering up to Coreper, and once the 'technical' points are boiled off, sent to the ministers for debate and decision is a misnomer. Complicated files are almost invariably shuttled up and down the Council hierarchy at least once. The movement of proposals from Coreper to Council and Council to Coreper has become an essential iteration in the temporal sequence of EU decision-making. And the pattern which Noël perceptively observed in 1967, where "the Council prepares the meeting of the Permanent Repre-

3 Besides specialists from the line ministries, this includes the Antici counsellors who prepare Coreper II meetings (named after the inaugural chair of the group started in 1975, Paolo Antici, from the Italian permanent representation) and, since 1993, the Mertens counsellors providing identical support for Coreper I (named after Vincent Mertens de Wilmars of the Belgian delegation).

4 Since July 1960, Agriculture has had its own separate preparatory body, the Special Committee on Agriculture (SCA).

5 Hayes-Renshaw and Wallace (1997: 40) estimate "85–90 per cent of business is transacted by ministers as 'A' points, with approximately 70 per cent having been in effect settled at working group level, and another 15–20 per cent by Coreper, leaving 10–15 per cent to ministers for substantive discussion as 'B' points".

6 For a more systematic breakdown of A- and B-points, see the interesting survey of Agricultural Councils from 1992 and 1993 by Van Schendelen (1996).

sentative as much as the latter prepares the Council meeting" (248) has developed into an almost taken-for-granted trait of the decision-making process.[7] Already at this point the demarcations of *de facto* versus *de jure* decision-making authority within the EU system appear more complex than standard assumptions imply.

2.2 Wearing a Janus-Face

Any debate over the nature of Council decision-making turns on starting assumptions about the actors who participate in the system, their attitudes, and their underlying motivations. To understand how the perspective of Committee members is distinct from the ministerial and expert viewpoints, a fundamental part of the story is to understand the rationality of the permanent representatives themselves.

Without exception, the Committee members I spoke to described themselves as performing a double-role or contradictory functions, even having a "dual personality," or as one claimed, "I wear a Janus-face."[8] In Coreper, they are the representative of their member-state, and in concertation with the capital, perhaps reporting on a weekly meeting or requesting new instructions, they act as ambassador of the EU to their country.[9] This metaphor of the Janus-face goes to the heart of what Hayes-Renshaw and Wallace (1995: 564) have described as a "continuous tension between the home affiliation and the pull of the collective forum". Only half-jokingly, the German Ambassador, Dietrich von Kyaw, claims he is known in Bonn not as the *Ständiger Vertreter* (Permanent Representative) but *Ständiger Verräter* (Permanent Traitor) (Barber 1995).

What is theoretically incisive is the effect of the Janus-face on the day-to-day articulation and representation of interests. Coreper is not just an influential group of diplomats, but an institutional mechanism where member-states internalize EU membership into their "self" interest calculations. The permanent representatives share a collective rationality based on the dual-responsibility to deliver the goods both at home and collectively at the EU-level. The defining trait of this rationality is a redefined notion of self-interest and individual (i.e. statal), instrumental rationality. As one deputy in a particularly self-reflective mood explained:

> We serve a dialectical function, but it is not contradictory. We play a dialectical function between the specific interest and the overall perspective. I must do this

7 See also Lindberg (1963: 53) and Hayes (1984: 180).

8 Interview, Brussels, February 1996. All interview material quoted below was collected by the author between February 1996–July 1996 and February 1997–April 1997.

9 Interview with Emile Noël, Paris, March 1996.

> because I am not dealing with one file. There are a succession of games with my colleagues. We all understand that we must manage and cooperate for the long-term and this creates an extremely demanding work environment or the system will not work. The participants have an intrinsic psychological interest in the success of the system. But I do not live or feel a contradiction. I feel a tension. This is not antagonistic, but not unproblematic either when trying to deal with the ministers back in [the capital]. This is because there is a confidence that I will deliver the goods at home and a confidence to deliver the goods collectively. I must find ways to synthesize the two.[10]

Delivering the goods at home and collectively, combined with the decisional demands placed on Coreper, creates two features anomalous to the intergovernmental image. The first is the system of instruction and way in which the capitals internalize this dialectic between the self and the collective-self. One ambassador described his instructions as follows: "I always have two sets of instructions in front of me. One contain instructions on the specific dossier at hand and the other, which is unwritten, is a global instruction to find solutions."[11] Existing principle-agent models would have difficulty diagnosing a form of delegation that contains a permanent instruction to find solutions with an inbuilt margin for maneuver. They might object, claiming delegation operates within definable parameters, but for reasons discussed below, this belies the complexity of instruction common to the different national systems of coordination.

Second, the dialectic nature of Committee membership and confidence to deliver on both fronts is rooted in an intangible but collectively held responsibility to make a success of the Council as a whole. Contrary to the hard bargaining image of EU decision-making, this can instill a type of self-restraint in "self-interest" calculations.[12] "There is a responsibility to the Community task and narrow national interests often appear secondary from this perspective," a former ambassador told me, "Ministers take their interests as *the* national interest … But we must wear two hats. We defend national interests *and* we have a responsibility vis-à-vis the Community."[13] Another ambassador claimed, "There is a high collective interest in getting results and reaching solutions. This is in addition to representing the national interest."[14]

In the EU context, Coreper is a mechanism where member-states internalize or endogenize new ways of articulating, defending, and representing their "self" interests. As Joseph Weiler (1991: 2479) has so pointedly described, the notion of "community" in the EU breaks the "exclusivist ethos of statal autonomy." I can-

10 Interview, Brussels, July 1996.
11 Interview, Brussels, February 1996.
12 For a similar argument, see Weiler (1992: 37–38).
13 Interview, national capital, May 1996.
14 Interview, Brussels, July 1996.

not improve on Weiler's description of the importance of this development, namely its "civilizing effect on intra-European statal intercourse" which stems from the "tension of the state actors among themselves and with their community and their need to reconcile the reflexes and ethos of the 'sovereign' national state with new modes of discourse and a new discipline of solidarity" (Weiler 1992: 38). A concrete statement reflecting this point is provided by Werner Ungerer, former German Ambassador (1985–90). Diagnosing the possible effects of future enlargement and the increased heterogeneity of membership, he points out that "newcomers … might have difficulties in adapting to the 'political culture' in Brussels where compromise seeking has developed into an art," and that this is a culture "which could be qualified as a refined form of defending national interests" (Ungerer 1993: 82).

In Coreper, this culture of compromise is a by-product of the dual-responsibility of the Janus-face to deliver on both fronts, and results in a unique perspective, what Salmon has called the *"view d'ensemble"* (Salmon 1971: 642; de Zwaan 1995: 34). In perspectival terms, the *view d'ensemble* is a horizontal viewpoint in which permanent representatives "see" the broader picture in the interests of their country. This may include an extended time-horizon (generalized reciprocity), a more inclusive definition of the "national" interest by endogenizing linkages to other issue-areas or member-states' preferences, or just a more-or-less predictable instinct of what will work and what will not. The latter characteristic of the *view d'ensemble* is an outgrowth of the Committee member's permanent presence in Brussels and their often long experience in working on European affairs. This also includes a certain institutional memory, an important benefit of their tenure, which gives the permanent representative the capacity to make reference to and draw linkages with dossiers from months or years past, to recall how the insertion or deletion of a sentence or word removed seemingly implacable legal doubts, even in totally unrelated policy-sectors which share similar legal reasoning or political maneuver (e.g. packaging a report in a certain manner). In short, the perspective of the *view d'ensemble* is a qualitative aspect of the collective decision-making process found in Coreper, and contributes to the distinct supranational institutional form of the EU system.

Coreper also provides a good look at what is often described as a so-called "Community method" (hereafter, community-method). But the uses and abuses of notions of a community-method are legion in European integration studies. Complicating matters are several possible types and sources of a community-method, including the rotating presidency (often portrayed as a promoter of a Community perspective), the Commission (as an honest broker and defender of the "Community interest"), and the Council General-Secretariat (as a neutral arbiter and advisor especially through the skills of the legal service). The value-lost

is that the term community-method has lost all semblance of a meaningful conceptual and empirical indicator of supranationality – something neofunctionalists tried long ago to establish.

For those who consider the EU a *sui generis* institutional creature, the strength or absence of a community-method goes a long way as a conceptual yardstick to delineate its particular brand of supranationality. My argument is that a community-method does exist, it is partially produced and maintained through the institutional channel of Coreper, and it is the *practice* of this community-method which instantiates a form of supranationality distinguishing the EC / EU system from other multilateral forms of governance, institutions and regimes. The next section extends this argument by drawing linkages to earlier integration studies which diagnosed the contours of this emerging community-method.

3 Reconceptualizing the Community-Method

3.1 Missing Ingredients in the Intergovernmentalist Image

Many assume Coreper is an intergovernmental bargaining-table *par excellence*. But this misses the underlying rationality and ethos of Coreper as it has evolved over the last four decades. It also discounts some of the pioneering research on European integration which recognized Coreper's emerging institutional form. Ernst Haas, for example, writing in 1958, identified Cocor (which at the time was still based out of the national capitals) as "a novel community-type organ" as opposed to traditional conference diplomacy (Haas 1985: 491). From his field research conducted between 1959 and 1961, Leon Lindberg also observed the institutional form of Coreper taking shape:

> In their collective role they have become, in effect, an institution of the Community … They do not always talk on national briefs, and the common interest of all in achieving a compromise solution is generally stressed … The Permanent Representatives defend national points of view, but at the same time are influenced by their participation in Community affairs and often argue back to their national capitals in favor of Commission proposals, or in favor of making concessions to another Member State in order to achieve agreement. (Lindberg 1963: 78–79)

And as an early insider, Emile Noël stressed the *communitaire* nature of this cadre of diplomats:

> Coreper could easily turn into a carbon copy of the Council. It has not done so. The Permanent Representative also represents the Community to his government, explains the reasons behind what the Commission is doing, the concerns of

> the other governments and the importance of reaching a conclusion. The Permanent Representatives play this role as individuals, but Coreper as a body can play a similar role vis-à-vis the Council, putting forward the interests of the Community as a whole and ensuring that they prevail. (Noël 1990: 55)

An important focus of neofunctionalism which remains unassimilated in contemporary research is their attention to the emergence of a community-method, including the possibility of actor socialization and the long-term cumulative effects of EC / EU membership. Lindberg and Scheingold (1970), for example, documented different possibilities of growth inducing coalitions, including the capacity of actors to "gradually internalize the Community decision-making and bargaining norms" (Lindberg / Scheingold 1970: 119). Socialization to a community-method is the process where actors "learn new rules, develop new identifications and new patterns of mutual trust and regard" (Lindberg 1970: 98; 1966: 224–225). Borrowing from Rapoport's classic distinction, the EU's community-method suggests that decision-making less resembles a "fight" or "game" but a "debate," where "the models of problem solving, consensus formation, and communicative action enter as important defining characteristics" (Kratochwil 1993: 448; see also Lindberg 1970: 103).

