

The European Convention as a Discursive Setting? An Interactionist Account of the Limits of Institutional Design.

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Abstract:

Overall, the Nizza Intergovernmental Conference was not a story of success. After the attempts of deepening integration failed at Nizza, all hopes shifted to the European Convention. According to the widely shared expectation, the institutional design of the Convention is conducive to discourses and allows thus for innovative results. On the contrary, this paper argues that often mentioned institutional variables, such as the transparency and the plurality of actors, were less important for the achievements of the European Convention. Rather, policy-types, and the norm density are variables of crucial importance for the dynamics of interaction and, in turn, for the scope and content of interaction results. This assessment is based on an interactionist approach to learning. The impact of ideas, which are communicated through speech acts of arguing and bargaining, varies between the absence of collective learning, mutual instrumental learning, and reflexive collective learning. However, contrary to the existing literature, this paper argues, that the type of learning, that can be expected, is not solely determined by the use of speech acts of either arguing or bargaining. The focus on speech acts alone does not provide any yardsticks for the evaluation of the quality of communicated ideas. Since only ideas of high quality can induce processes of mutual instrumental or reflexive collective learning, the interactionist approach theoretically assesses the intersubjective preconditions for different types of learning to occur. Thereby, one-sided constructivist and rationalist action theoretical premises, which are responsible for biased accounts of variables such as transparency and the plurality of actors, are avoided.

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I The European Convention vs. IGCs: Institutional Design as Remedy?

The IGC in Nice and the Laeken Summit came to the decision of conscribing a European Convention, in order to debate on the modification of the EU's 'constitutional' order. Practitioners and scholars alike shared the hope that the European Convention would produce results, much more ambitious and innovative than the preceding IGCs (see i.e. Göler and Marhold, 2003: 323; Maurer, 2003: 182; Pollack and Slominski, 2004). This hope was based on the idea that the institutional design of the Convention is the appropriate remedy for curing the European disease of 'lowest-common-denominator' outcomes produced by IGCs (Magnetite, 2003: 4-5). Comparing the institutional design of the European Convention with the IGCs, it is often claimed that the Convention is characterised by a more discursive setting (Closa, 2003: 18; Göler and Marhold, 2003; Maurer, 2003; Wessels, 2002: 93). The implicit idea behind this belief is that institutional variables such as the transparency and the inclusion of the public(s) via media foster deliberation (e.g. Göler and Marhold, 2003: 328).

There are, however, serious doubts that the modification of the institutional design is the right remedy. A comparison between the IGCs of Maastricht, Amsterdam and Nice reveals that the institutional design as a constant cannot explain the observed variation of interaction results. While the Maastricht IGC achieved a deepening and widening of EU-integration, the amount, relevance and the level of conflict of postponed issues of the IGCs in Amsterdam and Nice indicate that those IGCs were less successful. Since there is considerable variation in the outcomes, even though the institutional design of IGCs remained constant, institutional design variables cannot carry to whole explanatory work load. This indicates that even if some of the results of the European Convention are evaluated as reaching far behind the lowest common denominator solution (such as the development of the principle of the double majority, the inclusion of the Charta of Fundamental Rights, the extension of the EP's co-decision-making competencies or the position of a European foreign minister – for which the previous IGCs failed to produce outcomes¹), the causal mechanisms might be related to variables other than the institutional design.

This paper aims at assessing the impact of institutional design variables on results of interactions in a deductive manner. The emphasis is on the question of whether and how the Convention's institutional design is conducive to arguing and can promote far reaching results

¹ Despite an array of successes, there are also outcomes somewhat resembling lowest common denominator solutions of IGCs. Examples are the unanimity principle for matters of foreign affairs including security policy or the nomination of the Commission's presidents by the European Council, no progress as regards to social policy (see further e.g. Emmanouilidis and Giering, 2003).

of interactions. How far do institutional settings matter for the ‘quality’ of outcomes and which roles play additional policy variables and political agency?

In a first step, the communication of ideas in rationalist and constructivist accounts are examined. Existing bridge-building approaches on bargaining and arguing offer a rich selection of hypotheses on contextual variables – including institutional design variables – conducive to arguing. These approaches would support the widely shared belief that the institutional design of the European Convention was favourable for arguing. However, the causal mechanisms behind the existing bridge-building approaches are most often biased in favour of constructivism and arguing, leading to an overestimation of the discourse-supporting character of institutional variables.

