



EUROPEAN UNIVERSITY INSTITUTE  
Department of Political and Social Sciences "Swiss Chair"

## **Arguing and Bargaining in Multilateral Negotiations.**

Cornelia Ulbert/Thomas Risse/Harald Müller

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### **3. Project Goals, Research Design and Methodology**

#### **3.1. Starting Point and Original Goals**

From the early 1990s on, the two project directors have been at the forefront of the scholarly debate on arguing and bargaining in the German-speaking International Relations community (the so called „ZIB debate”). Since this debate mainly focused on clarifying theoretical issues with regard to arguing and bargaining, the project was undertaken to do empirical work on analyzing the role and effects of reason-giving and arguing in multilateral negotiations. Multilateral negotiations constitute „hard cases” for arguing, since deliberation as such is not the purpose of such talks but to accomplish certain goals including the maximization of interests of the negotiating partners. We can safely assume that diplomats and other negotiators act on the basis of specific instructions meant to further the „national interests” of their home countries or international organizations. If arguing and reason-giving matters in such negotiations, we can infer that argumentative rationality is more pervasive in international affairs than has been previously assumed.

Initially, the project tried to accomplish three tasks:

1. to inductively generate hypotheses on the conditions under which arguing leads to changing persuasions thereby affecting the processes and outcomes of multilateral negotiations;
2. to start developing a methodology which should allow us to study arguing and its effects on negotiations empirically (how do we know arguing when we see it?);
3. to empirically analyze our cases to the point where we can identify „critical junctures” in the various negotiations, i.e., moments of crises, of surprising and counterintuitive developments, and the like.

After an initial phase, our case studies led to three important findings, which were empirically and theoretically significant for conducting further research:

1. Arguing and reason-giving are all-pervasive during all phases of international negotiations. While we can distinguish analytically between the communicative modes of arguing and bargaining, in reality they usually go together. Pure arguing in terms of deliberative and truth-seeking behavior occurs as rarely as pure bargaining in terms of the exchange of demands, threats, and promises, and the like. Rather, pure arguing and pure bargaining represent opposite ends of a continuum whereby most of the actual communicative processes take place somewhere in between. Bargaining actors tend to constantly justify their

demands in terms of generally accepted norms as well as consensual knowledge. Arguing actors tend to routinely use reasons in order to persuade *others* of the validity and the justifiability of their claims. This puts doubts on the proposal to separate, for the sake of negotiation success, distributive (bargaining) and regulative (arguing) phases of a negotiation (Scharpf 1997). But the ubiquity of arguing in multilateral negotiations should not be confused with the assertion that, therefore, reason-giving always matters and always influences results. Rather, it led us to slightly shift the focus of our research: Instead of analyzing whether arguing or bargaining modes dominate in various phases of the negotiations, we wanted to identify the conditions under which arguing leads to changes in actors' persuasions and, thus, influences the process and outcomes of negotiations. Therefore, we tried to develop hypotheses (see below), which were geared to establish these scope conditions.

2. Our second finding concerned the interaction orientations and motivations of negotiators involved in arguing and bargaining. Initially, we had been misled by some theoretical claims according to which actors engaged in arguing must be motivated toward truth-seeking in order to be able to mutually exchange and challenge validity claims. Such claims stem from a particular interpretation of the Habermasian theory of communicative action, but they can also be found in the broader literature (e.g. Scharpf 1997: 84-89; for a discussion see Steffek 2001). However, it is empirically impossible to ascertain with any certainty the interaction orientations of our negotiators. At the same time, we discovered that it is not necessary to make heroic assumptions about truth-seeking actors to find them engaged in argumentative exchanges and reason-giving. In particular circumstances, even instrumentally rational and strategically motivated actors need to engage in a serious dialogue and in reason-giving with their counterparts in order to be able to influence the course of the negotiations. Ritualistic rhetoric that repeats the same arguments over and over again tends to be rather self-defeating in diplomatic negotiations (actors retain some veto power, but are unlikely to positively influence the course of the talks). As a result, even actors with an initial strategic motivation must engage in the give and take of arguing in order to affect the negotiations. They must demonstrate their truthfulness and their open-mindedness to the „better argument“. Risse has suggested to call this process „argumentative entrapment“ for lack of a better term (Risse 1999). In fact, we found instances in several cases when more powerful actors changed their position in the direction of arguments presented by less powerful ones. We can explain this finding on the basis of the triadic structure of arguing as compared to the dyadic structure of bargaining (Saretzki

1996, see below). As a consequence, it is no longer necessary for us to ascertain the interaction orientations of negotiators in order to claim that arguing influences the course of negotiations. Rather, we must focus on the social and institutional context in which these negotiations take place. The question then becomes what type of context conditions are required to enable the triadic structure of arguing to become effective. The hypotheses identified below were designed to get at these context conditions.

3. In the ZIB debate, one important criticism against applying the concept of communicative action to the realm of international negotiations was the lack of a common lifeworld in the international diplomatic realm (Keck 1995). Since diplomats involved in the negotiation originate from quite diverse cultures with highly different lifeworlds, arguing would become impossible as the joint system of normative reference on which argumentation must rely simply did not exist. The ubiquity of arguing in our cases indicates that this problem appears to be much less virulent than the critics would have it. Arguments are not only made, but regularly exchanged and replied to. This finding would suggest that diplomacy has found ways to substitute for the lack of a lifeworld rooted in domestic cultures and directs our attention to the type of normative reference systems negotiators use while exchanging arguments.

### 3.2. Reformulation of Research Goals and Reconceptualization of the Research Design

In the face of these findings we decided to reformulate our research question from whether arguing occurs in international negotiations, to *how arguing works and how it matters*. Thus, our focus was on persuasion and the effects of arguments (Keohane 2001) rather than on the presence or absence of arguing during multilateral negotiations. Therefore we aimed at explaining to what extent and how arguing influences the processes and outcomes of multilateral negotiations and to specify under what conditions arguing is likely to change actors' perceptions of the situation and/or interests (preferences over strategies and outcomes). In order to achieve this, our empirical goal was to systematically evaluate the influence of arguing

- in the various phases of multilateral negotiations (agenda-setting, problem definition, negotiating an agreement);
- on the outcome of such negotiations (does arguing enhance the perceived problem-solving capacity of international institutions?).

As a consequence, we changed our conception of arguing and bargaining from two different rationalities of social action to different modes of interaction and communication. Conceptualized as mode of communication, pure arguing as reason-giving can be distinguished analytically from pure bargaining in modal, structural, and procedural terms (cf. Saretzki 1996: 32-36, see also Elster 1991: 5) and in terms of possible observable outcomes. Table 1 defines arguing and bargaining as ideal types representing end points on a continuum. Arguing is a mode of communication in which the power of reasoning prevails. The mutual assessment of the validity of an argument geared to reach a reasoned consensus rather than instructions, rules, votes, force, manipulation, tradition etc. becomes crucial for decision-making (Eriksen and Weigard 1997: 227). Moreover, arguing is a reflexive process that does not take place in distinct sequences. The process of arguing is rather characterized by an exchange of arguments that is based on a common frame of reference that is adjusted in the course of communication.

As to structural features, arguing can be distinguished from bargaining through its triadic nature. Bargaining actors assess the moves in negotiations solely based on their own utility functions including private information, while validity claims such as the truthfulness of speakers, the truth of empirical assertions, or the rightness of normative claims recede in the background and are irrelevant for the bargaining situation. This is the dyadic nature of bargaining. In contrast, arguing always involves references to a mutually accepted external authority to validate empirical or normative assertions. In international negotiations, our empirical domain, such sources of authority (*Berufungsgrundlagen*) can be previously negotiated and agreed-upon treaties, universally held norms, scientific evidence, and other forms of consensual knowledge. A special case of this kind of triadic situation occurs when negotiators argue in front of an audience, which serves as adjudicators of the 'better argument'. In such cases, they do not only refer to some external authority, but the audience itself might become that external authority as part of the reflexive process. In the multilateral settings of concern for us, such audiences might sit around the negotiating table, but they can also be the public observing the negotiations.

Every negotiation process is embedded in some kind of material and social context. Studies on international bargaining have overwhelmingly focused on the material context of negotiations. Features of this material context are the power resources of participants, their cost-benefit calculations and material factors that heighten the credibility of commitments or make side

payments possible (see Schoppa 1999: 307/308). Conceptualizing the negotiation process as a social process that is not only characterized by exchanging resources but also by communicative processes renders a different picture of context. A social context of communicative action can then be defined as „the structure of those properties of the communicative situation that are ostensibly relevant for participants in the production and comprehension of text or talk” (van Dijk 1999: 291). Communicative processes take place within specific social and material contexts.