There is some recognition of the value of this earlier line of questioning. In their carefully researched volume on the Council, Hayes-Renshaw and Wallace (1997: 253–255) ask: "Is there a Community Method?". They find that "… the neofunctionalists' definition of the 'Community method' remains apposite for its insights into negotiating behaviour in the EU" (ibid., 254). They go on to add:

> There is a shared culture in the Council, in spite of the public and publicised pictures of tensions and antagonistic positioning. Embedded in informal practices, as well as rooted in formal procedures, this is reinforced by forms of socialisation and engrenage, much on the line long ago identified by the neo-functionalists … Our study reveals that decision-makers in the Council, in spite of their national roots, become locked into the collective process, especially in areas of well-established and recurrent negotiation. This does not mean that the participants have transferred loyalties to the EU system, but it does mean that they acknowledge themselves in certain crucial ways as being part of a collective system of decision making. There is an identifiable cohort of decision makers, albeit with primary affiliations to the member governments, who have specific common concerns and shared commitments to the collective arena. (ibid., 278–279)

Coreper is a mainstay of this shared culture and collective process. My research supports a characterization of the permanent representatives as a group with strong identifications of membership in a collective decision-making system. As such, participation in Coreper represents an important mechanism for socialization to an EU community-method.

Another way to conceptualize Coreper's role in promulgating a community-method is what Putnam means by the accumulation of "social capital" and the development of a norm of generalized reciprocity which can "reconcile self-interest and solidarity" (Putnam 1995: 172). Coreper is an example of a dense network of reciprocal engagement, based on "thick trust" and the *production* of social capital. Unlike Putnam's attention on external sources of social capital (e.g. 169) which draw on preexisting social connections, the permanent representatives have created an administrative infrastructure which represents an *internal* source of social capital to the EU system. It is in this manner that Coreper functions as a causal mechanism in the production and maintenance of a community-method.

The accumulation of social capital in Coreper *itself* has several potential sources in addition to weekly meetings. The role of trips is one such source, which precede each European Council summit and are hosted by the presidency in office. Trips provide interpersonal and social contact and reinforce the bonds of thick trust. Although business is sometimes discussed informally, trips are more for socializing, or as an Antici counsellor explained, "The role of trips is an oiling of the mechanism."[15] Another source of social capital are lunches and restricted sessions where Committee members can speak frankly and in confidence what they say will not be reported back home. "The really frank discussions take place over lunch," a long-time observer revealed, "The real knives only come out on the table here. They know what is said will not be reported to headquarters."[16]

Coreper's socialization functions apply to new member-states as well as individual participants. Alberta Sbragia, for example, has argued the Spanish government desired a large Brussels delegation (103 in 1988) because of "the need to expose its own civil servants as rapidly as possible to the Community's ways" (Sbragia 1993: 74).[17] Of equal importance is how permanent representatives become socialized into Coreper. An experienced participant told me:

> New people at Coreper must find their way. They stick close to their instructions. They don't yet have all the technical knowledge of the dossiers. They cannot gauge what is whispered in their ears. They have to learn to trust their experts.

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15 Interview, Brussels, April 1997.

16 Interview, Brussels, March 1996. An Antici counsellor told me, "It has happened that the ambassadors call a restricted meeting to get rid of the experts, even to get the experts from the permanent representation out! To totally get rid of the watchdog. This is rare, maybe twice in my eight years here. But when it has happened it is in order to be able to say what the problem back home is more frankly and to gain a flexibility of solution including 'How can I sell this back home?'" (Interview, Brussels, April 1997).

17 The newest member-states also fit this pattern: Sweden (53 in 1995), Austria (61 in 1995) (Guide to the Council of the European Union, September 1995).

> And only then do they start to operate smoother. This takes at least half a year to relax and get used to the environment.[18]

A deputy from one of the newest member-states confirmed this process of socialization:

> Early in our membership we acted tough and we had these positions, 'Others don't like it, too bad.' But the politicians back home learned fast to be prepared to compromise. Now we are known as a country others can turn to for a compromise.[19]

A striking illustration of actor socialization is the Belgian Ambassador, Philippe de Schoutheete, the *doyen* of Coreper, and described to me by an Antici counsellor of another small member-state as a "master of the process" who has "internalized the EU more than any other single person."[20] Ambassador de Schoutheete is also legendary within the Belgian administration for training a generation of Belgian diplomats and officials to the methods of community. This reflects over 25 years of work on EC / EU affairs (as Political Director, head of the P-11 Unit [European Affairs] in the Ministry of Foreign Affairs, and Ambassador since 1987), and includes, according to an official in the Belgian Ministry of Foreign Affairs, "teaching many ministers what the EU is."[21] Similar examples of permanent representatives with long tenure, experience in European affairs, and seniority in the national capital could be cited, such as French Ambassador Pierre de Boissieu (a distant relative of de Gaulle who is often able to win arguments on intellectual prowess alone), or the German Deputy Jochen Grünhage from the Ministry of Economics who has held his post since 1987.

Coreper is not the only socialization mechanism to a community-method, but others, such as the rotating presidency which can be wielded to recalibrate and rationalize national administrations and train national officials in European policy-making, are orchestrated *through* the Brussels-based representation. A member of the Dutch delegation claimed their presidency would be used to "reeducate the national administration into Europe, to really go deep; this involves participation of some 500 to 600 people."[22] Hayes-Renshaw and Wallace (1997) support this point by arguing:

> The permanent representations in Brussels play a particular role here as training-grounds for national officials, not just in the Council's working methods and for forging links with their opposite numbers from other member states, but also for devising professional responses to this *demi-monde* between the national and Community processes. (Hayes-Renshaw / Wallace 1997: 235)

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18 Interview, Brussels, May 1996.
19 Interview, Brussels, March 1996.
20 Interview, Brussels, May 1996.
21 Interview, Brussels, July 1996.
22 Interview, Brussels, March 1996.

Another mechanism is the expansion of Community competencies which forces member-states to "extend the reach of the socialization process" (Sbragia 1993: 75). Following Maastricht, this process was accelerated or initiated in several new issue-areas. "Looking at the beginnings of the third pillar [Justice and Home Affairs] and the creation of a number of new working groups of coordinators," an Antici counsellor explained, "it is easy to stress the lack of results to date … but three years later, you can't compare how they've learned to talk to one another. This opened their mind to another EU reality."[23]

A final mechanism of socialization is the deepening and intensification of national administrative agents working on European affairs in the home capitals. This is a kind of 'dynamic density' argument which Wolfgang Wessels has estimated to include some 25,000 national officials across the EU (Wessels and Rometsch 1996: 331; Wessels 1990). Most permanent representatives have years of experience in European affairs often including previous postings to Brussels (in some cases as an Antici counsellor or a policy specialist). This reveals that the socialization process embodied in Coreper occurs over an extended time frame, inculcated through years of experience, practice, and trust building. We turn now to the instruction process and some features which suggest the need to relax the restrictive assumptions of national interest and preference formation found in the intergovermentalist image.[24]

3.2 Instructions and the Intergovernmentalist Image

Permanent representatives are under "instruction" from their national capitals. They are civil servants without authority independent of these instructions. No Committee member I interviewed failed to offer this point. In theory, this means for every issue on the agenda they have been given a national position or, at a minimum, the parameters of what is and is not acceptable. In temporal terms, this instruction is arrived at only after going through a coordination process in the national capital among the relevant line ministries, often passing through an interministerial mechanism (such as the SGCI[25] in the French case or the British Cabinet Office) or through the Foreign Ministry which informally holds coordi-

23 Interview, Brussels, May 1996. For an early identification of this socialization mechanism, see Haas' discussion of the concept of "engagement" (Haas 1958: 522–523).

24 The most developed version is Andrew Moravcsik's liberal intergovernmentalist approach. He makes two temporal assumptions which seem particularly restrictive: (a) "The analysis of national preference formation must precede the analysis of interstate bargaining (1993a: 5); and (b) "Governments first define a set of interests, then bargain among themselves in a effort to realize those interests" (1993b: 481).

25 The full name for this centralized coordinating body is the *Secrétariat général du Comité inter-ministériel pour les questions de coopération économique européenne.*

nation power.[26] And in the case of Denmark, the permanent representative has received mandation from the *Folketing's* European Affairs Committee. In practice however, there is significant variation from this principle and several layers of additional complexity which muddy this straightforward temporal sequence.

The margin for maneuver which permanent representatives can acquire varies by member-state and issue-area. Maneuverability and room for interpretation also hinges on the personalities involved. Some permanent representatives hold a great deal of seniority and standing with their ministers and in these cases, 'voice' and discretionary maneuver will be greater. And accounting for differences in the national systems of coordination, instruction, and maneuverability requires careful empirical study on a case-by-case basis. But one point seems clear: there is no simple one-to-one correspondence between national instructions and the representation of interests in Coreper. Most instructions, with the exception of certain highly sensitive issues which vary by member-state (e.g. transport for the Netherlands, agriculture for Ireland, Turkey for Greece, the ECJ for Britain) have an in-built margin for maneuver and are susceptible to evolution. Instructions which lack an appreciation for evolution and flexibility can be detrimental to representatives because discussions and the search for compromise often evolve over the course of a meeting. This is especially true for issue-areas where qualified majority voting (and the "shadow of the vote") applies, since a delegation can become isolated or left with obsolete arguments to defend.