In order to avoid biases, this paper offers a theoretical framework, the ‘systemic approach on interaction’, accounting for arguing *and* bargaining dynamics without drawing on one sided action theoretical premises. This approach allows for the deduction of hypotheses on the role of the most often discussed contextual variables (polity and policy) for the content of results of interactions. Some variables (regulative issues, early stages of interactions, institutional differentiation) are conducive to arguing characteristics; others (distributive issues, norm definitions, high density of norms) are favourable to bargaining dynamics, while an often mentioned contextual variable (the transparency of interactions) has no impact on the dynamics of interactions at all.

Comparing both designs, this paper comes to the surprising conclusion that IGCs are slightly stronger conducive to arguing than the European Convention. However, the institutional design cannot explain differences in the outcomes between IGCs and the Convention-Method. Although policy variables reveal a stronger explanatory power than institutional design variables, there is still a wide margin for political agency influencing outcomes.

II. Theorizing Arguing and Bargaining: Overcoming the Rationalist-Constructivist Divide?

The major difference between rationalism and constructivism is of ontological nature (Wendt, 1999). Due to their different action theoretical assumptions, both meta-theories attribute different impacts to communicated ideas on actors' identities, substantial interests and/or strategic preferences. In rationalist accounts, ideas communicated directly or indirectly through speech acts of bargaining (see below) can only lead to *instrumental learning* about external constraints and thus to changes in strategic preferences (while substantial interests are conceptualised as exogenous).² Constructivism claims that argumentatively communicated ideas (see below) can bring about *reflexive learning* and thus changes in substantial interests (while strategic preferences are irrelevant).³

Harald Müller introduced the Habermasian concept of communicative action,⁴ a logic of action in which actors are prepared to change their ideas in the wake of the better argument (Müller, 1994) into the German IR debate. First, the debate was on whether communicative action actually exists. In order to distinguish strategic from communicative action empirically, typical speech acts (arguing and bargaining) were linked to the two logics of action (Müller, 1994, 1995, Risse-Kappen, 1995: 171-184). The emphasis of the debate shifted as soon as empirical insights pointed towards the coexistence of arguing and bargaining in international negotiations (Müller, 2002, Risse, 2002, Zangl and Zürn, 1996; Elgström and Jönsson, 2000). In the second step, the quest for contextual conditions facilitating communicative action became dominant and hypotheses were developed through a mixture of deductive and inductive reasoning. Thereby, access of affected actors, degrees of institutionalisation and transparency were discussed as contextual institutional variables influencing successful

² Rationalism is based on a methodological-individualist conception of rationality: the strategic rationality. While actor's substantial interests are conceptualized as exogenously defined and fix during interactions, strategic preferences can change. Strategic preferences are about how substantial interests are best pursued (means-ends calculations). They can be altered when new ideas on external constraints (such as the distribution of bargaining power or alternative possibilities for action) are communicated through speech acts of bargaining (*instrumental learning*).

³ Constructivism rests on the ontological assumption that agent and structure are mutually constitutive (Ulbert, 2003, Wendt, 1987, 1999). Intersubjective meaning is created, reproduced and changed through the exchange of argumentative speech acts and influences the development of actors' substantial interests. Since the intersubjective structure is in flux, substantial interests are conceptualised as endogenous (*reflexive learning*). The intersubjective ideational structure is constitutive for actor's substantial interests in two regards. Firstly, the development of substantial interests is based on a common conception of the situation, which itself has to be created during interactions. Secondly, the ideas on questions of truth, appropriateness or rightfulness underlying substantial interests can change during interactions (processes of reflexive learning).

⁴ Strategic rational actors calculate means-end relationships, when they pursue their given substantial interests. Actors relying on the logic of communicative action transcend their substantial interests in order to achieve mutual understanding (Verstaendigung) (Habermas 1995).

argumentation. All those bridge-building considerations⁵ suggest that arguing can be expected in arenas with wide access, highly institutionalized arenas, and settings with high transparency. Bargaining is furthered by strongly restricted channels of access, poorly institutionalized arenas, and interactions taking place behind closed doors. For the European Convention – compared to IGCs – these hypotheses would lead to the expectation that arguing is favoured and bargaining is downgraded, so that interaction results are ‘better’ than the lowest common denominator baseline (as reached in Amsterdam and Nice).

The identification of these aspects is without doubt an important contribution. However, the above approaches are strongly biased in favour of communicative action. As a consequence they overestimate the ideal scope of constructivist approaches and overemphasise the impact of institutional design variables on the development and effectiveness of argumentative dynamics.