*Table 1: Arguing and Bargaining as Modes of Communication*

<b>Mode of communication / Characteristics</b>	<b>ARGUING</b>	<b>BARGAINING</b>
modal	empirical and normative assertions with validity claims (assessment criteria: empirical proof and consistency or in the case of normative assertions consistency and impartiality); based on: „argumentative power” in the sense of good reasoning	pragmatic demands with credibility claims (assessment criteria: credibility of speaker); based on: „bargaining power” in the sense of material and ideational resources and exit options
procedural	reflexive	Sequential
possible observable outcome	reasoned consensus, actors submitting to the better argument and changing interests/preferences accordingly	compromise without change in preferences/interests
structural	triadic (speaker and listener have to refer to some external authority to make validity claims)	dyadic (only mutual assessment counts)

The effectiveness of arguing may vary according to the phases of international negotiations:

1) *Agenda-setting*:

Arguing may be effectively applied during the process of „getting to the table” (Stein 1989) in various ways. Actors have to be convinced that there is a problem that needs to be solved cooperatively. If an issue gets on the international agenda in the absence of material interests or strategically motivated issue-linkages, this might be an indicator of the influence of arguing. A second indicator could be that an item has been put on the agenda against the will of materially powerful actors. The presence or absence of ‘norm entrepreneurs’ in the sense of (transnational) advocacy networks (Keck and Sikkink 1998) and

epistemic communities (Haas 1992) serves as a third indicator of the influence of arguing during this phase, since such entrepreneurs normally do not command powerful material resources, but have to rely on the power of the ‘better argument’. Framing and strategic constructions (Finnemore and Sikkink 1998) are typically used in this phase to persuade other actors of the urgency to tackle a particular issue.

2) *Problem-definition:*

Once an issue has been put on the agenda of international negotiations, the negotiation partners involved need to agree on a common problem definition. Defining a problem is a crucial aspect for tackling it. In general, how a problem is defined will influence the way it is solved, i.e. which types of instruments and strategies are chosen. Therefore, actors will once again put considerable effort into framing a problem (McAdam, McCarthy, and Zald 1996, Johnston 1995, Payne 2001, Snow and Bedford 1988). In the terminology of the bargaining literature and of non-cooperative game theory, actors need to develop some kind of „common knowledge” about the situation and the underlying principles of negotiating. Sometimes, „knowledge brokers” might help the negotiating parties to reach a common definition of the situation and to agree on certain underlying normative principles – including rules of fairness – which structure the negotiation process.<sup>1</sup> These underlying normative principles can serve as basis for the actors involved to claim legitimacy for their respective positions. The convergence of initially differing problem definitions is an indicator of an effect of arguing, notably if it differs from the more powerful actors’ preferences.

3) *Negotiating an Agreement:*

Once the problem has been defined, actors can negotiate a common solution. This involves finding an agreement on the norms, rules, and procedures of the treaty under consideration, but also negotiating the distributive aspects as well as the monitoring and enforcement procedures. This is the actual bargaining phase of the negotiations where horse-trading, package deals, and other bargaining tools are expected to be employed. As a result, arguing and reason-giving might recede into the background and might have less effects than during the earlier phases of the negotiations. However, distribution will proceed along some standards of appropriateness, fairness and justice, and arguing about such standards might be found in this phase. And while a coercive solution sharply contradicts

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<sup>1</sup> The „ZIB debate” to a large extent centered on the question to what degree processes of arguing and persuasion were necessary to establish „common knowledge”, which non-cooperative game theory takes for granted. For competing views see Keck 1995, Keck 1997, Müller 1995.

the logic of arguing, we might infer the influence of arguing during this phase from the extent to which actors describe the negotiation results as outright failure, agreement to disagree, compromise, or consensus. Likewise, the emergence of new normative frameworks that could not be predicted from the initial set of preferences points in the same direction. (Note that we do not infer the effects of arguing from the successful conclusion of negotiations.) The more actors give identical reasons for why they adhere to a consensus or why they failed to find a solution, the more we can infer the influence of arguing and the achievement of a reasoned consensus. The more actors give different reasons for why they support a treaty or why they failed to achieve one, the more we can infer a compromise and the less mutual persuasion.

Another yardstick for the effects of arguing on negotiating a solution concerns the degree to which actors change their views and preferences during the process, provided that the alternative explanations fail to account for these changes. Arguing may affect levels of knowledge and information (weak version), but also more fundamental interests and preferences of actors (strong version). To measure this, we can compare the kind of ‘outcome’ relevant actors had in mind at the beginning of the negotiation processes with the final accord, including the reasoning used for explaining or justifying them.

#### 4) *Negotiation Outcome:*

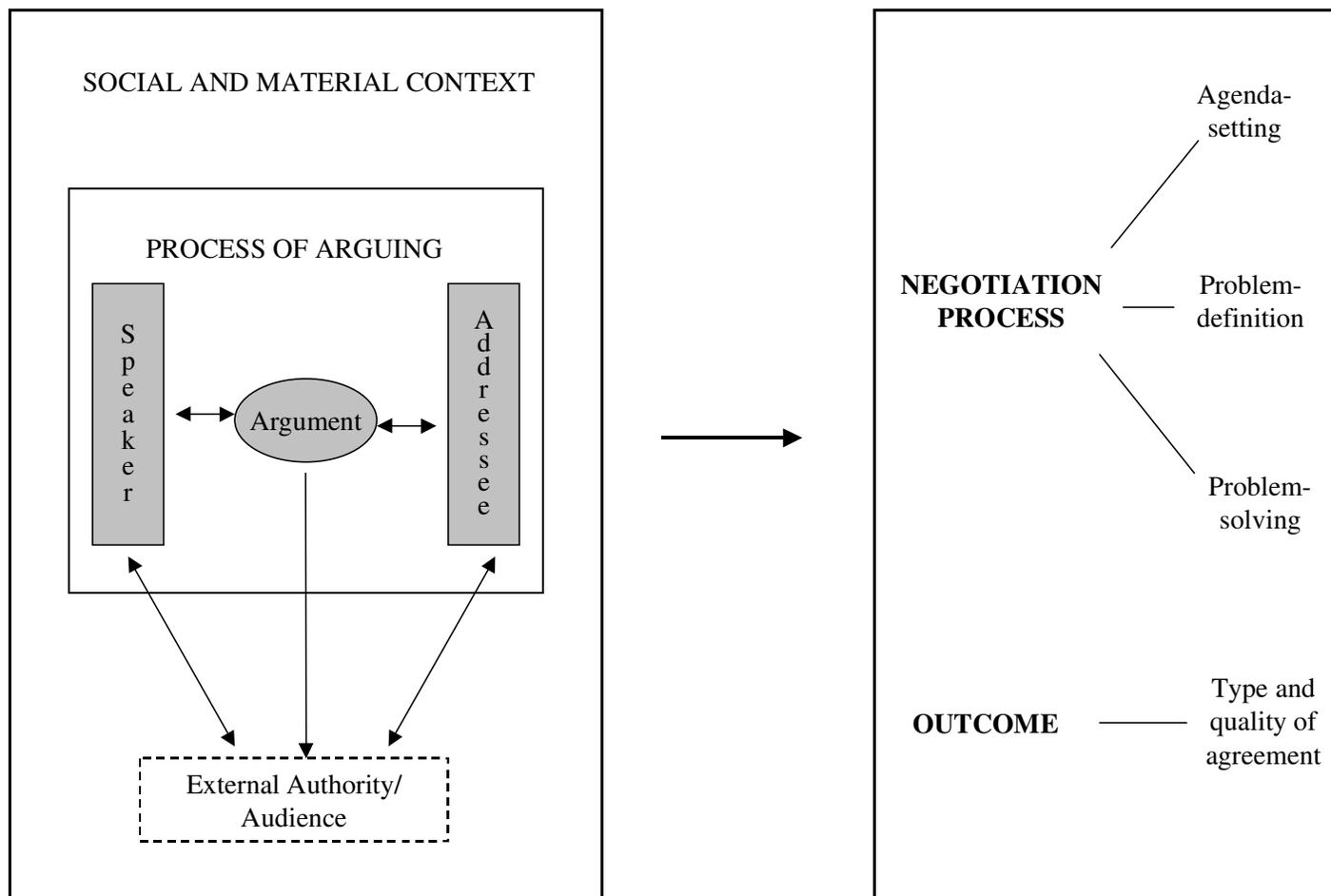
If arguing is not only „cheap talk” (Farrell and Rabin 1996), it should also have effects on the outcome of a negotiation process. The dominant hypothesis in the literature asserts that a reasoned consensus rather than a compromise is likely to enhance the problem-solving capacity of the agreement (Scharpf 1997: 124, Lax and Sebenius 1986). But how do we ascertain empirically what a ‘better outcome’ in terms of enhanced problem-solving capacity means? In the absence of an ‘objective’ yardstick we have to resort to *actors’ preferences* and *subjective perceptions* of what has been achieved. Once again, this can be established through „before-after” comparisons as well as actors’ own evaluations of the negotiation outcomes.