In general, there are at least four generic patterns which challenge the intergovernmentalist image, including:

1. *Departing from instructions and making "recommendations."* When instructions are "on the wrong track" or others' arguments are convincing, permanent representatives can decide to put their instructions aside, give their provisional consent and "recommend" changes back to their national capital. Provisional consent varies by degree of certainty: "I think this can work," or "I will try…," or "I'll tell them, but… ." More likely, as one deputy commented, "On a serious piece of legislation, it won't go through one meeting, but several. Here the permanent representative will automatically have ideas to suggest."[27] Departing from instructions is obviously a sensitive interview topic and specific examples were difficult to document (but see below). Overall, this pattern points to the neglected role of the power of good arguments and the importance of communicative rationality.

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26 For concise summaries of differences in national coordination systems, see Spence (1995) and Hayes-Renshaw / Wallace (1997: 211–43).

27 Interview, Brussels, March 1996.

2. *The national capital signals a margin of maneuver exists.* Permanent representatives can be informed more or less explicitly, "not to take instructions too seriously," that they are too complicated, not realistic and so on. This can occur when national interministerial coordinating mechanisms do not function properly or in the case of decentralized systems such as Germany, there is agreement to disagree. One deputy remarked that frequently, "The Minister will tell me that I am the decision-maker."[28] And, more generally, an ambassador ascribed the flexibility in instruction to the fact that, "They [the capitals] know the system works because there are no spotlights on it."[29] This practice is similar, in two-level game parlance, to a strategy of "cutting slack."[30]

3. *There is a political need to minimize confrontation.* This occurs in issue-areas where the capitals wish to avoid politicization or debate at the ministerial level. This happens in a variety of ways, either informally by telephone or formally with an instruction that specifies, "avoid Council."[31] This has occurred in fisheries and the annual negotiations of quotas. Another exemplar (detailed below) was the 1994 local elections directive where political consensus existed among the capitals to reach agreement in Coreper rather than the General Affairs Council. In these cases, permanent representatives receive greater flexibility to find solutions and capacity to sell success at home.

4. *The national capital cannot make up its mind.* Even the most proficient interministerial coordinating systems do not always output preferences which are fixed and ordered. Sometimes, the relevant home ministry will ask their permanent representative, "What do you need?"[32] In her now-classic study, Helen Wallace (1973: 65) identified this pattern in citing an official who acknowledged, "Negotiators work best if they write their own instructions." More complex, in terms of temporal causation, is the pattern of instruction which an Antici counsellor described to me as follows: "Instructions already contain a big Brussels element in them, and sometimes they *are* Brussels-instructions, because the first ten lines of our report imply an instruction … sometimes they just copy our reports into instructions."[33]

The role of reporting complicates any parsimonious explanation of the instruction process. For the permanent representative, reporting is a central channel of

28 Interview, Brussels, March 1996.
29 Interview, Brussels, July 1996.
30 In this context, permanent representatives are not reformulating national preferences but reshaping domestic constraints. For more on this strategy, see Moravcsik (1993c: 28).
31 Interview, Brussels, February 1996.
32 Interview, Brussels, April 1996.
33 Interview, Brussels, May 1996.

voice. Reporting is also a mechanism in the causal chain of interest definition and redefinition. An Antici counsellor stressed his ambassador often goads his assistants, "If you do such silly reporting, how can you expect to get better instructions from [the capital]?"[34] Another pointed out that "Reports can be written in such a way as to exert a certain amount of pressure."[35] Even the British, who have acquired a reputation for some of the more rigid and inflexible instructions in recent years, can force London to rethink a position. As a senior member of the British representation told me, "The permanent representatives' voice can sometimes produce a paradigm change back home."[36] A recent example of this was British Ambassador Kerr's handling of the Delors II package and the budget rebate during their last presidency which ultimately saved the UK millions of pounds, despite initial opposition from London to accept the financial package.

Coreper can also act surreptitiously. Permanent representatives sometimes engage in "plotting." They can, for example, "especially underline opposition."[37] For instance, in updating the association agreements with Central and Eastern European countries to account for the Uruguay Round of GATT and the accession of Sweden, Austria and Finland, agricultural import quotas had to be revised. The German Ambassador was instructed by the Agricultural Ministry to defend tough restrictions, and despite the trade liberalization arguments from several other member-states, insisted on maintaining a tough line. But the German Ambassador had to weigh this preference with Germany's overall interests for Eastern enlargement, and was dissatisfied with this rigid instruction. In Coreper, the British Ambassador raised a strong objection to the effect that: 'You are defending an amount of produce which will fit in the trunk of Dietrich's Mercedes and we are talking about the future of Europe.'[38] The Danish Ambassador also intervened to argue the German reservation was unacceptable, that the new quotas amounted to something like half of one potato chip for each German. The German Ambassador packaged this opposition into his report back to Bonn, which subsequently changed its position and dropped the reserve. As a member of the German delegation summarized, "Enlargement interests had to overcome agricultural reservations."[39]

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34 Interview, Brussels, March 1996.
35 Interview, Brussels, March 1996.
36 Interview, Brussels, May 1996.
37 Interview, Brussels, March 1996.
38 A participant suggested the German and British ambassadors "planned" this intervention beforehand. In any case, the general pattern of bilateral discussions before and even during Coreper sessions is an important practice, especially the informal coordination of views with the President. On this point, see de Bassompierre (1988: 25–29).
39 Interview, Brussels, March 1996.

Plotting and underlining opposition can also involve censure or strong pressure from the group on a delegation to reconsider their position. A deputy of one of the newest member-states cited the example of a data protection proposal where the national position became isolated and Coreper "did not accept our argument." As a result, they had to attempt to change the capital's view, and the deputy was "grateful for their harsh comments [in Coreper], a form of 'faked outrage' which is a hidden rule of behavior."[40]

Another hidden rule of behavior is the ability of permanent representatives to signal disagreement with their instructions. If they receive a strict instruction, or in their overall view, an instruction they do not like, there are several ways they can proceed. "If the capital won't move, I say this very frankly in Coreper. But I may say to them, 'This is my view this week, but it may not be next week.'"[41] Or they may approach the president for an informal bilateral and say, "We must be tough here, but I promise to discuss with [the capital] for better instructions next week."[42] Another strategy is to just read them. They may say, "Mr. Chairman, I'd like to read you something which I myself do not understand," or "Unfortunately I have to bore you with the following …"[43] Some Committee members claim they can detect when a colleague is not behind their instructions by body language alone. A deputy explained:

> In these cases, I won't sound as convincing as usual. The others sense you are not behind them. Twice I just read them. They were not sensible. I couldn't just throw them in the wastebasket, but I could not make an argument with them either … when I hear other permanent representatives reading their instructions, I just let it go, we don't even start a discussion.[44]

Occasionally, they may even 'throw their instructions away.' This is rare, but two examples will suggest the general pattern. A Committee member told me:

> One time, in the Cultural sector, I fundamentally disagreed with my instructions. So I made my own proposals and sold them [back home] afterwards. At a restricted Coreper meeting I told the president, "This is my personal opinion and if we get this compromise I will try to sell it." I took a risk by making my own proposals, because my instructions said not to do anything.[45]

In another case, a deputy described going against their instructions on a telecommunications proposal because the position was indefensible. Specifically:

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40 Interview, Brussels, March 1996.
41 Interview, Brussels, March 1996.
42 Interview, Brussels, April 1996.
43 Interviews, Brussels, July 1996 and February 1997.
44 Interview, Brussels, March 1996.
45 Interview, Brussels, March 1996.

> Sometimes they give me a bad argument to defend. In one case they said place a reserve because we have a national regulation which we don't want to change. I threw this instruction away. I need a good argument …. They said keep the reserve because this is technically not possible. So I gave it up. My collaborators [i.e. assistants] were nervous, they said I can't do that. I said if the Minister wants to raise a lot of laughter in the Council, then let him do that I told them. So I wrote in my report "I let this pass" and explained why.[46]

Though these cases may occur infrequently, it remains puzzling why permanent representatives would take such political risks. After a closer examination of two case studies, we will return to this puzzle which remains anomalous without reference to the interaction context of Coreper.

The next section details two case studies: the 1994 local elections directive and the 1996 Helms-Burton countermeasures. Based on an "embedded case study" design (Yin 1994) and a strategy of "process tracing" (George 1979), my objective is to document the bargaining sequence of each case to provide a more accurate image of decision-making in the EU system. The local elections directive is a plausibility probe to establish that Coreper does indeed handle highly political, sensitive dossiers. But the local elections directive is also a "critical" case in the strict methodological sense; it is a dossier invoking all the pathologies of a 'joint-decision trap': a symbolic 'high politics' issue dealing with national citizenship and electoral laws, subject to unanimous voting, and a contestable extension of Community competence. If the hard bargaining image is accurate, we should see it at work here. If, on the other hand, we find evidence for a community-method, even in this 'tough' case, then we could reasonably expect to find similar evidence in less politically charged and more routine cases.

The case of the Helms-Burton countermeasures illustrates Coreper's role in the broader context of the Council's decision-making machinery: permanent representatives are not omnicompetent problem-solvers, but they are instrumental agents in the process of coordinating European level policies and reaching agreement. Another signature case where the intergovernmentalist image would expect to find hard bargaining and a lowest common denominator outcome, Helms-Burton exemplifies a problem-solving approach to EU decision-making. As I will show below, the EU countermeasures to US extraterritorial trade policy depended crucially on the horizontal viewpoint and cross-pillar aggregration functions of the permanent representatives.

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46 Interview, Brussels, March 1996.