Rational choice action theoretical assumptions (strategic and communicative logic as well as the accompanied take of ideas and learning) are incompatible with constructivist assumptions. Hence, the construction of an overarching action-theoretical foundation that encompasses the logic of strategic and of communicative action, endogenous as well as exogenous strategic preferences and substantial interests, and instrumental as well as reflexive learning is impossible.⁶ Therefore, conventional bridge-building approaches apodictically set either strategic or communicative action as ‘naturally’ predominant. This leads to a bias in favour of the ‘natural’ logic of action, when contextual conditions are examined which either hinder the evolution of the primary logic of action or favour the evolution of the secondary logic of action (see part III).

The contextual approach based on the logic of communicative action as prior is problematic as well, because causal chains between contextual factors and modes of action

⁵ Firstly, if wide access to arenas of interaction is granted to affected individuals and groups, this is conducive to argumentative dynamics (Deitelhoff, 2003). This is because a high level of inclusion resembles the ideal speech situation as outlined in the Habermasian discourse theory. Moreover, open channels of access are most likely used by actors lacking formal bargaining power. This, in turn, favours arguing. Secondly, it is often made the case that arguing is favoured by high a degree of institutionalisation (Deitelhoff, 2003; Zangl and Zürn, 1999: 943), because the embedded norms and ideas constitute a common life world, which, according to the Habermasian discourse theory, presupposes successful communicative action (Habermas, 1985, 1992). Thus, the hypothesis is that arguing is more successful when it takes place in a highly institutionalised arena. Thirdly, it is claimed that public settings strengthen communicative action (Elster, 1989, Risse, 1999; Risse, 2002), because the public is a substitute for a common ideational reference system and allows for the triadic structure, which, according to Saretzki, characterises argumentative interactions (Saretzki, 1996). The corresponding hypothesis is that arguments matter increasingly, the higher the transparency of interactions is.

⁶ Although Esser claims that the development of meta-frames is possible, such attempts implicitly consider one action theory as primary (the sequential framing model is ultimately based on the strategic logic of action) (Esser, 2004).

are very weak. Even propositions deduced from the Habermasian discourse theory are not convincing.⁷ Although deliberations in normative *discourse theory* presupposes that persuasion can take place, its transferral to the *empirical-analytical level*, according to which approximations to the ideal discourse conditions favour the logic of communicative action, remains underspecified. Causal mechanisms between institutional variables and arguing are not exemplified. Even if institutional variables resembling ideal discourse conditions would be favourable to the increasing use of argumentative speech acts, the increasing use of speech acts alone allows no propositions on whether arguments are convincing (compare Holzinger, 2001, 2004 with Elgström and Jönsson, 2000, Müller, 2002). Moreover, even interactions under approximated ideal discourse conditions, face the risk of dissent. This aspect cannot be theorized, if the Habermasian normative theory is transferred to the empirical-analytical level. This is because the conditions for what makes an argument convincing are not exemplified.

In a nutshell, existing bridge-building approaches rely (at least implicitly) on a primary logic of action. This produces biases and prevents a neutral deduction of ideal scopes for competing rationalist and constructivist hypotheses. The most important shortcoming, however, is that such approaches cannot theorize instances in which persuasion fails to appear, in spite of constant contextual variables. This is because the possibility of persuasion is linked to the logic of communicative action or to the increasing use of argumentative speech acts. However, not every argument transports per se good ideas that are able to persuade others and lead to a change of substantial interests. It is elementary for an unbiased bridge-building approach that it assesses theoretically the *quality of communicated ideas*. The quality of communicated ideas, in turn, is crucial for different processes of collective and individual learning.

⁷ The Habermasian discourse theory aims at the development of propositions about ideal decision making procedures for modern societies, as procedures allowing for deliberation and thus for legitimate outcomes (Habermas, 1983, Schaal and Strecker, 1999).

II.1 The Systemic Approach to Interactions

Within this paragraph, I develop a systemic approach on interactions (c.f. Panke, under review). It is not biased towards either rationalist or constructivist theories, since it does not refer to action-theoretical presumptions. It does neither presume that communicative action has a primary status, nor that strategic action is primary. Most fundamentally, it starts from the *behavioural premise* that instrumental and reflexive learning are processes, which are not consciously controlled by the affected actors (Zukin and Snyder, 1984). Instead, both learning processes are considered systemic effects of interactions and do thus not require a special preparedness of the actors (c.f. Panke, 2004b, Panke, 2004a).

Under which conditions can the different types of learning be expected? In order to develop propositions about ideal scopes of competing rationalist and constructivist approaches we have to distinguish between processes of *individual learning*, processes of *collective learning*. Propositions on ideal scopes must be based on the prospects for processes of collective learning, because collective learning (as learning processes of all interaction's participants) influences outcomes of interactions much stronger than individual learning processes (as learning processes of only some participants). Interactions are essential for both *reflexive* and *instrumental collective learning*, because interactions accelerate opportunities for learning by increasing the flow of ideas. However, the flow of ideas alone is not sufficient for the deduction of ideal scopes of rationalist and constructivist theories, because it cannot account for the *type of learning* that might occur.