For practical reasons, the case studies did not focus on the implementation phase of an agreement or on questions of compliance which would have required a more complex research design and would not have been manageable within the time frame of the project.

*Table 2: The Influence of Arguing on Negotiation Processes and Outcomes*

	NEGOTIATION PROCESS			OUTCOME
Relevant stages	AGENDA-SETTING	PROBLEM-DEFINITION	NEGOTIATING AN AGREEMENT	TYPE AND QUALITY OF AN AGREEMENT
Indicators for effects of arguing	<ul style="list-style-type: none"> <li>• absence of material interests or strategically motivated issue-linkages</li> <li>• putting an item on the agenda against the will of powerful actors</li> <li>• norm entrepreneurs: advocacy networks, epistemic communities</li> </ul>	<ul style="list-style-type: none"> <li>• (re-)framing of problem</li> <li>• common knowledge base: „knowledge-broker” to establish consensual knowledge, legitimacy claims</li> <li>• convergence of initially differing problem definitions</li> </ul>	<ul style="list-style-type: none"> <li>• reasoned consensus (or consensus to disagree) vs. bargaining compromise or failure</li> <li>• emergence of new normative frameworks that were not predicted</li> <li>• change of views (concerning levels of knowledge and information) and fundamental interests and preferences of significant actors</li> </ul>	<ul style="list-style-type: none"> <li>• change in positions of significant actors compared to beginning of negotiation process („before – after” comparison)</li> <li>• actor’s evaluations of problem-solving capacity and quality of agreement</li> </ul>

Figure 1: Research Design



### 3.3. Hypotheses

The project's main goal was to explain how arguing affects the process and outcome of multilateral negotiations and to specify under what conditions arguing might be effectively applied in the various phases of negotiations specified above. Relevant conditions that influence the effect and effectiveness of arguing and specific arguments can be found in

1. the social context within which negotiations take place
2. the process of arguing itself.

#### 3.3.1. Social Context

From a broader perspective, the social context in negotiations can comprise various factors like the negotiation parties, the social knowledge the participants have of each other and their respective preferences and strategies, the social norms of the institution, and processes of communication (cf. Thompson, Peterson, and Kray 1995: 7). In our empirical analyses, we focussed on different factors that had an influence on the specific context of each negotiation process under study. From our theoretical perspective, two types of context variables deserved closer attention to infer some guiding hypotheses – the institutional setting in which the negotiations take place and the nature of the problem to be solved.

The *institutional setting* was assumed to be relevant in terms of

- a) the *degree of institutionalization*, i.e. the density of norms, rules and procedures in which the negotiations are embedded, and
- b) providing reference points for the „*external authority*” to which speakers have to refer in their arguments given the triadic nature of arguing. At the same time, the institutional setting provides negotiations with different types of audience.

##### *a) Degree of Institutionalization*

Institutions consist of specific sets of principles, norms, rules and procedures that pre-structure the interactions and define the range of legitimate behaviour (cf. Keohane 1989). Institutions do not only reduce transaction costs and provide actors with relevant information, they can also serve as discourse arenas enabling actors to argue and challenge validity claims in order to solve common problems. Given the triadic structure of arguing, densely institutionalized settings of international negotiations supply actors with a „common lifeworld” of collective interpretations of the world and of themselves, as provided by language, a common

history, or culture, to facilitate processes of arguing (Habermas 1981, Habermas 1992, Habermas 1995). The „common lifeworld” provides actors with a repertoire of collective understandings, to which they can refer when making truth claims. Thus, densely institutionalized settings provide consensual reference points (*Berufungsgrundlagen*) in terms of previously agreed-upon substantive norms of appropriate behavior (as codified in treaties and agreements, e.g.), but also in terms of procedural norms and standards. In short, institutions provide the ‘common knowledge’ to which the rationalist literature on bargaining refers to. Densely institutionalized settings should, however, not only facilitate bargaining, but should also make arguing more effective. This led to the following hypothesis:

*H1: The more densely institutionalized the social context of the negotiations in terms of consensual norms, rules and decision-making procedures, the more likely it is that arguing affects both the process and the outcome of negotiations.*

As negotiators have to draw on shared norms to justify their positions in an arguing process, arguing might be more common as well as more successful, the denser the network of common knowledge and shared norms among the actors is. The normative interpretation of the „democratic peace” theory claims that it is that shared background that makes democracies particularly averse against entering armed conflict against each other, as they recognize each other as directed by the same set of cherished norms (Risse-Kappen 1995). The same factor makes democracies particularly inclined to enter international organizations. Shared democratic norms and additional institutional networks engendered by this heightened organizational activity mean that common knowledge must be significantly higher among democracies than between democracies and non-democracies.

*H2: In negotiation settings that involve democracies as the protagonists of the main contending positions, arguing is more dominant and bargaining more subdued than in settings in which democracies negotiate mainly with non-democratic opponents.*

#### *b) External Authority*

Institutional settings do not only provide different degrees of reference points enabling the triadic structure of arguing to play itself out, they also vary with regard to the (public) audiences, who can listen to the argumentative exchanges of the speakers. Interestingly enough, we can derive competing expectations from the literature as to the effects of arguing in front of (public) audiences. On the one hand, Elster has pointed out (Elster 1991, Elster 1998) that

public discourses tend to have a „civilizing effect” on the participants in the sense that explicitly selfish interests can rarely be defended and justified in the public sphere. At least, actors have to pretend rhetorically that their interests serve the common good. Once universalistic claims are made in a public discourse, though, other speakers can weigh in and challenge the arguments as self-serving etc. On the other hand, Checkel claims (Checkel 1999), based on insights from the literature on persuasion, that arguing geared to a reasoned consensus is more likely in private in-camera settings and behind closed doors given the considerable risks which actors face when they expose their interests or even identities to arguing. Thus, arguing in front of a public would rarely result in a true dialogue, but more likely lead to ritualistic rhetoric and purely strategic arguing.

We assumed that both claims might be correct, but depend on the institutional context of the negotiations. In the case of legal reasoning in front of a court, for instance, the civilizing effects of an audience weigh heavily on the speakers even if they are strongly motivated by instrumental concerns. The point here is that judges and juries are obliged to be impartial and to decide about the validity of the arguments of the speakers. In contrast, arguing in front of a TV audience often results in ritualistic rhetoric and symbolic mobilization, because the speakers’ main purpose is to rally their own constituencies behind their positions, and rhetorical performance criteria are at least as important as the ‘power of the better argument’ (of course, the latter is also relevant in a court setting).

The difference between the two scenarios seems to be, on the one hand, how significant the consent of the audience is for the decision to be taken and how much the speakers know about its preferences, on the other. Furthermore, one needs to distinguish between two potential audiences in the case of multilateral negotiations: First, there are always those states at the negotiating table, who do not actively participate in the negotiations on a specific point, but whose consent is nevertheless needed to achieve an agreement. As a result and absent the possibility of side-payments or issue linkages, arguing should be more effective in multilateral rather than bilateral settings. Unfortunately, we could not evaluate this hypothesis in the strict sense, since we were focussing on multilateral negotiations. What we could do, however, was to analyze how many different negotiating ‘camps’ were present in any given talks and how much was known about their preferences. This led to the following hypothesis:

*H3: The smaller the number of preferences that have to be taken into account in a negotiating setting and the more these preferences can be treated as fixed, the more appropriate 'in camera' settings might be for making arguing effective.*

Second, there are the public audiences of multilateral negotiations, both in the transnational public sphere and in the domestic environments of many negotiating states. Here, the domestic structures of the states involved in the negotiations might make a difference. Public spheres are a constitutive feature of liberal democracies as a result of which they might be particularly affected by Elster's 'civilizing effect' of audiences. And to the extent to which a transnational public space exists in the international community, it largely links up and is dominated by the public spheres of these democratic systems. This consideration lead to the following hypothesis

*H4: The more liberal democracies are involved in the negotiations in terms of both speakers and audiences whose consent is sought, the more effective arguing will be.*

The second context factor which is relevant for the effects of arguing on the negotiations, concerns the ***problem and situation structure*** (see e.g. Zürn/Wolf/Efinger 1990, Zürn 1992). Again, we concentrated on two factors that were relevant for our research:

- a) the *type of problem* and
- b) the *degree of knowledge and/or uncertainty* that actors have about a specific problem.