4 Coreper and the Community-Method: Two Cases

4.1 The 1994 Directive on the Right to Vote and Run for Municipal Elections

At a December 19, 1994 meeting of the General Affairs Council, the Foreign Ministers formally adopted a directive on the right to vote and run for municipal elections (94 / 80 / EC) which had been solved twelve days earlier by the ambassadors at the 1634th session of Coreper.[47] This is a classic example of a "false B-point," or an A-point 'disguised' for political reasons as a B-point and rubber-stamped by the ministers. What makes this a classic example is that negotiation of the directive was engineered to "avoid Council" and kept exclusively at the working group-Coreper levels. After Internal Market Commissioner Vanni d'Archirafi introduced the proposed text[48] to the General Affairs Council on April 18–19, 1994 and two days later to Home Affairs, no ministerial discussion took place again on this file. When it was sent back to the Council on December 19, unanimous agreement had already been reached in Coreper, including a delicate 'eleventh hour' compromise on the subject of member-state derogations.

This case reveals Coreper does not deal merely in "non-controversial" matters. The local elections directive covers extremely sensitive domestic political issues related to electoral and citizenship laws. The directive grants EU citizens living in another member-state the right to vote and run for office in municipal elections, and establishes a principle of equal treatment between national and non-national EU citizens.[49] Implementation would require constitutional amendment in several member-states, including: Belgium, Germany, France, Luxembourg, Italy, Greece, Portugal, Spain, and Austria. Clearly, this is the stuff of 'high politics.' But as mentioned above, one of the functions of Coreper is to handle files where politicization risks are high and perceived as undesirable. During negotiations

47 The full title is the Council directive "laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by citizens of the Union residing in a Member State of which they are not nationals" (OJ L 368 / 38, 31.12.94).

48 Com(94) 38 final, submitted to the Council on February 28, 1994.

49 For reasons of space, I have excluded coverage of the 1993 negotiations on detailed arrangements for Article 8b(2) (TEU) which grants EU citizens residing in another member-state the right to vote and stand as a candidate in European Parliamentary elections, Council Directive (93 / 109 / EC) (OJ L 329 / 34; 30.12.93). But the EP directive was also less contentious than the local elections case, supporting the latter's characterization as a critical case. It was widely predicted after the EP elections directive was adopted that the local elections directive would be more controversial and difficult to reach agreement on (e.g. Koslowski 1994: 389).

under the German presidency of 1994, an Antici counsellor claimed instructions clearly signaled the need to "keep it away from the press, where it would have been politicized quickly."[50] Another explained, "We all knew that if the discussion was put a certain way we never would reach agreement. Because of the press, pressure from national populations, the idea that 'We will be run by foreigners'…."[51] A resident journalist in Brussels who followed this file told me, "It was specifically dressed up as a B-point, but it was definitely an A-point. It was felt that the ministers couldn't contain this issue."[52]

The local elections directive can claim a remarkably long shelf-life. Its origins date back to the Paris Communiqué of 1974. Point 11 calls for a working party to "study the conditions and the timing under which the citizens of the nine Member States could be given special rights as members of the Community."[53] Following up on this, the Commission sent a report to the Council in July 1975 which argued the working group "should study the possibility of granting to everyone at least the right to vote and stand for election at the municipal level."[54]

In November 1976, Coreper was sent a report from the *ad hoc* working party on special rights of citizens. The bulk of this document spelled out the problems with granting Community nationals living in another member-state (referred to as "Community foreigners") "active voting rights" in local elections. In addition to these problems, there was unanimous agreement that "the Treaties did not provide an adequate legal basis for the adoption of an instrument on voting rights. Only an instrument under international law or a Treaty amendment would suffice."[55] This report was sent back to the group level, but "the delegations spent most of their time outlining the political and legal difficulties … [this] … would create in their country," including the need for constitutional revision (in six of the nine member-states).[56] As a result, in June 1977, Coreper "did no more than 'take note' of the report presented to it."[57]

Following rejection of another preliminary draft resolution prepared in 1979, the file was placed in deep storage until the mid-1980s. Initially, these new discussions also ran aground. The ad hoc group set up after the Fontainebleau European Council in 1984 (the Adonnino Committee) could only agree in their report

50 Interview, Brussels, May 1996.
51 Interview, Brussels, April 1997.
52 Interview, Brussels, March 1997.
53 Bull. EC 12–1974, point 1104.
54 Bull. EC Supplement 7 / 75, 2.
55 Bull. EC Supplement 7 / 86, 11.
56 Ibid.
57 Ibid.

approved at the 1985 Milan summit that voting rights and the eligibility to run for local elections "falls within national jurisdiction."58

The next important development was a request from the European Parliament for a new Commission report on November 15, 1986. In this report, the Commission provided systematic demographic statistics as well as the legal and political status of voting rights for non-nationals in each member-state.[59] It was estimated that four million Community nationals were living in another member-state, and as such, were "disenfranchised in local elections by virtue of living in a Member State other than their own."[60] The report led to a Commission proposal in 1988 for a directive on voting rights for Community nationals in local elections.[61]

Although this proposal would resurface and serve as a partial template in the Maastricht negotiations on citizenship, one group member claimed, "The 1988 draft never got far because at the time it was very questionable for Community competence in this field."[62] But at least one Antici counsellor who worked on this file in 1988 and 1989 detected new impetus behind this dossier. Specifically, "The working group level discussions went well. There was almost agreement on the text, but some really key questions needed to be addressed still."[63] Following an initiative by the Spanish presidency, the topic of voting rights for Community nationals was placed on the agenda of the January 23, 1989 General Affairs Council.[64] Negotiations continued to gather momentum. A member of the Belgian delegation recalled:

> In 1990, this file went from the working group to Coreper and then to the Council. The result was an agreement in principle, but the political problems were still not solved. What happened was they stopped negotiations at Council and agreed to take the issue up in the IGC.[65]

According to the Council press release, the Foreign Ministers discussed this topic at their June 18–19 meeting, but noted "political, constitutional and legal problems in connection with this proposal which prevent certain Member States from taking up a final position."[66]

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58 Ibid.: 14.
59 Bull. EC Supplement 7 / 86.
60 Ibid.: 5. In the Commission's 1994 proposal (COM (94) 38 final), this estimate was five million. See also, Koslowski (1994).
61 COM(88) 371 final.
62 Interview, national capital, March 1997.
63 Interview, Brussels, April 1997.
64 Press Release. Council of the European Communities, General Secretariat. 4163 / 89 (Presse 4).
65 Interview, Brussels, February 1997.
66 Press Release. Council of the European Communities, General Secretariat. 7258 / 90 (Presse 98).

So it was only under the auspices of the Maastricht negotiations and the political consensus to give substance to the chapter on European citizenship that the right to vote and run for local elections was finally accepted.[67] As a result of the Treaty deadline, there was considerable time pressure during the German presidency of 1994 to reach agreement on the detailed secondary legislation. As one group-level participant explains,

> This was a big step for most member-states, but because of the deadline, discussions were kept going. It was essential to have lots of meetings to keep the rhythm going. It would have been very difficult for one member-state to sign for it at Maastricht and then veto it. [But] the real danger was that it would be postponed and negotiations would advance very slowly.[68]

In order to understand how the timing and political acceptance of voting rights for Community nationals differed from previous failed attempts, the 'grand bargain' and package-deal of Maastricht must be taken into account. As do subsequent time pressures to agree on arrangements detailing Article 8b(1) by the December 31, 1994 deadline. But a third critical factor was that detailed arrangement negotiations were injected into Coreper. Without recourse to the community-method found in Coreper, this directive would have looked very different if it had been adopted at all.

The critical litmus-test for this counterfactual argument is the handling of the derogations stage. Derogation discussions were initiated at the group-level, beginning in the Fall of 1994, but this was for trouble-shooting, not negotiation.[69] The German presidency employed the group to discuss derogations at a technical level (i.e. demographics, etc.). But derogation negotiations only began to take place in Coreper in late October.

The ambassadors first discussed derogations at length on October 19. At this time, several were under instruction to seek special consideration, although the packaging and presentation of these "special problems" would only be played out over the next seven weeks. In particular, six member-states claimed difficulties: Luxembourg, Denmark, France, Greece, Austria, and Belgium (see table 1).

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67 The relevant Treaty Article is 8b(1), which reads: Every citizen of the Union residing in a Member State of which he is not a national shall have the right to vote and to stand as a candidate at municipal elections in the Member State in which he resides, under the same conditions as nationals of that State. This right shall be exercised subject to detailed arrangements to be adopted before 31 December 1994 by the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament; these arrangements may provide for derogations where warranted by problems specific to a Member State.

68 Interview, Brussels, March 1997.

69 Interview, Brussels, April 1997.

Table 1 Derogation Arguments for the 1994 Local Elections Directive

	Nature of Problem	Received Understanding	Compromise Reached
Luxembourg	30% of electorate are non-national EU citizens	Yes	Article 12(1). Can establish minimum residency requirements for non-national EU citizens, not to exceed the term length of the local office in question (to vote) and twice the term length to stand as candidate
Denmark	All foreign nationals can vote in local elections after meeting a residency requirement of 3 years; Community nationals should still be required to meet this requirement	No	Danish nationals are not subject to this requirement; would violate the principle of equal treatment between all EU citizens
France	Certain local offices participate in the *Collège des grands électeurs sénatoriaux*, and have powers to elect delegates to the parliamentary assembly	Yes	Article 5(4). Allows additional restrictions on local offices designating delegates who vote in or elect members to the parliamentary assembly
	In municipalities where over 20% of voters are non-national EU citizens, only 20% of the seats in the local assembly should be held by such nationals	No	Violates the principle of equal treatment, and the restriction of posts to own nationals in Article 5(3)
Greece	Desired extension of the Luxembourg derogation to the local level	No	Exemptions should be as restricted as possible and are not applicable to local government units; the Luxembourg derogation applies to the national level
Austria	Desired extension of the Luxembourg derogation to the local level	No	Exemptions should be as restricted as possible
Belgium	Territorial division of electorate into linguistic communities	Yes	Article 12(2). Can restrict application of directive to certain communes, a list of which must be published one year before elections are held

Luxembourg already had support for a derogation, and discussion reiterated only why this was justified. Even the earlier 1988 Commission proposal recognized the need for exemptions in a member-state where the proportion of non-national Community residents is 30 percent of the total electorate.[70] It should be noted that the Luxembourg derogation was raised at the second working group meeting on April 15 (under the Greek presidency), and consensus already existed.[71] The wording of the derogation covers a member-state where non-national EU citizens form more than 20 percent of the total electorate, effectively limiting the exemption to Luxembourg (i.e. the 20 percent threshold is *not* applicable to individual municipalities within member-states). However, this derogation created a precedent other delegations would try to extend to their own "special" problems.