In order to distinguish between contexts which are either especially conducive for reflexive or for instrumental learning, a systemic perspective, avoiding the predominance of one-sided action theoretical assumptions, on interactions is necessary. A system is characterized by two necessary conditions. These are "(a) a set of units or elements is interconnected so that changes in some elements or their relations produce changes in other parts of the system, and (b) the entire system exhibits properties and behaviours that are different from those of the parts" (Jervis, 1997 :6). A system of interaction is composed of the totality of all speech acts,⁸ which were expressed by the participating actors, as the units of the system, during interactions.

⁸ Speech acts and logics of action can be distinguished analytically (see Holzinger, 2004, Müller, 2002, Risse, 2003). Whereas actors behaving according to the logic of communicative action can only use arguments, actors behaving according to the strategic logic of action or the logic of appropriateness can potentially use both types of speech acts, since the selection of the speech acts is subject to the type of rationality. It is, for example, strategically rational for an actor to use an argument instead of a speech act of bargaining, in order to pursue her interests, when her bargaining power is perceived as too low and the changes for influence are expected to be higher through arguing. Hence, from the fact that actors use arguments it cannot be deduced the actors follow the logic of communicative action and are themselves consciously motivated to become persuaded. This analytical

In every system, structures can evolve. In systems of interactions, structures are the dominant pattern of speech acts, which influence the dynamics of ideational change (unconscious reflexive or instrumental learning). According to the systemic approach, *collective learning*, as learning processes of the participants in a system of interaction, is a systemic effect of interactions. Collective learning occurs only under specific conditions, conditions that constitute the two possible structures that can evolve within systems of interaction: arguing and bargaining. Structures of interaction are defined by certain *relationships between structure and content of the dominant pattern of speech acts*. Both elements structure and content of speech acts are elaborated in turn.

The structure of speech acts can take two different forms: arguments or acts of bargaining. Arguments link propositions to reasons related to the intersubjective world.⁹ A speech act of bargaining is characterized by a demand, a concession or a rejection, which can additionally be linked to a threat or to reasons that are related to the subjective world (such as domestic opposition, see Putnam, 1988). A dominant pattern of speech acts increases the flow of ideas but is not sufficient for processes of *collective learning*. *Collective learning* refers to learning processes of the participants in a system of interaction and requires meaningful communication. Communication is not meaningful when actors cannot relate to each other and talk cross-purposes. Meaningful communication presupposes that all participants share standards of how to evaluate the content of speech acts (not the intention!). Meaningful communication is characterized by the possibility that B (as well as the other participants) understands the content of the speech act of A, evaluates the quality of communicated ideas and replies to A in a manner that allows A (and also the other participants) to reply meaningful again. Only when interactions are based on the mutual exchange of meaningful speech acts, actors do not talk at cross-purposes and results (compromises or consensus) can be achieved incrementally, to which all participants can agree (without voting or authoritative decision). For meaningful interaction to evolve, a consensus among the actors is necessary of how the content (not the intention!) of speech acts is to be understood. For processes of *collective reflexive or instrumental learning* within interactions, the content of speech acts must fulfil certain criteria (that constitute intersubjective meaning). Which criteria for the quality of the content of speech acts can be defined in the abstract?

distinction fits well with the interactionist approach, since this approach links prospects for learning to the dominant pattern of speech acts in combination with systemic preconditions and **not** to logics of actions.

⁹ Both concepts, the subjective and the intersubjective world, are social constructions. Whereas all actors are affected more or less equally by the intersubjective world, the subjective world refers to the internal conditions (domestic constellations such as positions and influence of organized interests) with which an actor is confronted. His own subjective world affects an actor more intensively than other participants of interactions (who themselves face their own subjective worlds).

Processes of *reflexive collective learning* presuppose two elements. The necessary condition is that arguments are the dominant pattern of speech acts (**flow of ideas**). The sufficient condition is that standards for the evaluation of the quality of ideas are shared among the actors (common standards for **quality of ideas**). Such standards refer to what constitutes truth (causal ideas), rightness (normative ideas) or appropriateness (ideas on values) in a given context to a particular point in time (Habermas, 1992, Habermas, 1995b). When both conditions are fulfilled, I refer to this pattern of meaningful communication as *'arguing as a structure of interaction'*. Only when arguing as the structure of interaction has emerged, it is likely that argumentative speech acts lead the participants to question in response to what they heard the very ideas underlying their substantial interests without having been consciously prepared or motivated before. When ideational change occurs, a change of substantive preferences is possible, when the ideas underlying the original substantial interests are affected by the ideational change (*reflexive collective learning*).¹⁰ Processes of *reflexive collective learning* can result in a consensus as outcomes of interactions.