#### *a) Type of Problem*

Neoliberal institutionalism and rationalist regime analysis have provided a straightforward proposition as to the type of problems conducive to the effects of arguing. The more negotiations deal with regulatory issues in order to solve commonly identified problems, these authors claim, the more arguing should matter (Scharpf 1997). Distributive problems, however, should be particularly conducive to bargaining, once an agreement on principles of fairness and justice has been achieved. This led to the following hypothesis:

*H5. Arguing will be more successful in the case of regulatory instead of distributive problems.*

### *b) Degree of knowledge and uncertainty*

The final context condition which we assumed to be conducive to making arguing effective concerned the degree of knowledge and uncertainty of actors about the problem to be dealt with and about their interests and preferences. Arguing can be conceptualized as a micro-mechanism for learning in a social interaction environment. Learning, particularly „double-loop learning” defined as changes in actors’ goal orientations (Argyris and Schön 1978; see also Levy 1994) is the more likely to occur, the more uncertain actors are about their preferences over outcomes and over strategies. Psychological research has identified conditions, under which a listening audience is motivated to accept arguments running counter to previous convictions. Such receptivity for counterattitudinal information is likely in situations of high uncertainty or in threatening circumstances (Chaiken, Wood, and Eagly 1996, Johnston 2001). New arguments might also become persuasive if actors try to cope with previous policy failures. Much of the negotiating literature in the rationalist tradition takes it for granted that national governments enter multilateral negotiations with fixed preferences and that they mostly know what their preferences are. But, as Zangl and Zürn pointed out in the ZIB debate (Zangl and Zürn 1996), strategically rational actor should be interested in getting the ‘facts right’ and to update their preferences accordingly. Uncertainty might be particularly relevant in the early phases of negotiations, e.g. agenda-setting and problem definition. This led to the following hypothesis:

*H6: The less certain actors are about the nature of the problem and about their own interests and preferences, the more they are likely to be open to persuasion and arguing.*

### 3.3.2. Process of Arguing

A second set of hypotheses that we evaluated in the project pertained to the process of arguing itself rather than to the social and institutional context in which the negotiations were embedded. As emphasized above, arguing itself consists of a special structure comprising a speaker, listeners (addressee and context-specific audience), and the argument itself. The question is what makes a particular argument persuasive and convincing. The psychological literature on persuasion provides some clues for answering this question.<sup>2</sup> According to this literature, the persuasiveness of an argument is related to

- 1) properties of the speaker,
- 2) properties of the argument, and

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<sup>2</sup> For an excellent review see Chaiken, Wood, and Eagly 1996.

3) the attitudes and cognitive capacities of the listeners.

As to the *properties of the speaker*, there is overwhelming evidence that the *credibility* and *trustworthiness* of the speaker are the most important features for the persuasiveness of an argument (see also Ostrom 1998). According to the psychological literature, mutual trust is based on one or a combination of the following factors:

- affective and emotional relationship between a speaker and her audience (e.g. based on common values or a common ideology);
- consistence with which a speaker makes similar arguments, irrespective of the audiences;
- perceived moral authority of the speaker;
- authoritative claim to knowledge by the speaker.<sup>3</sup>

Applying these factors to our case of multilateral negotiations in international society, we identified two types of speakers who were most likely to make persuasive arguments because of their trustworthiness (see also Young 1991):

- mediators and dis-interested third parties
- NGOs with a high level of moral authority as well as expert groups (epistemic communities).

This led to the following hypothesis:

*H7. The more a speaker represents a neutral third party to the dispute under consideration or can legitimately claim moral authority and knowledge, the more persuasive her arguments will be.*

As to the *persuasiveness of the arguments* themselves, the constructivist literature on norms and persuasion shows an astonishing convergence on what could be called the „*resonance*” or „*cultural match*” assumption (see, e.g., Checkel 1999, Checkel 2001, Finnemore and Sikkink 1998, Ulbert 1997a). „*Resonance*” means that listeners (either the direct addressee of an argument or an audience) can relate or fit a new argument to their previous beliefs on a subject or

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<sup>3</sup> As to the two latter factors, various studies have shown, for example, that the authority and influence of many NGOs and expert communities largely derives from the fact that they are often perceived as knowledgeable in a particular issue-area, neutral with regard to partisan opinions, and/or only interested in the international common good and well-being of the people (see, for example, Keck and Sikkink 1998, Sabatier and Jenkins-Smith 1993). Similar findings hold true for the argumentative power of expert communities with an authoritative claim to knowledge in a particular issue-area (Haas 1992).

on some moral convictions. If an argument is coherent with a generally accepted principle or norm as well as with previously agreed-upon treaties (*Berufungsgrundlage*), if analogies are used, or if the speaker uses powerful symbols to make her case, the arguments become more persuasive (Price 1998). Since arguing is a social-interactive process, speakers will actively seek not only to deliver their perspective on a problem, but will also – implicitly or explicitly - try to find out the positions other participants will take. In a discourse so-called „story-lines”, „a generative sort of narrative that allows actors to draw upon various discursive categories to give meaning to specific physical or social phenomena” (Hajer 1995: 56), may function as a kind of unifying argumentative scheme for various discursive dimensions of a problem. When entering into an argumentative discourse actors either use certain story-lines more or less automatically because it is appropriate in a given context. Or they are actively seeking for a story-line that empowers them to structure a discourse and to gain the power of giving meaning to a certain problem (*Definitionsmacht*). This led to the following hypothesis:

*H8. The more an argument can be made to resonate with some listener’s previous attitudes or experiences and/or previously accepted norms and principles, the more persuasive it is likely to be.*

Finally, the *attitudes and cognitive capacities of the listeners and the audience* are relevant for the persuasiveness of an argument. Here, most of the literature emphasizes *uncertainty*, lack of knowledge as well as preparedness to receive counter-attitudinal information. Hypothesis 6 above captured this proposition.

Table 3: Overview of Hypotheses

Conditions...	SOCIAL CONTEXT				PROCESS OF ARGUING		
... for	effectiveness of arguing as such				effectiveness of specific arguments		
Variables	Institutional setting		Nature of the problem		Properties of the speaker	Properties of the argument	Attitudes and cognitive capacities of listeners
Dimensions	Degree of institutionalisation	External authority	Type of problem	Degree of knowledge and uncertainty			
Hypotheses	„norm density” hypothesis (H1) „democracy” hypothesis (H2)	„in camera” hypothesis (H3), „public sphere” hypothesis (H4)	„problem structure” hypothesis (H5)	„uncertainty” hypothesis (H6)	„credibility” hypothesis (H7)	„resonance” hypothesis (H8)	„uncertainty” hypothesis (H6)
Theoretical and empirical foundations	Habermas, democratic peace literature	Elster, Checkel	neoliberal institutionalism, rational regime analysis	social psychological theories on learning	social psychological studies on persuasion	constructivist studies, discourse analysis	social psychological studies on persuasion and learning

### 3.4. Case Selection and Methodology

Our main criteria for case selection were hypotheses 1 (norm density) and 5 (problem structure). Three of our negotiations (Child Labour Convention of the International Labour Organization [ILO], Nuclear Non-Proliferation Treaty [NPT] review conferences, and EU negotiations on greenhouse gas (GHG) emission limits) took place in densely institutionalized settings with previously agreed-upon treaties as well as well-defined and –specified procedures and decision-making rules. Comparatively speaking, three negotiations (Treaty Banning Land Mines, International Criminal Court (ICC) and the United Nations Conference on Trade and Development (UNCTAD) originated outside the established framework of an international institution and/or in the absence of clearly identified consensual norms and rules of procedure. Finally, the Climate Change Negotiations initially took place outside established settings with little normative consensus, but then became strongly institutionalized. As to the problem structure, all cases involved both problem-solving and distributive bargains. However, regulatory issues dominated four of our cases (ILO Child Labour, NPT Review, Land Mines, ICC), while distributive problems were particularly relevant for the Climate Change Negotiations, the EU negotiations on GHG emissions and UNCTAD. Our case selection is summarized below.