Denmark, for example, already allowed all foreign nationals the right to vote in local elections after a minimum residency of three years. They pushed for the extension of this requirement to non-national EU citizens as a special clause to the directive. This reservation remained on the agenda and was discussed as late as the Coreper II meeting on December 2. But few delegations supported a fixed residency requirement, under the logic that Danish nationals were not subject to a similar restriction and this violated the principle of equal treatment between national and non-national EU citizens. Unable to convince the others this derogation was warranted, the Danish delegation dropped their reserve and accepted the directive as it stood.

France requested a derogation stemming from special problems in municipalities where mayors have sovereign powers to elect Senate delegates. The argument heard in Coreper was that the French Senate amended the constitution to allow EU citizens the right to vote and run for local elections subject to reciprocity (Article 88–3), but they also added to that clause: "Such citizens may not perform the duties of mayor or deputy mayor or participate in the designation of senatorial electors and the election of senators."[72] In other words, the French wished to exclude municipal offices with independent powers in Senate elections from thescope of the directive. On this score, they received support and understanding in Coreper. The rationale for accepting the derogation was that Article 8b (TEU) clearly delimits the scope of voting and participatory rights to the municipal level.[73]

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70 In the other member-states, the average proportion of non-national Community residents to nationals varies from 0.3 percent to 6 percent of the total electorate.

71 Interview, national capital, March 1997.

72 Cited in Keraudren and Dubois (1994: 151).

73 Article 5(4) of the directive reads: "Member States may also stipulate that citizens of the Union elected as members of a representative council shall take part in neither

However, the French also proposed to restrict the directive's scope by limiting the number of local seats open to non-national EU citizens in specific municipalities. In October, under pressure from Paris, and the political signals being sent from the Senate, the French delegation argued to add a clause limiting the number of seats open to other member-states' citizens to 20 percent in municipalities where over 20 percent of the electorate are non-national EU citizens.[74] In effect, this would extend the Luxembourg derogation to the local level. Several delegations entered scrutiny reservations. The Greek delegation showed early support for the restriction. But the majority was not in favor of this 'quota system' because it violated the spirit of the principle of equal treatment and the *implicit* understanding that restrictions under Article 5 of the directive should not be so broad as to enable a member-state to extend exemptions to all the seats on a local council.[75] In the end, it was agreed this derogation would result in a patchy implementation of the directive, severely restrict its scope and application, and render the Treaty's objective of endowing EU citizenship with distinct rights a hollow shell. The French ambassador, under instruction, kept this reservation in place right up until the end, when it was dropped after the lunch session of Coreper II on December 7.

Greece and Austria had a harder time generating understanding for an exemption. In fact, both arguments were torpedoed in Coreper, one implicitly and one explicitly. Greece raised their concern at the working group level by stating, "We would have problems in certain municipalities … but this is for political consideration." In the informal bilateral discussions which followed, the Greek delegation raised what one group member described as "Their hypothetical concern that they could have the future obligation to give Turkish citizens the right to vote."[76] Another participant recalled, "The Greeks felt they had a problem, but this did not get much understanding in the group or in Coreper. Their problem was forward-looking and hypothetical. They wanted the 20 percent derogation extended to individual municipalities, and their argument was that if Turkey ever became an EU member they would have several local communities which would be affected."[77] While Greece strongly supported the French proposal for a 'quota system', they never came out and made an argument for their derogation needs in Coreper. Perhaps aware their argument lacked persuasive power, they quietly dropped their reserve along the way, and the addition of a review proce-

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the designation of delegates who can vote in a parliamentary assembly nor the election of the members of that assembly."

74 Interview, Brussels, March 1997.

75 Interview, national capital, February 1997.

76 Interview, national capital, February 1997.

77 Interview, Brussels, March 1997.

dure enabling the Commission to propose "appropriate adjustments" may have been a face-saving device for Athens.

A similar hypothetical concern was raised by the Austrian delegation, which did receive explicit rejection in Coreper. "They were afraid of how the directive would be accepted internally," a group representative recalled, "They are afraid of extreme Right movements and they have a high standard of living so it was not easy to explain to them the advantage of the directive." They were also initiates to the practices of a community-method. The Austrian Ambassador pressed for a special derogation twice at the level of Coreper. The first time, no one said anything in reply. "We just sat there and listened," a participant recalled, "[German Ambassador] Von Kyaw waited to see what would happen. But the second time Austria raised the issue, Von Kyaw was very rough to the Austrian Permanent Representative. The Austrian Ambassador said in Coreper, 'What is the logical argument why you cannot accept our case?' Von Kyaw replied very sharply, 'We are here meeting very pragmatically, I don't have to explain the logical case to you.' He said this very rough and it was the last we heard of the Austrian derogation."[78]

The final "special" problem was raised by Belgium, which proved to be the true endgame of derogation negotiations. Strategically, the Belgian delegation waited to present their case until the others' arguments had been heard. The Danes were unable to garner support for a fixed residency requirement. The French had worked out a satisfactory wording to limit the directive's scope, but justification for their 'quota-system' was unconvincing. The Greeks "had almost forgotten their problem."[79] And the Austrian argument had been rejected. One ambassador recalled the issue with Belgium was "How to accept the Belgium problem without opening the Pandora's box of Treaty revision?" "We were able to do it in Coreper," he added, "but it would have been difficult to do in a crowded, mediacized General Affairs Council."[80]

Essentially what happened was the Belgian Ambassador requested a restricted session to clear the room and said, 'We will need constitutional changes to transpose this directive and the Flemish Chamber will not accept it without a derogation.' His ability to speak frankly and seek understanding from his colleagues was based on a culture of compromise and a mutual responsiveness to accept domestic political constraints. And unlike the other failed attempts for member-

78 Interview, Brussels, March 1997. The 'roughness' of this incident may seem to support an image of hard bargaining. But in the interaction context of Coreper, this is evidence of the socialization process described above and the group censure and harsh comments which can be used to underline opposition.

79 Interview, Brussels, April 1997.

80 Interview, Brussels, March 1997.

state derogations, the Belgian problem was supported by a good argument. As a member of the Belgian delegation explained:

> We knew that the members of Coreper knew the Belgian situation. They live here, they hear the radio, read the news, and they understand our domestic political problems. The ambassadors did not need a detailed explanation to justify the derogation to their capitals because they already understood the problem. Sometimes in Coreper there is a lot of understanding without a lot of words … . Included in the derogation was a guarantee to the other member-states that it would be as limited a derogation as possible … Ambassador de Schoutheete actually asked for a closed derogation, not an open one. And this is something ministers do not want to discuss. The Belgian Minister would have had to explain the Belgian situation in the Council and the ministers would not understand.[81]

It is significant that the Belgian derogation was settled over lunch at the December 7 session of Coreper where the ambassadors could again meet in restricted session and speak frankly. Before restarting Coreper after lunch, the ambassadors telephoned their foreign ministers to explain the agreement reached. They emphasized the Belgian derogation was necessary and an acceptable solution was in hand. A participant described the reports back home as follows: "The concessions we agreed on were accepted in the capitals as the bottom-line, after a series of long telephone discussions."[82]

In summary, this case illustrates the problem-solving capacity of Coreper and their influence in handling a sensitive political file which included a tricky balancing act of delivering the goods at home and collectively. While this was a dramatic case supporting my argument that the bargaining style of Coreper is embedded in an atmosphere of frank discussion, thick trust, and a shared commitment to finding solutions, it is also a critical case to understand Coreper's role in making a success of the Council through the production of a distinct community-method.

4.2 The 1996 Helms-Burton Countermeasures

When EU blocking legislation to the United States Helms-Burton Act was formally adopted as an A-point at the November 22, 1996 meeting of the Fisheries Council, five months of intense negotiation and transatlantic brinkmanship had culminated into a successful case of collective problem-solving at the European level. Unlike the case of the local elections directive, the EU response to Helms-Burton was not settled quietly in Coreper, but processed at multiple levels of the Council machinery and resolved only in the margins of a General Affairs Council

81 Interview, Brussels, March 1997.
82 Interview, Brussels, May 1996.

on October 28. But as this case will reveal, Coreper's input and packaging of the response was instrumental for collective EU action.

The "Cuban Liberty and Democratic Solidarity (Libertad) Act," better known as the Helms-Burton Act, was signed into law on March 12, 1996 by US President Bill Clinton.[83] Ostensibly, his endorsement was precipitated by the desire to tighten the existing US embargo on Cuba in response to the shooting down of two small US civilian aircraft in international waters by Cuban military jets on February 24, 1996. Prior to this incident, President Clinton did not support Helms-Burton and was on record saying he would veto the bill if it ever reached his desk (Lowenfeld 1996: 419).[84] Designed to reinforce existing US legislation to isolate Cuba, Helms-Burton amalgamates existing embargo regulations into one statute. There are four main provisions. Title I reaffirms and extends the restrictions of the embargo, for example, by prohibiting indirect financing through international financial institutions such as the International Monetary Fund. Title II details provisions by which the US will provide assistance to a free and independent Cuba. This is a detailed section, listing the necessary conditions before Cuba can be considered democratic, as well as the types of assistance the US is willing to provide.