Table 1 Two Structures in Systems of Interaction

	Structure ' arguing '	Structure ' bargaining '
Pattern of dominant speech acts	Arguments (propositions with reasons related to the intersubjective world)	Bargaining acts (demands, threats, concessions, reasons related to the subjective world)
Shared standards for the evaluation of the content of speech acts	Common standard for truth or rightness or appropriateness	Common conception of what constitutes bargaining power AND shared attitude on the reputation of the speakers
Systemic effect: possible influence of communicated ideas on the majority of actors	Reflexive collective learning	Instrumental learning
Incrementally achieved result of interactions	Consensus	Compromise

There is a second pattern of meaningful communication, namely *'bargaining as the structure of interaction'*. For bargaining as a structure of interaction to evolve, it is not only required that acts of bargaining constitute the predominant pattern of speech acts (flow of ideas), but also that actors share a standard for the evaluation of credibility. The standard of credibility has two components, incorporating a subjective and an intersubjective part. The

¹⁰ Since reflexive learning is an unintentional process (see also Zukin and Snyder, 1984: 629-630), it is also possible that short cuts lead some of the actors to accept an argument as true, right or appropriate, even though common standards are lacking, because they attribute authority to the speaker. However, short cuts do not contribute to the establishment or maintenance of any of the structures of interaction, because it is unlikely that all actors undertake similar short cuts simultaneously.

intersubjective standard for the evaluation of a bargaining speech act refers to the bargaining power of an actor. Bargaining power is a complex social construct, which does not only entail formal vetoes but also such elements as the preference intensity and the alternatives of action. Regarding the subjective part, it is necessary that a positive attribution of a particular actor's reputation is undertaken by the other actors. Otherwise a threat, demand or concession is not meaningful, because the other actors cannot rely on its realization. Besides bargaining acts as the predominant pattern of speech acts, it is necessary that actors share a conception of bargaining power and a perception of the actors' reputation for bargaining as the structure of interaction to evolve. Within bargaining as the structure of interaction, *instrumental learning* about the distribution and nature of external constraints (such as the costs imposed by threats) is likely and can result in compromises.

Only when a structure of interaction has evolved, it is likely that the participants of an interaction unintentionally (without having been consciously prepared or motivated before) start to question the ideas, which underlie their own strategic preferences and/or substantial interests, in reaction to communicated ideas. When ideational change occurs, a change of strategic preferences or substantial interests can be expected, when the ideas underlying the original interests and preferences are affected by the ideational change. When *collective reflexive learning* takes place, actors alter their substantial interests. When, on the other hand, bargaining dynamics evolve, *instrumental learning* processes and changes of strategic preferences are most likely.

The developed systemic approach on interactions has the advantage of accounting for the coexistence of argumentative speech acts and speech acts of bargaining without generating tensions between them. This meta-theoretical bridge and its concept of two structures of interaction is a heuristic yardstick that allows grasping the potential impact of communicates ideas from reflexive to instrumental collective learning.

III. Hypotheses on Contextual Variables and Structures of Interaction

In order to develop hypotheses on contextual elements that favour the evolution of one of the two structures of interaction, it is necessary to inquire whether common standards, on which the content of speech acts can commonly be evaluated by the participating actors, exist in the IGCs and the European Convention's arenas of interaction. Therefore, it is discussed next, under what conditions the structures of interaction are likely to evolve, to be maintained and prevented. The discussion of contextual variables is organized around the issues polity and policy.

Not only IGCs but also the European Convention is characterized by **horizontal and vertical institutional differentiation**. While the institutional differentiation in a horizontal and a vertical sense is rather high for IGCs (various preparatory group meetings, negotiations on bureaucratic and political vertical levels), it is only on medium level as regards the European Convention (even though working groups existed, the major work load (especially regarding questions of institutional design) was dealt within the plenary, see also (Closa, 2003), horizontal differentiation was introduced through the distinction of three phases: information, debate, and concrete proposals).¹¹