*Table 4: Criteria for Case Selection*

Degree of Institutionalization	HIGH	LOW
Type of the Problem		
REGULATIVE	NPT ILO Child Labour	Land Mines ICC
DISTRIBUTIVE	EU GHG emissions Climate Change (phase 2)	UNCTAD Climate Change (phase 1)

In terms of research methodology the project aimed at testing hypothesis by means of reconstructing and interpreting communicative processes. We did not only want to understand how processes of arguing unfolded and developed over time. We also aimed at explaining why certain instances of arguing had political effects and what these effects were. Studying processes of arguing necessarily meant that the usage of language, both written and spoken, had to be analyzed. The effects of language and communicative processes are always related to a

specific context and can only be accounted for in the framework of this specific context. Therefore, we also needed to look at the context in order to figure out how participants perceived a specific move or communicative act. As a consequence, for establishing systematically what type of context conditions favored arguing and what kind of effects it may have had, no single method could be employed only. Instead, a systematic variation of research perspectives (triangulation) was needed, whereby a combination of different data sets, theoretical perspectives and methods were used (Flick 1998: 229/30):

- 1) Generally speaking, the *method* of analysis we applied in our case studies was process-tracing. Process-tracing is the appropriate method to be used to generate data on causal mechanisms, events, actions and other kinds of intervening variables or context conditions that link arguing to observed effects (see Bennett and George 1997). In addition, for analyzing communicative processes we also employed various methods of discourse and content analysis depending on the available data sets (for details see below).
- 2) As far as *data sets* were concerned, we used different types of texts ranging from official documents and other documentary material (summarizing and/or rephrasing the negotiation process) to interview material. A lot of the communicative action in international negotiations, however, takes place in informal meetings, behind closed doors, or in the corridors. There is usually little documentary evidence available to track these meetings. Moreover, written protocols were only available in four of our eight cases (ILO Child Labour, Land Mine Treaty, UNCTAD, Nuclear Non-Proliferation), while we could use methods of participant observation in only two cases (NPT, Climate Change negotiations). As a result, all investigators conducted a number of intensive and in-depth interviewing of participants to the negotiations.
- 3) The various *theoretical perspectives* we employed were reflected in our set of hypotheses. Moreover, we tried to test alternative explanations for the process and outcome of the negotiations from different theoretical approaches. The main point was to establish the counterfactual (Fearon 1991, Lebow 2000, Tetlock and Belkin 1996): How would the negotiations have proceeded and what would have been the result in the absence of arguing and reason-giving?

Our actual *research strategies* depended on the different data sets that were available in each case. Irrespective of differences in data a crucial aspect in the research design was the systematic comparison of texts that had been produced by the same actor through different stages of the negotiation process. Wherever possible, we tried to establish a sequencing of the data

(initial positions, pre-negotiations, positions after pre-negotiations but before negotiations, positions expressed during and after various stages of negotiations, and positions explaining and justifying negotiation results or the lack thereof). Changes in style (shift of emphasis from arguing to bargaining and vice versa), objectives (redefinition of preferences) and reasoning (reference to previously rejected or unmentioned norms, assertion of previously unspoken causal links etc.) served as important indicators of a redefinition of an actor's position. Moreover, the following indicators were used to measure the effectiveness of arguing in the various contexts:

- A negotiating result that cannot be explained by the power ratio among the negotiating parties, that is, against the will of the more powerful party/parties;
- A result that goes beyond the actors' preferences at the outset of negotiations and cannot be explained on the basis of these preferences alone;
- A marked shift in preferences of actors, notably more powerful ones, in particular if it coincides with a change in the set of arguments by which these actors' positions are justified and explained;
- An explicit conceding of an argument by an actor leading to a shift in position which cannot be explained by events outside the negotiations themselves;
- A convergence of explanation and justification of positions and/or negotiations result at during and at the end of negotiations which deviate markedly from explanation and justification at the beginning of negotiations.

*Discourse analytical approaches* helped us to approach communicative processes from a more macro-analytical perspective by analyzing how specific patterns of thinking and of giving meaning to something changed over time. The term „discourse analysis” covers a wide range of theoretical approaches and methods (see e.g. Keller et al. 2001, Milliken 1999, Potter and Wetherell 1987, Titscher et al. 2000, van Dijk 1985). A discourse can be defined as „a specific ensemble of ideas, concepts, and categorizations that are produced, reproduced and transformed in a particular set of practices and through which meaning is given to physical and social realities” (Hajer 1995: 44). Analyzing discourses is an attempt to give meaning to regularities and variations in different types of texts, and to understand the social backgrounds and social effects of different ways and modes of communication. Therefore, discourse analysis is characterized by two analytic dimensions:

- the level of *content*, i.e. what is actually said or written and

- the level of *context*, i.e. the social situation in which a text is produced, by whom it is produced and/or by which social practices it is produced (van Dijk 1999).

Employing discourse as the overall concept, with which communicative processes can be reconstructed and interpreted, allowed us to pose specific questions that helped to structure our analysis of the argumentative processes (see also Keller 1997: 318/19):

- How did a specific discourse develop?
- How did various discourses change over time?
- To which issue-area and to which audience do they refer specifically?
- Which kind of content (frames, story-lines etc.) do they convey?
- Which types of rhetoric strategies are employed to promote a certain discourse?
- Who are the carriers of specific discourses?
- What is the relationship of one dominating discourse to other competing current or historic discourses?
  - What kind of effects do these discourses have on actors' behaviour?

Since the contexts, in which the negotiations took place, were not always fixed over time, we checked regularly for changes in the social and material settings of the negotiations and if, or to what extent, such changes were mirrored in argumentative styles and behavior.

### 3.5. Problems

As already set out above, we had to reformulate our research goal (3.1) and reconceptualize our research design considerably (3.2) after having conducted some initial research. The most severe problem we were encountering during our research was a methodological one: the different quality of data we were able to obtain. As already pointed out above (3.4.), cases were rare where we could use verbatim protocols to reconstruct sequences of arguing. To make up for this shortcoming, our investigators tried to rely on other forms of protocols or official documents as primary sources. Alternatively, some of us could fall back on secondary sources like NGO reports on the course of the negotiation process. In addition, all case study investigators conducted a number of interviews. Unfortunately, many interviewees had difficulties to remember which kind of arguments were exchanged or how specific participants argued in certain instances. By using all data sets available and cross-checking the information gained

very carefully, it was possible to draw conclusions in terms of arguing for our cases under investigation, except for the case study on EU climate change negotiations which we had to eliminate from our pool of case studies because of data gathering problems.

Another problem of our project concerns lack of funding after the first funding period. This made it impossible successfully complete some of the case studies. E.g., case study investigators, who had been funded by the Volkswagen Foundation, had to go on with their research on different funding sources while they were working on their Ph.D. theses. Therefore, the case studies could not be carried out to the point we had intended originally. This renders a comparison of the cases a bit more problematic and restricts the possible range of generalizations that can be made.

#### **4. Overview of Results and Conclusions**

In the following we will first present the results of our project with reference to the hypotheses we wanted to examine. Then we will draw some general conclusions about arguing as a distinct mode of communication, how it works, what kind of functions it has and what kind of outcome it might produce.

##### 4.1. Results Referring to the Hypotheses

###### 4.1.1. Social Context

###### *1) Institutional setting*

###### *1a) degree of institutionalisation:*

H1: The more densely institutionalized the social context of the negotiations in terms of consensual norms, rules and decision-making procedures, the more likely it is that arguing affects both the process and the outcome of negotiations.

In general, we were able to confirm this proposition across our case studies. A densely institutionalized context in which negotiations take place, provide a set of already agreed-upon norms, rules, and decision-making procedures which serve as reference points („*Berufungsgrundlagen*”) in an argumentative discourse. Negotiators in such settings routinely refer to these consensual norms in order to justify their positions. Moreover, it is next to impossible in such institutionalized settings to argumentatively challenge previously agreed-upon norms and rules. A strong „logic of appropriateness” (March and Olsen 1998) prevails in such settings determining the type of arguments and justifications deemed socially acceptable in such

contexts. In the case of the Nuclear Non-Proliferation Treaty Review conference, for example, a diplomat representing a nuclear-weapons state lost his case in a negotiating sequence when he seemed to challenge the obligation to nuclear disarmament enshrined in the NPT.

Yet, this was only part of the story. We found in many cases that it was more important than the existence of previously agreed-upon norms that some actors acted as „norm entrepreneurs” or as „knowledge brokers”, who tried to actively formulate a consensual problem definition backed by existing norms. These norms were either quite specific and enshrined in specific treaties (as in the case of the ILO Child Labour Convention) or rather general as in the landmine case, where actors referred to humanitarian law more broadly. It really made a difference when these norms were looked upon as legitimate and appropriate standards of behaviour in a given context. To put it differently: norms had to be „activated“ first. Either the negotiations took place in a setting where the norms were already „out there“, because actors could refer to already existing standards (child labour, nonproliferation). Or actors were negotiating in settings where analogies could be drawn to similar cases (climate change, landmine). Very often it was possible to refer to principles then, which were agreed upon in different contexts. A third variant was a setting where there was no real precedent (ICC). To argue successfully in this case, negotiators reframed the issue at hand so that it was easier to draw analogies or refer to already existing norms (for more on arguing strategies see 4.1.2.).