The remaining two provisions are the fundamental source of international controversy. The main extraterritorial component of Helms-Burton is Title III, which enables US citizens whose property was confiscated after the 1959 Cuban revolution to sue foreign companies currently benefiting from this property. Claimants may recover damages equal to the value certified by the US Foreign Claims Settlement Commission or the fair market value, plus legal costs. President Clinton agreed to sign Helms-Burton after negotiating with Congress the right to suspend the Title III provision allowing lawsuits. The terms of the Title III waiver require renewal every six months, and the right to sue foreign companies is retroactive from November 1, 1996 if the suspension is ever lifted. The Final Title, Title IV, holds that foreign nationals found "trafficking" in confiscated property can be denied entry into the US. Trafficking is defined very broadly, to include the buying, selling, transferring, or leasing of expropriated property, as well as "engaging in a commercial activity using or otherwise benefiting from confiscated prop-

83 Public Law No. 104–114, 110 Stat. 785 (March 12, 1996).

84 On September 25, 1995, Secretary of State Warren Christopher sent a letter to House Speaker Newt Gingrich stating, "We believe that [Helms-Burton] would actually damage prospects for a peaceful transition … [and] would jeopardize a number of key US interests around the globe" (quoted in Lowenfeld 1996: 419, fn. 3). Despite the Clinton Administration's initial misgivings for Helms-Burton, this was an election year, and taking a tough stance on Cuba would help secure the vote of the Cuban-American population in Florida. For more on this point, see Roy (1997: 3); and *Business Week*, November 25, 1996: 58.

erty" (Section 4(13)) (cited in Lowenfeld 1996: 424). Some estimate as many as 1,300 companies have investments in Cuba which constitute "trafficking" as defined in Helms-Burton (Lowe 1997: 381).

International opposition to Helms-Burton was swift and widespread, led by the EU, Canada, Mexico, and the Organization of American States (OAS). US trading partners were infuriated by the possibility of US nationals making expropriation claims on foreign owned companies in US courts as well as the anticipation effects this legislation could have on future investment opportunities in Cuba. But the biggest outrage was political: In effect, Helms-Burton attempts to internationalize the unilateral US embargo on Cuba.

The EU response to Helms-Burton would ultimately coalesce into a two-text formulation: a Council Regulation (2271 / 96 / EC) and a Joint Action (96 / 668 / CFSP).[85] The stated aim is to protect against the effects of the extraterritorial application of legislation adopted by a third country. As a legal instrument, the Helms-Burton countermeasures are particularly interesting because of their horizontal nature covering all three pillars. Pillar one coverage includes external commercial relations with the United States and Cuba. Pillar two aspects include transatlantic relations with the United States generally, and the promotion of liberal democracy abroad more specifically. And pillar three is implicated through the issue of visas policy and the jurisdiction of national courts in civil matters. As we shall see, maintaining the boundaries between pillars is not unproblematic; one of the trickiest aspects in drafting the blocking measures was to avoid the competencies of pillars two and three from being imported into a Community regulation governed by the first pillar.

The first ministerial discussion of the Helms-Burton Act took place at the General Affairs Council on April 22, 1996. The Foreign Affairs Ministers raised the possibility of adopting countermeasures to Helms-Burton and the need to press this issue as a high priority within the framework of the transatlantic dialogue.[86] But it wasn't until the July meeting of General Affairs, following the Florence summit, that specific countermeasures were elaborated.

At the Florence summit on June 21–22, Helms-Burton was discussed by the Heads of State and Government, and the communiqué issued a sharp message to the US: "The EU asserts its right and intention to react in defence of the EU's interest in respect to this legislation and any other secondary boycott legislation which has extra-territorial effects."[87] At this time, the European reaction was one of deterrence. Retaliatory actions were considered premature. Aside from men-

85 OJ L 309 / 1; 29.11.96.
86 Press Release. Council of the European Union, General Secretariat. 6561 / 96 (Presse 98).
87 Financial Times, June 24, 1997.

tioning a possible request for a dispute settlement panel at the World Trade Organization (WTO), the lack of discussion of specific EU counter-legislation was tangibly evident at Florence.[88]

Following Florence, weekly discussions in Coreper II focused on preparation for the July General Affairs Council. The ambassadors recognized this as the last Council before the August holidays to get a concrete set of EU countermeasures on the bargaining table.[89] The Commission also went on the offensive in preparation for the July Council. On July 12, Commission President Jacques Santer sent a letter and explanatory memorandum to President Clinton, formally requesting suspension of Title III provisions by July 15. He added that Clinton's decision to suspend Title III would affect the EU's response, which involved the "active consideration of retaliatory measures such as entry restrictions, freezing of assets, 'claw back' suits in foreign courts to reclaim amounts awarded in the US, and the application of blocking statutes to prevent the application of the US law."[90] But the General Affairs Council was scheduled to meet on Monday, July 15 and Clinton would not make a decision until consulting his advisors on Tuesday, July 16.[91] As the Commission's main interlocutor in Coreper II, Deputy Secretary-General Carlo Trojan worked closely with the ambassadors to prepare arguments against Helms-Burton and potential EU responses.

There was an undeniable element of brinkmanship at work here. On Monday, Jacques Santer opened the debate in the General Affairs session, calling on the ministers to "react and react today," since "it is more than likely that the United States will confirm application of the Helms-Burton Law in its entirety."[92] The Council conclusions included the possibility of enacting four specific countermeasures:

1. Initiating dispute settlement proceedings at the World Trade Organization (WTO).
2. Adopting blocking legislation to counteract the extraterritorial effects of US legislation.
3. Enacting visas restrictions on the entry of US businessmen into the EU.
4. Establishing a watch list of US companies filing Title III actions.

It was also at this meeting that the Foreign Affairs Ministers gave Coreper a political green light to develop the EU response. The Council authorized Coreper to

88 Interview, Brussels, March 1997.
89 Interview, Brussels, February 1997.
90 Agence Europe, no. 6770, July 13, 1996, 5.
91 Agence Europe, no. 6772, July 17, 1996, 5.
92 Agence Europe, no. 6772, July 17, 1996, 5.

"make the necessary preparations for urgent Community and coordinated national action."[93]

To orchestrate these four retaliatory measures, the ambassadors began extensive weekly discussions on the EU response to Helms-Burton. On July 17, President Clinton suspended Title III for six months. On July 18, at the weekly meeting of Coreper II, the main agenda issue was Helms-Burton. The ambassadors' discussion centered on the significance of Clinton's suspension of Title III and how to follow-up Monday's General Affairs Council conclusions regarding the EU countermeasures. Consensus existed on two points. First, President Clinton's six month suspension was only a partial solution. Regardless of the waiver, the right to sue under Title III was retroactive from November 1, 1996 any time the waiver was lifted or expired. The threat of pending lawsuits in US courts created a strong disincentive for current and future business ventures and investment into Cuba by European companies. And Title IV actions to deny targeted business executives entry to the US could not be suspended.

Second, the ambassadors agreed that Clinton's decision did not modify the conclusions reached at Monday's Council.[94] The French ambassador was particularly outspoken for coordinated EU action, supported with strong statements from the Belgian, Italian, and German ambassadors as well.[95] They agreed to emphasize in their reports the need to keep up pressure on Washington. In several cases, these written reports were followed up with direct phone calls to their Foreign Affairs Minister.[96] By underlining the recommendation to coordinate a European response *and* packaging the viewpoints and preferences of their colleagues (i.e. they were serious, they could deliver their government's approval of specific countermeasures) the ambassadors began a strategic campaign to deliver a collective agreement on a set of EU countermeasures.

The ambassadors tried early on to find agreement on third pillar measures. One idea was floated to enact visa restrictions on US business executives. The discussion, at a restricted session, centered on the possibility of requiring immigration and entry forms on all transatlantic flights into the EU, as a way of enacting mirror legislation to Title IV of Helms-Burton.[97] As one ambassador commented, "It would be quite a step! Each American coming over would have to fill out a form saying they had no case against an EU firm."[98] The ambassadors also held de-

93 Press Release. Council of the European Union, General Secretariat. 8913 / 96 (Presse 208).
94 Agence Europe, no. 6774, July 19, 1996, 7.
95 Interview, Brussels, March 1997.
96 Interview, Brussels, March 1997.
97 Interview, Brussels, March 1997.
98 Interview, Brussels, April 1997.

tailed discussions on the status of the Commission draft proposal for presentation to the Ministers early in the Fall.[99] And they agreed on the importance of working closely with the Article 113 Committee to base the possible request for a WTO panel on solid legal arguments.[100] Carlo Trojan packaged this discussion into his report to the Commission that member-states backed a strongly worded Community regulation.[101]

Several ambassadors believed the July 15 conclusions would have a deterrent effect on the pending Congressional vote on the D'Amato Bill.[102] This became an important subplot in the Helms-Burton dispute. The D'Amato Iran-Libya Sanction Act (Ilsa) targets new investments in Iran and Libya's gas and oil industries over $20 million by authorizing a range of sanctions against foreign companies investing in these energy markets. The potential economic implications of D'Amato is greater for EU member-states than Helms-Burton because of their dependence on imported oil. The EU imports 80 percent of their oil, of which 20 percent comes from Libya and Iran. And the EU accounts for two-thirds of Libya's total oil exports and one-third of oil from Iran.[103] Several EU companies have large investments in one or the other countries, including: France's *Elf* and *Total*, Spain's *Repsol*, *Petrofina* of Belgium, *Veba* and *Wintershall* of Germany, and Italy's *Agip*.[104]

Later that same week, the US Senate approved a draft version of the D'Amato Act. And this was a revised, "hardline" version of D'Amato which strengthened the range of sanctions against foreign investors.[105] In short, the EU deterrent had failed. The July 15 conclusions had no effect on dissuading the US Congress from supporting the D'Amato Act. It was the approval of the D'Amato Act and the wider application of new forms of US "aggressive unilateralism" being signaled from the US Congress which marked a turning point in EU countermeasure negotiations.[106]

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99 Financial Times, July 19, 1996.

100 Interview Brussels, March 1997.

101 Interview, Brussels, April 1997.

102 Interview, Brussels, April 1997.

103 In comparison, the US imports 50 percent of its oil consumption, primarily from Saudi Arabia, Mexico, Venezuela, Nigeria, and Norway. Agence Europe, no. 6786, August 7, 1996: 4.

104 Financial Times, August 7, 1996.

105 Agence Europe, no. 6777, July 25, 1996: 9. The "menu" of sanctions that can be leveraged against companies include: a ban on taking part in public procurement in the US, export and / or import restrictions, the refusal of loans from US financial institutions, and the refusal of assistance from the US Export-Import Bank.