Has institutional differentiation an effect on the dynamics of interactions at all? While the pattern of speech acts is clearly not influenced by horizontal and vertical differentiation, the likelihood that certain standards for the evaluation of communicated ideas is. In general, with truth, rightness and appropriateness, there are three possible standards according to which the quality of arguments can be evaluated (Habermas, 1995b, Habermas, 1973). The standard of truth encompasses epistemological and methodological principles and sometimes even ontological elements. It is usually shared within a scientific paradigm. The more specialised participants of interactions are, the higher is the likelihood that they share expertise and, in turn, standards for what constitutes true arguments and for the evaluation of new causal ideas. Hence, specialisation is conducive to the development of arguing as the structure of interaction. The higher the institutional vertical differentiation is, the more likely it is that arenas of interaction comprise experts of the subject matter. Since the European Convention is less vertically institutionally differentiated than IGCs, it is rather likely that actors share a standard for what constitutes truth in IGCs than in the European Convention. Comparing both institutional settings, it is to be expected that the structure of interaction

¹¹ An important difference between the IGC's and the Convention's horizontal differentiation (sequencing) is that there are the same actors during all three phases in the Convention, while actors change in the stages of negotiation in IGCs (see Kleine/Risse 2005).

‘arguing’ rather evolves on low levels (such as the administrative level) of IGCs than in the plenum of the European Convention, which dealt with a high work load since the agendas of working groups were restricted in order to limit the fragmentation of the plenum (Closa, 2003: 14).

Unlike vertical differentiation, the horizontal differentiation of interactions is neither directly related to the use of speech acts nor to the possibilities of existing shared standards. Rather, it allows excluding and adjourning controversial issues (Benz, 1992). If common standards for the evaluation of communicated ideas are lacking, neither arguing nor bargaining as a structure of interaction can evolve. The possibility of postponing controversial issues helps to avoid dissent (which can only be solved by voting or authoritarian decision) since issues can be tailored to those aspects, for which either common standards of what constitutes truth, rightfulness or appropriateness, on the one hand, or common conceptions on what constitutes bargaining power, on the other hand, exist. Horizontal institutional differentiation allows adjourning controversial issues, and, in turn, avoids decision-making by voting or by authoritative means and opens room for compromise or consensus. It is thus conducive to the evolution of both structures of interaction alike.

Based on the centrality of the Habermasian concept of ‘lifeworld’ (Habermas, 1992) it is often claimed that a high **degree of norm density** furthers argumentative dynamics (Deitelhoff, 2003, Risse, 2003, Göler and Marhold, 2003: 324). Normative ideas are candidates for the expression of a common interest and are evaluated in regard to the standard of rightness as the extent to which normative ideas articulate the common interest (Habermas, 1992, 1995a: 42). In interactions, aspects of truth precede the stage in which norms are developed, because interests can only be developed on the basis of a common definition of the situation. At the end of interactions, when norms are drafted and defined in content and scope, it is unlikely that a common evaluative standard for rightness still exists. This is because the scope of a new norm most likely overlaps with the scope of norms already in existence on the European or on national levels. If scope conflicts cannot be resolved by reference to a single common interest, norm hierarchies have to be established. For the structure of interaction ‘arguing’ to be maintained, this would require that the actors share a hierarchy of standards for what constitutes ‘rightfulness’. In the European Convention the diversity of participants is higher than in IGCs.¹² This suggests that no overarching hierarchy of standards for rightness is

¹² Kleine and Risse argue that the heterogeneity of actors varies among issues (Kleine and Risse 2005). Examining the policy specific effect of diversity would be an interesting undertaking, but is unfortunately beyond the scope of this paper.

shared. Hence, it is to be expected, that bargaining as the structure of interaction evolves in the *latest stage of pre-agreement interactions*¹³, when norms are defined in content and scope. Therefore, bargaining is likely to evolve as the structure of interaction, when norm hierarchies have to be established. A high density of norms within an arena of interaction increases the possibility that norm conflicts arise relatively early in interactions and furthers the development of bargaining as the structure of interaction. A high diversity of actors, in turn, increases the number of (diverging) norms. Since the diversity of actors is influenced by the institutional differentiation, the diversity of norms is lower for IGCs than for the European Convention.

It is often noted that the European Convention's relatively high **level of transparency** (compared to IGCs)¹⁴ favours the development of discursive dynamics ({Bellamy, 2004 #4061}: 67, Göler and Marhold, 2003: 328).