*Table 5: Institutional Settings and Arguing Strategies*

<b>Type of setting</b>	<b>standards already existing</b>	<b>no standards, but analogies to similar cases possible</b>	<b>no standards, no real precedent</b>
<b>arguing strategy</b>	reference to already existing standards as standards of appropriate behaviour	Analogies, recourse to more general standards	reframing to make analogies possible, recourse to more general standards

Another hypothesis we wanted to examine with regard to the institutional setting was if democracies with their shared normative background were more inclined to arguing instead of bargaining when they were the main protagonists in multilateral negotiations compared to a setting where democracies negotiated with non-democratic countries (H2 democracy hypothesis). As far as our cases are concerned, we are not able to draw a definite conclusion. However, our evidence raises doubts about the assumption that negotiators from democratic coun-

tries are better able to argue and to use arguments more persuasively than their counterparts from authoritarian countries.

The type of political system, however, comes into play when one takes the domestic level into account. Non-state actors in democratic countries, for example, mobilise and try to influence their country's negotiating position. The landmine, the climate change, and the ICC cases are prominent examples of how domestic constituents tried to influence their governments in the respective negotiations. Then, governments can be pushed to agree to certain standards (as in the landmine case) or governments may act as „laggards“ and use their domestic opposition as a bargaining resource in a classical „two level game“ (Putnam 1988), as the example of the US in the climate change negotiations shows. However, while the “two level game” metaphor implies interest-based bargaining as the prevailing mode of communication, it might be more appropriate to refer to “two level arguing.”<sup>4</sup> In the cases of the land mine, climate change, and ICC campaigns, NGOs and other transnational actors had to first persuade their domestic audiences in order to influence the negotiating positions of their respective governments. Domestic “win sets” conducive to international cooperation had to be created through argumentative persuasion. But the “two level arguing” mechanism also works the other way round. Negotiators who have been persuaded at the international level that their country’s negotiating position is not sustainable, have to argue back to their governments and their domestic audiences in order to convince them to change preferences. The mechanism of “two level arguing” appears to require a democratic political system with a public sphere open to persuasion.

Concerning the institutional setting in which negotiations take place, we also have to take the organisational setting in a more narrow sense into account. The organisational context in which negotiations take place, decides who gets access to the negotiation process. Moreover, this organisational context assigns certain roles, functions and a certain room for manoeuvre to specific actors. In short: particular actors get empowered by the type of organisational setting. And what is more, the organisational setting as such is decisive for the choice of strategies which are looked upon as appropriate. There are certain rules of appropriate behaviour in different settings. In a court setting, for instance, the actors will choose different strategies according to their roles as prosecutor, defense lawyer, or judge. When people try to solve an argument with the help of a mediator they will behave differently to argue their cases.

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<sup>4</sup> We owe this expression to David Held and Mathias Koenig-Archibugi. For a discussion see Risse 2004.

Knowing this, actors can change the organisational setting deliberately as a kind of strategic move to end some diplomatic stalemate. The landmine case is a good example of how a change in organisational setting led to the empowerment of a different group of actors (NGOs), who then gained access to the negotiations. This, in turn, made it easier to reframe the problem from a strictly security-related problem to a humanitarian problem and also led to a reappraisal of the military utility of anti-personnel landmines.

*1b) external authority:*

A distinguishing characteristic of arguing compared to bargaining is its triadic nature. This means that actors always refer to some kind of external authority to make validity claims. This external authority may be a set of norms, but it may also be an audience. Therefore, we wanted to analyse if it makes a difference in terms of arguing if actors negotiate in public or in camera. In the literature you will find competing claims about this factor, which we termed the „in camera hypothesis“ (H3) and the „public sphere hypothesis“ (H4). Neither of the hypotheses could be refuted or validated by our sample of cases. On the one hand, we found many instances in our cases where controversial passages in drafted papers were negotiated within a smaller group of negotiators behind closed doors. Especially when conferences draw to a close, conference secretariats tend to resort to this strategy to finalise a paper so that is ready for signature. Unfortunately, we do not know if the completion of a text behind closed doors is due to arguing or bargaining, since we usually lack the necessary information.

On the other hand, we do have instances where in camera meetings proved rather useless in terms of consensus-seeking as in the case of the ICC. Here, the meetings under the eyes of an interested public proved to be much more effective as far as the influence of arguments was concerned. An alternative strategy to in camera meetings which also guarantees some privacy, is to circulate non-papers that narrow down the options or ask a number of specific questions. Usually, conference secretariats inquire the preferences of each delegation or a number of delegations in this way, and then try to formulate a consensus or compromise position in the light of the answers received.

Again, the triadic nature of arguing is nicely exemplified by instances where delegates turn to the public, i.e. to members of the NGO community, who observe the negotiation process, or representatives of the media, and try to justify their positions. An interesting example of this

could be found in the child labour case, when a U.S. delegate tried to explain why the U.S. delegation did not want a certain wording on child soldiers in the text of the convention and why the U.S. delegation had to pressure other delegations to support the U.S. point of view in order to make sure that the convention as a whole would not be rejected by the U.S. Senate just because of some controversial clauses on child soldiers. Moreover, we found indications of some „indirect“ effect which the public may have on negotiations. Sometimes negotiators become aware of their „social responsibility“, when an interested public observes the course of the negotiations. Especially NGOs, which are said to act as „the conscience of the world“ (Willetts 1996), remind negotiators of the socio-economic and moral implications of their work. Therefore, sometimes delegates feel the presence of some moral obligation, from which a certain standard of appropriateness is derived, without referring to it explicitly all the time.

While we cannot decide firmly between the “in camera” and the “public sphere” hypotheses, it seems safe to conclude that their relative significance depends on further conditions. Private “in camera” settings during negotiations work particularly well in cases of what game theory calls “mixed motive games,” i.e., instances in which actors hold fixed preferences to maximize their egoistic interests, but would also prefer mutual cooperation under specific circumstances. In such instances, institutionalized “in camera settings” such as the “confession talks” during European Council summits allow actors to explore potential compromises, to seek out the justifiability of their interests, and the like. These settings allow for arguing and persuasion, because negotiators do not have to stick to their fixed preferences behind closed doors and are allowed to “think out aloud” about possible negotiating solutions. Such “in camera meetings” usually occur during later stages of negotiations and mostly when plenary sessions have led to some stalemate or crisis.

As to “arguing in a public sphere,” this mechanism appears to be particularly conducive to processes of persuasion, if the speakers do not know for sure the preferences of their audience *and* if the consent of the audiences is required, be it at the domestic level (as in a “two level arguing process”) or be it in front of a transnational public sphere in which negotiators see the need to legitimize their positions. At this point, justifications and reason-giving matter and the triadic structure of arguing plays itself out. However, the more speakers know about the preferences of the public and the more these preferences are assumed to be fixed, the more we will observe what communication specialists call “symbolic mobilization,” i.e., ritualistic ap-

peals to emotions and stereotypes to rally constituents around one's position. In sum then, the "public sphere" hypothesis appears to hold under two conditions:

1. The structure of the public resembles legal reasoning in front of a court, i.e., large portions of the audiences and/or constituencies deciding over the negotiating outcome are assumed to be neutral at the outset of the arguing process.
2. The negotiations are embedded in and take place in front of a transnationally constituted public sphere requiring justification and legitimation.

## *2) Nature of the problem*

Another contextual factor we were examining was the nature of the problem, upon which the negotiations centred. There, we concentrated on the type of problem (regulative vs. distributive) and the degree of knowledge or uncertainty about the nature of the problem to be negotiated.

### *2a) type of problem*

In general, we can falsify the assumption that arguing is more effective when regulatory rather than distributive issues are at stake. It is true that bargaining dominates when it comes to the actual process of deciding who gets what (or has to give something; i.e., when a previously defined "cake" has to be divided up). Yet, this statement refers to stages in a negotiating process rather than to the nature of the problem under consideration. There will be bargaining phases in any negotiation, even when regulatory problems have to be dealt with (because they often involve some distributive concerns, too). Moreover, our two cases of solving distributive problems during the climate change negotiations on the international and the EU levels demonstrate that negotiators have to agree on fairness principles beforehand to be able to strike a deal (see Steffek, 2002; Albin, 2001). This is where arguing sets in, even in the case of a distributive problem. As the international climate change negotiations nicely exemplify, some kind of agreement on fundamental fairness principles is necessary at early stages of the negotiations. Even during treaty negotiations tackling a distributive problem, it is common to start with a section on principles. For getting this done, negotiators have to justify their preferred principles on normative grounds and this process requires the use and exchange of arguments. Bargaining cannot solve disagreements over fairness principles. To put it differently: A bargaining compromise over fairness principles will unravel immediately, when it

comes to distributing the cake, while a reasoned consensus over what constitutes a “fair deal” is a pre-condition for solving the distributive problem.