106 For a good summary of "aggressive unilateralism" in US trade policy, see Bayard and Elliott (1994).

It was also during this early period of discussing the four options that the EU regulation almost met a sudden death. On July 24, the Commission was set to approve the draft blocking statute at the weekly *Cabinet* meeting but held off a final decision after Britain announced they would veto the proposal if it infringed on British sovereignty. The British Foreign Office issued a statement that the Commission proposal covers a "complicated legal area" which requires careful scrutiny.[107] And several other capitals including the Hague, Paris, Rome, and Bonn had issued similar scrutiny reservations to their Brussels delegation.[108] But the stakes for a united EU response were simultaneously raised when President Clinton approved the D'Amato Act on July 25. Just five days after the D'Amato Act was approved, despite British misgivings, the Commission approved a final draft proposal. And this proposal had been broadened beyond the narrow scope of Helms-Burton, to include noncompliance and legal remedy for *all* pending and future US extraterritorial legislation.[109] The passage of the D'Amato Iran-Libya Sanction Act reinforced the argument that a strong collective stance against Helms-Burton was imperative to EU commercial and political interests.

The first meeting of the Foreign Ministers following the summer break was the informal General Affairs Council in Tralee, Ireland on the weekend of September 7–8. The Foreign Ministers were briefed by Leon Brittan regarding his talks earlier in the week with US envoy Stuart Eizenstat. The ensuing discussion centered on the WTO option. The Ministers endorsed the Commission's opinion that the WTO option should not be ruled out, and that it constituted a major weapon in the EU "arsenal" against the encroaching extraterritoriality of US law. But there was also apprehension among the ministers that Helms-Burton could have negative repercussions on implementing the Transatlantic Agenda agreed at the 1995 Madrid summit. Overall, Tralee displayed a cautious approach by the Foreign Ministers to avoid escalating the dispute and damaging long-term relations with the US. At one point, Irish Foreign Affairs Minister Dick Spring, as acting EU President, and Jacques Santer both intervened to argue that a request for a WTO panel should be avoided until after the US presidential elections in November.[110]

What emerged from Tralee was an implicit understanding that the WTO option should not be ruled out, but that not all member-states currently supported WTO

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107 Financial Times, July 24, 1996.

108 Interview, Brussels, April 1997.

109 Com(96) 420 final.

110 Agence Europe, no. 6807, September 9–10, 1996: 7. It is unclear whether and to what degree these arguments were connected to Stuart Eizenstat's visit to Brussels and meetings with Spring and members of the Commission earlier in the week. A comparison of interview notes on this point show numerous inconsistencies in responses, some suggesting that Eizenstat's visit did not include discussion of the WTO option at all.

action because of potential damaging repercussions for relations with the US. There were differences of opinion regarding both the efficacy and the timing of the WTO option. In fact, there is evidence the ministers downplayed the WTO option at Tralee. Citing Commission sources, *Agence Europe* summarized the result of the exchange of views in Tralee as follows:

> The EU must adopt as soon as possible the anti-boycott regulation … and it believes that the Council should approve the regulation in its session on 1 October … if the regulation … and the other instruments that the EU is examining (e.g. regarding Visas) are rapidly put together, *the procedure before the WTO and the creation of the panel become less urgent* [emphasis added].[111]

The ambivalence of these conclusions by the ministers – the EU should respond quickly, the EU needs to take a strong stance, the WTO option could damage relations and the multilateral trading order – would in effect reinforce and expand the negotiating mandate of the permanent representatives and the voice of their recommendations back home.

At their weekly session following Tralee, the ambassadors spent most of the morning session in restricted session to discuss the WTO option. Based on a report from the Article 113 Committee, it was agreed a WTO challenge had a sound legal basis. But there were political doubts as to the effectiveness of this option. A participant at these discussions described the general climate as one of an emerging consensus to proceed with a WTO panel, but there was some trepidation this could undermine the fledgling WTO dispute machinery.[112] And consistent with Tralee, several member-states instructed the WTO option could lead to an undesirable escalation of tensions with the US. The ambassadors weighed this consideration carefully. But they were unsympathetic to the coincidence of WTO proceedings with US elections. When I asked an Antici counsellor present at these discussions how the US presidential elections factored into the timing of initiating a WTO panel, he dismissed this consideration as "rubbish" and "of no strategic importance to our deliberations."[113]

The bigger risk was that if the EU proceeded to the WTO, the US threatened to invoke a seldom used exemption on the grounds of national security. If the panel accepted the US argument, this could be a major setback for the multilateral trade regime and set a dangerous precedent for other countries to justify breaking WTO rules. On the other hand, if the panel were to reject the US exemption, as one trade diplomat hypothesized, the WTO "could be accused of over-riding a

111 Agence Europe, no. 6807, September 9–10, 1996: 7.
112 Interview, Brussels, April 1997.
113 Interview, Brussels, March 1997.

state's sovereign right to define its national security interests. Given the current mood of the Congress, that would be playing with fire."[114]

But overall, dissatisfaction with the Clinton waiver and the pending D'Amato Act justified the risk, and the WTO challenge would mark a decisive first step in the countermeasures package. This was the collective understanding reached among the ambassadors on September 12, an agreement which was then translated into their reports and recommendations back home. In comparison to the ambivalent stance taken by the ministers at Tralee, the October 1 decision to proceed with the WTO option is hard to understand without taking into account this consensus reached in Coreper. Throughout September, weekly discussions in Coreper continued regarding the partial suspension of Title III and the passing of the D'Amato Act. Slowly, after lengthy discussions and numerous follow-ups at each of the weekly Coreper II meetings in September, the decision to proceed with the WTO panel was confirmed.

The formal decision to proceed with the WTO option was taken at the General Affairs Council on October 1. Leon Brittan emerged from the meeting sounding victorious. "What has happened today has shown the whole world that the EU has the capacity to defend itself and the political will to do so. Respect grows when people think that you can stand up for your interests."[115] But the October 1 General Affairs meeting also confirmed the unresolved issues in reaching agreement on the blocking legislation. It was at this meeting that the two-text formula of a regulation and a joint action was first announced. However, the details were left vague and the ministers did not debate the form or legal basis of the blocking legislation. As one participant recalled, "The ministers realized the requisite consensus did not yet exist."[116] Instead, the Council conclusions instructed Coreper to "conclude the work already underway," and that "work should be taken forward urgently so that the European Parliament can participate in the process of the adoption of the Regulation …"[117]

Following the Council decision to proceed with the WTO option, Coreper discussions of the blocking legislation became more focused. Settling the competency question became the linchpin of reaching agreement. Because the Helms-Burton response involved mixed competencies between the national and Community levels, several delegations cited problems with a response in the form of a regulation. In September, Paris signaled that perhaps the EU response should come in

114 Financial Times, October 3, 1996.
115 Financial Times, October 2, 1996.
116 Interview, Brussels, March 1997.
117 Press Release. Council of the European Union, General Secretariat. 10265 / 96 (Presse 253).

the form of a joint action. Initial arguments were floated at the working group level, but this issue was quickly distilled to the permanent representatives for consideration. This set into motion lengthy discussions in Coreper and numerous bilateral conversations with the French ambassador and members of the Council legal service.

The ambassadors agreed on the consequences if the French proposal was accepted: A joint action would result in an ineffective response. The ambassadors were insistent in their reports this would be devastating. "We all knew that if it would be an effective instrument," a Committee member told me, "then it could not be a joint action."[118] French Ambassador de Boissieu supported this hypothesis, and forwarded this opinion back to Paris through a series of phone conversations with members of the SGCI. One member of the French delegation believes if not for the personal interventions of Ambassador de Boissieu to convince Paris that a joint action by itself would be ineffectual, this would have likely become an non-negotiable least common denominator for the French.[119]

The two-text formula was discussed on numerous occasions in Coreper during October, and from the permanent representatives' perspective, became the only solution possible. This should not be mistaken for a sub-optimal policy outcome however. The two-text compromise is not a least common denominator outcome, rather, it is a successful example of delivering the goods at home and collectively. One participant described the compromise as follows, "At the insistence of the French Ambassador's instructions, it was agreed [in Coreper] the two-text formula was necessary; without this formula, there could be no consensus." But in restricted session, several ambassadors also went on record saying they would accept the two-text formula but had no intention of implementing the Joint Action. The real "instrument" was the blocking regulation. As a member of the Council's legal service put it, "The Common Action was a magic formula for all that was not covered by the regulation under the first pillar."[120] A Commission participant in these negotiations summarized the compromise as follows: "The blocking statute is largely a Community instrument with an ambiguously drafted, minor third pillar agreement." This implicit understanding reached in Coreper became the backbone for consensus on a coordinated EU response.

The ambassadors were less successful on reaching agreement on other aspects of the countermeasures package. The visas countermeasure ran into trouble in early October, when the coordinating body for the third pillar, the K-4 Committee, raised a number of objections. One ambassador told me, "We did not find in our

118 Interview, Brussels, April 1997.
119 Interview, Brussels, March 1997.
120 Interview, Brussels, March 1997.

legal instrumentations the kind of powers needed to do something here."[121] Another pointed out Coreper did not try to solve it because of lack of time and since some permanent representatives are unwilling to "tread on the toes" of their K-4 directors. But he went on to say, "The ambassadors wanted the distribution of a leaflet to be filled out on all airplanes, like the US does … there was agreement on this. Not formal agreement, but a general feeling."[122]

And, in mid-October, under pressure to reach agreement on the blocking legislation in time for the October 28 General Affairs Council, Denmark announced they could not accept the legal basis of the Commission proposal. Kept quietly in the background for weeks, the Danish reservation quickly came to the center of negotiations. The draft regulation was based on three Articles: 73c, 113, and 235. Article 73c covers direct investment and the movement of capital to and from third countries. Article 113 forms the basis of the EU's common commercial policy. And Article 235 is the infamous 'implied powers' provision enabling Community action in new areas where necessary to attain objectives of the Treaty.