On a theoretical level, there is disagreement whether the transparency of settings influences the likelihood that arguments matter. Approaches that take the communicative logic of action as naturally dominant argue that transparency increases the impact of arguments, because the public serves as a third standard, allowing for the triadic structure of arguing (Saretzki, 1996).¹⁵ On the contrary, lines of reasoning that are based on the strategic logic of action take into consideration that in camera settings free the actors from the public pressure of interest representation (Checkel, 2001: 563). According to this argumentation, in camera settings allow for processes of persuasion, because public constraints on changes of interests and preferences can be side-stepped by pretending bargaining dynamics and

¹³ Maurer and Göler came to the same assessment, but for different reasons. They state that state representatives dominated in the proposal stage to the disadvantage of the other actors because the remaining controversial issues were centered around questions on the institutional distribution of power (Maurer and Göler, 2004).

¹⁴ Even though the Convention's transparency is higher as in IGCs, the transparency of the Convention's institutional arenas is overall rather on a medium level. To provide two illustrations: debates of the steering committee are not public at all and heads of working groups may decide on the public availability of documents (Closa, 2003: 15; see also <http://european-convention.eu.int>).

¹⁵ The analytical distinction between speech acts and logics of action is an important progress, on which Risse's concept of argumentative self-entrapment is built (Risse, 1999, 2000). According to his argumentation, the public forces state actors to use argumentative speech acts, regardless of the underlying logic of action. Changes of positions occur not because the actors are intrinsically motivated to become persuaded, but rather because they become caught by their own arguments, which cannot be recalled in public without a loss of reputation (Risse 2003). However, this line of reasoning presupposes that the public appreciates arguing of their representatives more than bargaining. This implicit assumption might not be generally valid, because in some situations the public might expect their representatives to push through the 'national interest' or the preferences of organised interests through bargaining. Additionally, the concept of argumentative self-entrapment is not based on consistent assumptions about the strength of strategic rationality. On the one hand, it presupposes perfectly strategic actors, calculating their reputational costs. At the same time, however, it is implicitly assumed that the actors are hardly rational regarding the selection of their speech acts, since they would otherwise anticipate the argumentative trap and eventually avoid the use of arguments at all. Because of these shortcomings, it can not generally be upheld that transparency automatically favours arguing.

restraints. The discrepancy of both assessments is grounded in the communicative and the strategic logic of action, which are mutually exclusive because they are based on different conceptions of rationality.

The systemic approach on interaction, which abstracts from one-sided action theoretical assumptions, comes to a different assessment. Firstly, transparency in itself does not bring about arguing or bargaining as the dominating pattern of speech acts. Concerning some issues the audience might regard arguments as the appropriate speech act, while in others it might wish for a representation and enforcement of their claims and interests via bargaining. Secondly, transparency is not in itself conducive to the reference of one of the standards for the evaluation of ideas (truth, rightness, and appropriateness or a common conception of bargaining power). In public as well as in in-camera settings, actors can principally refer to all standards alike.¹⁶ Transparency does therefore not influence the likelihood of shared standards for the evaluation of ideas and has no influence on the likelihood of the evolution of either arguing or bargaining as structures of interaction. Hence, in regard to this variable, the Convention does not induce discourses to a stronger extent than IGCs – contrary to the often proposed hypotheses that the Convention's transparency is conducive to arguing (i.e. Magnette, 2003: 9).

The **broad membership** of the European Convention is often regarded as being conducive to the development of discourses (Bellamy, 2004 #4061}: 66, Göler and Jopp, 2003: 37-38). Some of the actors lack formal bargaining power.¹⁷ In the wake of lacking votes, a first glance suggests that access and voice can be used more effectively via argumentative speech acts, which, in turn, might be conducive for the development of arguing as the structure of interaction. However, it is unclear whether from single uses of argumentative speech acts arguing as the dominant pattern evolves. Additionally, a pattern of argumentative speech acts

¹⁶ One could argue that the politicization of issues favours the use of rightness and appropriateness as standards for the evaluation of ideas, to the disadvantage of truth. This line of argumentation would lead to the hypotheses that public settings favour the development of bargaining as the structure of interaction. This argument, however, requires two additional assumptions. The participants of the European Convention must act in a strategically rational manner, since they wouldn't be sensitive for concerns and potential ex-post sanctions of their electorate otherwise. Since politicization increases public attention, it would additionally be necessary that the public always expects their representatives fighting for their interests with bargaining strategies. While this might be true in some settings, it is certainly not valid for all cases, especially not when the interested and mobilised public opposes the governmental action-plans.