Finally, the “nature of the problem” does not fall from heaven, but is socially constructed to a very large extent. Whether issues are primarily viewed as regulatory or distributive depends a lot on framing processes which, once again, rely on the logic of arguing. Depending on the framing of the problem, actors will prefer a specific set of problem-solving strategies and instruments. Therefore, the debate on if the US and its allies should wage a „war on terrorism“ instead of „combating terrorism“ (like to combat an infectious disease) is not trivial, because framing the issue leads to different conclusions on how to handle it. This is why actors use different types of framing strategies deliberately to open up new avenues of tackling a problem. We will elaborate on this point below when we look at the process of arguing below (4.1.2.).

#### *2b) degree of knowledge and uncertainty*

With respect to what is known about a problem we were hypothesizing that the less is known and the more actors are uncertain about the causes and consequences of a problem the more they would be open to arguing (H6). We will look on the „contextual“ dimension of this hypothesis now and dwell on the „actor“ dimension of it below (4.1.2.). In all our cases in which the main actors lacked knowledge and were uncertain about their preferences, the window of opportunity was wide open for all kinds of „knowledge brokers“. But not every actor who offers knowledge on a certain problem will be able to reach policy-makers through this window. It is the organizational context that decides who will get in. As we were pointing out above, the organizational context allows some actors to enter the policy process and excludes others. Moreover, institutional context sometimes assigns specific actors the task to provide policy makers with knowledge. There are two types of knowledge brokers: first, some are legitimated knowledge brokers „ex officio“ in the sense that they constitute institutionalized “epistemic communities”. This holds true for the ILO Office in the child labour case or the Intergovernmental Panel on Climate Change (IPCC) in the climate change case. In both cases, the institutional setting legitimated these actors to provide authoritative knowledge on a problem and, thus, made their claims and arguments persuasive almost by definition. Second, however, there are those actors who have to establish themselves first as credible and authoritative on a given policy issue. This was the case with the International Committee of the

Red Cross (ICRC) in the landmine case and with many non-governmental organizations who tried to enter the negotiation process „from below.“ These actors must build coalitions with like-minded states to exert normative influence.<sup>5</sup> But even if organizational position assigns the role of knowledge brokers to some actors, the IPCC example shows that their influence has clear-cut political boundaries. Moreover, institutionalized “epistemic communities” have to be very careful to cross these boundaries, because their claims to authoritative knowledge depend to some extent on their ability to convincingly demonstrate that they are politically neutral. This, of course, restricts their policy influence and persuasive power considerably.

#### 4.1.2. Process of Arguing

##### *1) Properties of the speaker*

In accordance with the overwhelming majority of the literature on negotiations, our case studies confirmed the crucial role of credibility of speakers, as far as the effects of arguments are concerned. The key to successful arguing is how a speaker is perceived by the audience. There are certain strategies with which actors can gain the status as credible speaker. E.g., it does not suffice that actors claim to hold legitimate knowledge, they also have to prove that the way they acquired this knowledge meets certain criteria of validity and can be shared intersubjectively. Moreover, as other studies pointed out before, knowledge brokers must be perceived as honest and impartial or dedicated to a cause which is looked upon as being legitimate and in the interest of some common good. This is part of the story why the ILO Office, the IPCC or the ICRC were able to gain authority. Yet, the sources of legitimacy vary, as these three examples demonstrate. The ILO office gains its credibility as a neutral agency to foster cooperation in international social policy. The IPCC represents an institutionalized form of epistemic community. The ICRC’s reputation and legitimacy, however, is based on more than hundred years of performance and service in humanitarian crises.

Another crucial aspect of credibility is that actors speak and act consistently. This is sometimes used to test the credibility of actors during the course of negotiations. In the climate change case, for instance, participants made the U.S. delegation stick to certain principles as benchmarks of their credibility and consistency of arguments. In the ICC case, the

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<sup>5</sup> A study on the landmine case and the ICC that draws similar conclusions to our project is Hampson and Reid 2003.

inconsistent behavior of the U.S. delegation decreased its credibility among the other delegations, which in turn led to a massive loss of trust in the U.S. and its final isolation in the negotiations. To many observers, this was one of the main causes why the Rome Statute was adopted contrary to all expectations.

Credible speakers often take leadership roles in international negotiations if they combine credibility with competence and determination.<sup>6</sup> This is one of the reasons why small state representatives often act as presidents of multilateral negotiations, as they are often perceived as being more neutral and free of vested interests than diplomats from bigger countries. In other cases, charismatic leaders emerge during the course of the negotiations, particularly in crises situations. Key to their success is the ability to present credible and persuasive arguments.

## *2) Properties of the argument itself*

A core mechanism that contributes to successful arguing relates to the properties of the argument. As the constructivist literature in International Relations points out, arguments have to „resonate“ with prior knowledge, agreed-upon principles and norms, or commonly held worldviews in order to become persuasive (H8 resonance hypothesis). But what does „resonance“ mean? We found three distinct strategies, with which arguments were constructed to resonate with previous beliefs: drawing analogies, reference to already established principles and framing.

During early phases of a negotiation process, actors tend to use analogies to make their arguments plausible. At the beginning of the climate change negotiations, actors constantly referred to the ozone regime in the sense of „look how we have done it in the ozone case, so let us also do it this way now“. As a result, negotiators agreed quickly on drafting a framework convention first and on specifying certain points in various protocols which should be negotiated later on. A second strategy is to refer to principles that have either already been established in the course of the negotiations or have been established in other areas which are relevant for the issue at hand. The crucial mechanism seems to be that arguments must be justified by certain standards of appropriateness, which are perceived as morally right and legiti-

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<sup>6</sup> On leadership see e.g. Malnes 1995, Moravcsik 1999, Young 1991, 1999.

mate by the listeners. Speakers can achieve this randomly or by trial and error. Yet, changing normative points of references during the negotiating process renders the speaker incredible after a while.

A third option is to frame a problem in such a way that an appeal to work on the problem in a specific way can be accommodated with normative principles of the listener. Such a framing strategy appears to be a rather crucial mechanism to socially construct resonance. A common understanding of framing in the social sciences defines it as „a way of selecting, organising, interpreting, and making sense of a complex reality so as to provide guideposts for knowing, analysing, persuading, and acting. A frame is a perspective from which an amorphous, ill-defined problematic situation can be made sense of and acted upon“ (Rein and Schön 1991: 263).<sup>7</sup> In essence, framing „ leads to different views of the world and creates multiple social realities“ (Rein and Schön 1991: 264). What framing actually does is to categorize cognitively what we experience as social reality, so that we are able to act and react upon it. By knowing how framing works, actors may use these cognitive mechanisms to categorize problems in such a way that other actors are able to understand them, because they can accommodate these problems with their empirical experiences and normative beliefs. We found a good example of how this process works, in the child labour case. Child labour as a human rights problem was embedded in a moral discourse. But to frame child labour as an individual human rights problem only would not have worked in the context of the International Labour Organization dealing primarily with questions of social rights. The traditional ILO discourse on child labour, however, depicted child labour as a developmental problem. But it was exactly this way of framing the problem that had prevented any progress on that matter for years. The ILO Office then succeeded in reframing how the problem was defined in terms of causes and consequences, i.e. by introducing new causal knowledge. It demonstrated that child labour not only resulted from poverty, but also prolonged poverty endlessly. Thus, countries had to do something against child labour, even if they were (still) underdeveloped. Once it was recognized that child labour actually contributed to poverty and to development problems, a new avenue seemed to open up for effective measures against it.

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<sup>7</sup> For two different traditions of framing and frame analysis see Kahnemann and Tversky 1984, Tversky and Kahneman 1986 from a rational choice point of view and Goffman 1974 from a more „interpretive“ point of view.

We found a similar process in the landmine case. Traditionally the use of landmines had been justified by its military utility, which made it impossible to negotiate an agreement banning these weapons. When a study of the ICRC proved that the military utility of anti-personnel landmines was rather modest, while they inflicted much heavier developmental damage to many societies, the mental block and the conflict of norms (security vs. human rights concerns) could be overcome. In both cases, the introduction of new knowledge on cause-effect relationships made it possible to change the normative frame of reference for the issue at stake which then enabled negotiators to work toward an agreement. In other words, new causal knowledge and the change of normative frames went hand in hand enabling actors to re-consider their interests in the light of new evidence leading to different frames of reference and, thus, to overcome blockages in the negotiations. To put this mechanism in rational choice terms: Framing and re-framing issues can lead to changing the “common knowledge” of actors and, thus, the situation structure from one in which there is little zone of agreement to one in which a negotiated or bargaining compromise becomes possible. This is exactly what happened in both the child labor and the landmine cases.

To put it more generally: Framing and reframing issues in such a way that actors are able to make sense of a problem and can accommodate it with certain normative principles helps to create an actor's willingness to tackle a problem. The mechanism to achieve this is to reformulate certain cognitive beliefs either in order to break up mental blocks that stopped actors from doing something about a problem or to show actors that their behaviour is unacceptable in terms of normative standards or dysfunctional in terms of their material interests.