Denmark's reservation was tied to a pending court case brought forward by a citizens group arguing the Article 235 formula has created an unconstitutional surrender of national sovereignty. Despite several attempts in Coreper to construct a politically acceptable rationale for the legal basis that the Danish Foreign Minister could endorse, there was no room for maneuver from Copenhagen. It was principled objection to the Article 235 legal basis and Danish domestic politics, not disagreement over the desirability of a Community blocking statute which created the shadow of the veto in this case. The ambassadors did discuss ways to package the legal formula, but none of these were politically digestible to the Ministry of Foreign Affairs and the legal advisors of the *Folketing's* European Affairs Committee. Nor could the ambassadors agree on an alternative legal remedy for the blocking legislation.

In short, the Danish reservation clearly indicates the limits of Coreper's problem-solving capacities. The member-governments sought to defuse the Danish reservation and minimize the media exposure of this problem in the run-up to the Luxembourg General Affairs Council by focusing discussions among the ambassadors in Coreper, but the ambassadors themselves believed this could only be resolved at the ministerial level.[123]

After a final failed attempt at the Coreper II meeting of October 24, the Danish Ambassador, Poul Christoffersen, began to work virtually around-the-clock over

121 Interview, Brussels, April 1997.
122 Interview, Brussels, March 1997.
123 Interview, Brussels, April 1997.

the weekend to find a solution in time for the Luxembourg General Affairs Council on Monday, October 28. His motivations to find a solution are revealing. The pressure to reach agreement on a blocking regulation had become a serious *European* credibility issue. For Denmark to block agreement on a measure which they supported because of their inability to accept the Article 235 formula put them in a very undesirable position. After months of strong declarations against the US law, the EU would lose credibility if they could not translate their objections into an operational retaliatory instrument. Danish Ambassador Christoffersen felt this pressure very strongly. During the weekend, in close concertation by telephone with lawyers in Copenhagen and the Council legal service, a possible solution began to emerge. But it was only at a meeting in the margins of the General Affairs Council on Monday that a 'creative solution' was found.

On Monday morning, October 28, the Foreign Ministers opened their session deadlocked over the Danish reservation. A small team of representatives from the Danish delegation, the Commission, the Council Legal Service, and the Irish Presidency met in one of the Presidency 'confessional' rooms to discuss the options. Denmark proposed the EU response come in the form of a Convention based on Article 228, which covers rules for concluding agreements between the Community and third states or other international organizations. But this alternative proposal was rejected by the others as too weak.[124] It was then suggested that Article 6 of the draft regulation, covering compensation for European companies hit with Title III actions in US courts, be removed from the regulation and transferred into a joint action. This would exorcise the third pillar component governing the jurisdiction of national courts in civil matters from the Community regulation. A final suggestion was a declaration in the minutes of the Council meeting where the member-states, the Council legal service, and the Commission state that in their view of the jurisprudence of the ECJ, recourse to Article 235 would not give the EU new powers in this case.[125] None of these alternative proposals were consensus-forming.

But a way out of this "technico-legal imbroglio"[126] did emerge. The solution included two components. First was a linkage to the 1968 Brussels Convention on the jurisdiction and enforcement of judgments in civil and commercial matters. This ameliorates the legal uncertainties of recognizing the connection to create judicial competence in a Community regulation. As a participant in these discussions put it, "This helped appease Denmark on the 235 formula. It was a gimmick essentially and a face-saving measure."[127] The 1968 Brussels Convention gave the

124 Agence Europe, no. 6842, October 28–29, 1996: 6.
125 Agence Europe, no. 6842, October 28–29, 1996: 6.
126 Agence Europe, no. 6839, October 24, 1996: 8.
127 Interview, Brussels, April 1997.

appearance that there was nothing 'new' in the blocking regulation. More importantly, it provided political argumentation that new powers were not being conferred to the EU. The second component was a rewording of the text to limit the scope of the clawback clause. As a member of the Danish delegation explained:

> This was the key advance, to limit the scope of the regulation to only regaining money lost as a result of a claim from a US court decision. Originally, it was extended to include the principle of compensation which could include compensation for lost business opportunities. But this gets into civil matters which fall under the jurisdiction of pillar 3 and our key objection was to not have a pillar 3 issue included in a regulation based on [Articles] 113 and 235.[128]

In summary, this case clearly shows that Coreper is not an omnipotent problem-solver, and indeed, they were unable to overcome the legal doubts and political sensitivities behind the Danish reservation. But overall, the permanent representatives played an instrumental role in orchestrating the cross-pillar implications of this file and in placing pressure on the capitals to accept a united response to the Helms-Burton Act. Despite the pathologies of joint decision-making, a coordinated EU response to US extraterritorial law was achieved. Whether this was an efficient response or a messy compromise based on complex legal formula and mixed competencies is another matter. And while the Helms-Burton case is considered by many in Brussels as a success story of the post-Maastricht pillar system, the precedent established for future cross-pillar endeavors and the degree to which pillars two and three are evolutive structures remain to be seen.

5 Conclusion: Coreper as a Nucleus of Community

To summarize my critique of the intergovernmentalist image, I have argued two components embodied in Coreper go undervalued and overlooked. First is the combination of Coreper's *de facto* decision-making role *and* their causal influence and voice in the articulation of national preferences. And second is the collective, *communautaire* dimension of this authority, expressed through the routinization and diffuse exchange of viewpoints and a collective rationality which transcends individual, instrumental rationality.

As the local elections case reveals, EU decision-making is not all about relative power and instrumental interest calculations. Communicative rationality matters; small states with good arguments can still win, as the Belgian derogation shows.

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128 Interview, Brussels, March 1997.

The local election negotiations are also an example where self-interest maximizing calculations were soft-pedaled in the broader interest of reaching agreement. Despite a number of delegations who failed to persuade the group for their derogation needs – including Denmark, France, Greece, and Austria – there was none of the sort of posturing you would expect to find in the confrontational style of hard bargaining, such as threats of veto or *quid pro quo* concessions leading to a lowest common denominator outcome and application of the directive.

And the case of the Helms-Burton countermeasures shows how collective problem-solving at the European level *can* overcome the frequently cited pathologies of a 'joint-decision trap,' including the demanding consensus requirements and threat of veto under unanimous voting.[129] More surprising in this case, is the finding that effective EU decision-making can occur in a policy-area steeped in legal doubts with multiple cross-pillar implications, complex technical issues, and mixed Community and national competencies. Following the recent work of integration researchers such as Guy Peters (1997), this case supports an argument that the presumption of the 'joint-decision trap' model to EU decision-making does not have universal application, and indeed, may actually apply under more restrictive and limited conditions than generally assumed. This case also suggests that in the multileveled, multipillar complexities of contemporary EU decision-making, Coreper is an important institutional mechanism in the machinery of the Council which can help avert the "traps" of collective decision-making at the European level.

These cases also show how the formal decision-rule is an indeterminate measure to predict bargaining outcomes. The instinctive recourse to behave consensually and the responsibility to find collective solutions appear to have as much causal significance in the decisional process as the rule of unanimity and the shadow of the veto. Even more indeterminate in understanding EU decision-making are quantitative estimates of the output of the Council according to A- and B-points. The local elections directive, formally a B-point, was merely rubber-stamped by the ministers after agreement was reached in Coreper; whereas the Helms-Burton blocking legislation was formally adopted by the Council as an A-point, but hinged crucially on political mandation by the ministers.

I have also argued Coreper is a key site in the production and maintenance of a community-method, characterized by a dynamic process of *l'engrenage*, a shared mutual purpose to understand each others problems, and a culture of compromise which results in a unique style of bargaining and context of interaction. However, this should not to be mistaken with the oft-cited affliction of "going

129 The classic formulation of the "joint-decision trap" is provided by Scharpf (1988). See also, Scharpf (1989).

native." My research points to a development more subtle and difficult to define. Very simply, the affliction of "going native" only makes sense where the cognitive boundaries between the national and Community levels are clearly separable and sharply drawn. But it is exactly at this interface between the national and Community levels that Coreper exists. In effect, the cognitive boundaries between the two levels have become blurred.[130] My argument is that what makes Coreper interesting as an institutional interface is that the permanent representatives have to *manage* this tension between the Community and national levels on a day-to-day basis. Or in more general terms described by Joseph Weiler (1991: 2480), they are actors "fated to live in an uneasy tension with two competing senses of the polity's self, the autonomous self and the self as a part of a larger community".

And while I agree with Weiler's (1994) categorization of supranationality as a foundational ideal (among others), and share his reading that this ideal has not fared well in the wake of Maastricht, my research on Coreper detects a weak yet discernible nucleus of community which still subscribes to this ideal. What resonates overall from my interview data is that Coreper is not only responsible for processing the bulk of EU legislation, but shares a collective responsibility to maintain the output and performance of Council as a whole.

The importance of supranationality as an ideal and a value, as Weiler also points out, is that it "replaces a kind of 'liberal' premise of international society with a communitarian one: the Community as a transnational regime will not simply be a neutral arena in which states seek to maximize their benefits but will create a tension between the national self and the collective self" (Weiler 1991: 31). As I have tried to show, Coreper is one of the few institutional sites of the EU system where this tension between the national self and collective self, embodied in the metaphor of the Janus face, results in a creative and pragmatic approach to collectively solve problems and the long-term effects of this tension have created a value in the survival and success of the system itself. Future empirical research to document this tension should be of broader interest to international relations scholars who study collective identity formation and transnational relations. To date, this research agenda has focused on the capacity of *states* to develop multiple social identities, collective identifications, and shared mutual purposes but with very little attention to who the actual *agents* are that internalize and practice these identities. Within the context of the EU system, the permanent representatives are exemplars of who John Ruggie means by "entrepreneurs of alternative political identities" (1993: 172).

130 For a similar observation, see Hayes-Renshaw and Wallace (1997: 278).

Finally, there is the question of durability. How robust is the value of supranationality in the EU? This question is ripe for further debate, exposing the interdisciplinary nature of contemporary integration research and the rich potential for exchange between political scientists, sociologists, historians, and lawyers. Whether the foundational ideals of the Community / Union still matter, and how, is open for debate. But if the value of supranationality is to survive coming rounds of Treaty revision, enlargement, and *de facto* if not *de jure* variable geometry, as well as the growing administrative rivalries between different preparatory committees over the competencies of pillars two and three, then Coreper will need to maintain its privileged role in preparing the Council and providing the "glue" which connects the Community and Union's single institutional structure.

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