### *3) Attitudes and cognitive capacities of listeners*

As far as the attitudes and cognitive capacities of listeners were concerned, we looked again at the lack of knowledge and uncertainty of actors (H6 uncertainty hypothesis). We wanted to know if actors are more open to arguments and persuasion under these conditions. As we pointed out above (4.1.1.), uncertainty and lack of knowledge opened up windows of opportunity for knowledge brokers. But having the opportunity to speak one's voice in the policy process does not mean that this voice will be listened to in the sense that arguments will have an effect. While we could observe that policy makers turned to expert advice very often in the face of uncertainty, seeking expert advice may also be understood as a kind of symbolic politics which substitutes political action with „doing studies“. Experts often serve to discharge

policy makers of taking decisions at all. In sum, uncertainty and lack of knowledge on the part of listeners cannot be confirmed as an either necessary or sufficient condition for the effects of arguing. Framing and re-framing arguments by introducing new knowledge and/or changing the normative context appears to be much more effective, irrespective of actors' prior knowledge.

#### 4.2. Conclusions

Our case studies showed that arguing works as a micro-mechanism by which new empirical insights and normative principles get diffused communicatively. While our project could hardly establish firm conclusions on the conditions under which arguing is effective in international negotiations in that it changes actors' definition of the situation, perceptions of interests, and the like, our research lead to various conclusions.

While it is possible empirically to distinguish arguing from bargaining speech acts, it is impossible to draw any conclusions from the sheer quantitative distribution of these speech acts. It is equally impossible to infer from communicative utterances whether actors are motivated by instrumental-strategic interests or by argumentative rationality to seek a reasoned consensus (*Verständigungsorientierung*). What we can demonstrate, though, is that processes of persuasion that change actors' perception of the situations, normative outlook and definitions of their interests have discernible consequences in multilateral negotiations leading to unexpected outcomes. By carefully analyzing how negotiators react to arguing and/or bargaining speech acts in particular negotiating sequences, we can infer which mode of communication dominated and which effects were achieved. In the cases of the ICC, the landmine treaty, and the ILO's Convention on Child Labor, we can demonstrate that introducing new causal knowledge and changing the normative frame of reference of the issue discussed created new "common knowledge" among the negotiating actors which made bargaining agreements possible in the first place. In the case of the Climate Change negotiations, we can also show that lack of a reasoned consensus on fairness criteria continued to result in negotiating blockages in the course of negotiations over the years. In that sense, we feel sufficiently confident to claim that the mode of communicative arguing and reason-giving matters in multilateral negotiations in that it has discernible effects on the outcome.

Yet, while we can show that arguing matters, it is more difficult to ascertain under which conditions it matters and how. None of the hypotheses we examined turned out to establish a deterministic relationship between the factor under consideration and the result it was expected to produce. As to the *institutional context*, for example, we were able to confirm that a dense framework of previously agreed-upon principles, norms, and rules establishes points of reference for arguing which have strong effects on negotiating outcomes. Moreover, organisational settings that assign specific roles to actors can have a strong effect on their ability to persuade others of their reasonings. But we also showed that “norm entrepreneurs” or “knowledge brokers” can serve as functional equivalents to densely institutionalized contexts in that their ability to frame or re-frame the issues at stake can overcome situations with a lack of already established frames of references or, more important, change situational settings which are not conducive to achieving agreements on principles or norms.

We also tried to establish whether arguing “in camera” or in public settings is more effective. These propositions produced rather mixed results and their validity depends on further scope conditions. On the one hand, arguing behind closed doors and “in camera” is particularly effective in situations in which it is necessary to enable negotiators with fixed preferences or strong and detailed instructions to “think out aloud” and to justify the reasoning behind these interests. Public settings, on the other hand, are particularly conducive for arguing to matter if speakers are uncertain about the preferences of their audiences *and* if the consent of these public audiences is required. In these instances, we could observe processes of “two-level arguing and persuasion” whereby negotiators had to justify their interests and their negotiating positions both at the negotiating table and in front of domestic audiences.

As to the nature of the problem at stake, we feel safe to falsify the proposition that arguing is more effective when regulatory rather than distributive issues are at stake. While it is true that bargaining prevails when negotiators have to “divide up the cake,” the rules by which the cake is being cut, are subject to reasoned discourses. Fairness criteria have to be agreed upon in order to allow for bargains. The climate change negotiations are a perfect example of how lack of consensus on fairness can hamper bargaining compromises. Finally, arguing matters immensely in the agenda-setting phase of negotiations when the nature of the problem is to be defined. Whether an issue is constructed primarily as regulatory or distributive, depends a lot

on how it is framed during these early phases of negotiations (or more precisely, even before actors get to the negotiating table).

As to the assumption derived from soft rational choice that arguing matters the more, the more actors are uncertain in terms of their preferences and their knowledge about the problem at hand, we have to add important qualifications to this assumption. First, it depends a lot on the institutional setting of negotiations whether “norm entrepreneurs” and/or “knowledge brokers” have a fair chance of persuading others. Second, uncertainty about one’s interests is *not* generally a condition for arguing to be effective. In at least three of our cases (ICC, landmine, child labor), changing established patterns of knowledge and altering the normative frames of references succeeded in moving negotiations from “zones of no agreement” into one in which negotiated compromises could be achieved. In other words, arguing and persuasion led to preference changes among important actors.

As to the processes of arguing itself, we can strongly confirm the proposition that the credibility of speakers as neutral, to be able to legitimately claim causal knowledge, or to provide moral authority is crucial. Moreover, credible speakers are particularly successful in making arguments and justifications resonate with existing and agreed-upon norms as well as general standards of appropriateness. We found strong evidence for the “resonance hypothesis” put forward by moderate constructivism in international relations theory. The same holds true for the ability of speakers to persuasively introduce new knowledge or to re-frame issues in negotiating settings. The combination of authoritative claims to knowledge and moral authority is precisely what constitutes the social power of (I)NGOs in multilateral negotiations.

As far as the different phases of negotiation are concerned, instances of arguing are quite important in the agenda-setting phase or in pre-negotiations. There, a problem will be defined, normative principles have to be established and decision-making procedures will be worked out. Very often this is the phase where decisive framing processes occur, competing discourses come to the fore and framing strategies will occur that try to accommodate the issue at hand within these discourses or establish a dominating one. Although in this early phase processes of arguing may yield crucial results for subsequent phases of the negotiation, instances of arguing occur in every phase and they may also alter outcomes at a later stage of the negotiation.

In sum, it is quite obvious from our case studies that arguing can contribute to learning in that actors acquire new information and are introduced to new ways of thinking about a problem and its possible solutions. This, in turn, might induce actors to reformulate their interests according to new empirical knowledge and moral standards. Moreover, the triadic nature of arguing leads actors to assess each other's validity claims collectively and agree jointly on standards of appropriate behaviour. By entering into a discursive process, the perception of a situation may change, and with it the interests, preferences and sometimes identities of the actors involved.

## **Anhang:**

### **1. Fallstudienberichte**

- Deitelhoff, Nicole 2003: Arguing and Bargaining in Multilateral Negotiations: The Case of the ICC, Case Study Report to the Volkswagen Foundation, unpublished manuscript, Frankfurt.
- Maier, Matthias Leonhard 2002: Negotiating Greenhouse Gas Emission Limits in the European Union, Report on a Case Study Conducted for the Project on „Arguing and Bargaining in Multilateral Negotiations“ funded by the Volkswagen Foundation, unpublished manuscript, Florence.
- Steffek, Jens 2003: Arguing About Fairness Principles: the Case of the UN Framework Convention on Climate Change, Case Study Report to the Volkswagen Foundation, unpublished manuscript, Bremen.
- Ulbert, Cornelia 2003: Arguing and Bargaining in Multilateral Negotiations: Case Study on the ILO „Worst Forms of Child Labour Convention“, Case Study Report to the Volkswagen Foundation, unpublished manuscript, Berlin.
- Wisotzki, Simone 2004: The Ban on Anti-Personnel Mines: A Case of Effective Persuasion, Case Study Report to the Volkswagen Foundation, unpublished manuscript, Frankfurt.

### **2. Publikationen**

- Deitelhoff, Nicole/Müller, Harald 2004: Theoretical Paradise - Empirically Lost? Arguing with Habermas, in: Review of International Studies, special section „Habermas and IR-Theory“ (i.E.).
- Müller, Harald 2004: Arguing, Bargaining and all That. Reflections on the Relationship of Communicative Action and Rationalist Theory in Analysing International Negotiations, in: European Journal of International Relations (i.E.).
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- Steffek, Jens 2003: The Legitimation of International Governance: A Discourse Approach, in: European Journal of International Relations 9: 2, 249-275.
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