¹⁷ The 13 accession states were present with delegations comprised of one governmental and two parliamentary actors. An observer status was also granted to representatives of the Committee of the Regions, the Social and Economic Committee and the European Social Partners (Wessels, 2002: 87, Pollack and Slominski, 2004). Moreover, the consensus principle causes the absence of ultimate veto options for all actors. Nevertheless, formal bargaining power is substituted to a certain extend by the shadow of IGCs, allowing the important member state representatives for two-level game threats.

is only the necessary, not the sufficient condition for the evolution of arguing as the structure of interaction (which would additionally require common standards allowing for the equal evaluation of the communicated ideas' content). Moreover, while discourse theory regards access and voice as important variables, furthering discourse (Habermas, 1976, 1985, 1992), it overlooks the other side of the coin. The more participants are included, the more likely is an increase in the heterogeneity of the actors. Low homogeneity, in turn, is disadvantageously for the evolution and maintenance of arguing as the structure of interactions, since additional actors come along with additional reference systems. The higher the quantity of reference systems are, the less likely it is that standards for the evaluation of arguments (especially as regards rightfulness and appropriateness) overlap.

The European Convention and IGC are distinct in regard to the **shadow of ex-post approval**.¹⁸ While the governmental actors, who are largely in charge for domestic ratification, are the main (and only) actors with a veto in IGCs, the Convention's participants were composed of a chairmen and a vice chairmen, national governmental and parliamentary representatives (including those of the candidate countries), representatives of the European Parliament (16) and of the European Commission (2) (additionally there are observers of the Committee of the Regions (6), the Economic and Social Committee (3) and the social partners (3)). Hence, in the European Convention, there are actors, who do not solely belong to the national governments and are thus not first and foremost responsible for domestic approval. Lacking congruence between the actors in charge of norm-definition and those, mostly responsible for domestic ratification of the norms, leads to the emergence of a shadow of ex-post approval in the European Convention¹⁹ (which is less intense (member states with minority governments or with referenda) or even absent (member states with majority governments) for IGCs). Does this shadow fall upon the interactions in both types of institutional arenas? Firstly, the possibility of follow up summits and of domestic ratification does not influence the participants' ability to use argumentative and bargaining speech acts alike. Bargaining speech acts, referring to the subjective world of (lacking) domestic support, can be used in IGCs and in the European Convention (since parliaments have to ratify the

¹⁸ The Convention's "members have never forgotten that they were just a preparatory body, and that their compromise would be renegotiated by the governments in the next IGC. They knew and often publicly stated, that if they reached a very ambitious compromise, but did not take into account the government's positions, they would be disavowed by the IGC" (Magnette, 2003: 11; Magnette and Nicolaidis, 2004: 394).

¹⁹ In one account, the Conventioneers did either defend governmental interests or anticipate constraints of the IGC (Magnette and Nicolaidis, 2004: 391). However, the strength of the shadow should not be overestimated. In the wake of the often mentioned democratic deficit of the EU, it appears plausible that considerations of the Convention's democratic legitimacy might prevent member states' governments from dismissals of the European Convention's achievements.

treaties). Secondly, the probability that common standards for the evaluation of the quality of communicated ideas exist, is not influenced by variations in the length and strength of the shadow of domestic approval. Without introducing one-sided constructivist or rationalist action-theoretical assumptions, this variable has no effect on the development and maintenance of either one of the structures of interaction.

The other side of the coin of a shadow of ex-post approval is **the gestalt of the mandates**. Anticipated shadows of ex-post approval and the gestalt of mandates are to a certain extent functional equivalents. Restricted mandates guarantee that participants strive for substantial interests which can be accepted domestically (and are thus not in danger of becoming defeated by the prime minister or the cabinet ex-post). Broad mandates leave participants broader room for manoeuvre and do not prescribe substantial interests clearly. They, however, pose the achieved results under a reservation for ex-post modification by the head of government or the cabinet. The stronger the mandates of participants in international interactions are restricted regarding the range of possibly acceptable interests, the lower is the shadow of ex-post approval. The mandates for the governmental and parliamentary actors in the European Convention were free and did, thus, not define which range of substantial interests is acceptable ex-post and which is not (Magnetete, 2003: 9).²⁰ The shadow of ex-post approval, on the other hand, is longer for participants in the European Convention, since there is uncertainty which outcomes will find support on the follow up summits and domestic ratification. In IGCs, on the other hand, mandates for actors on vertical lower level are restricted to a stronger extent, while the ministerial mandates are freer. A side-effect is that ex-post approvals are almost granted, when participants do not go beyond their mandates. How does this affect the possibilities for the evolution and maintenance of one of the structures of interaction?

The question whether restricted or open mandates influence the evolving pattern of speech act, has to be answered in the negative. Even if mandates are strongly restricted, the actors can use argumentative speech acts, in order to convince others from their set of substantial interests as true, right or appropriate. Actors can principally recur to speech acts of arguing and bargaining alike. However, actors with strongly restricted mandates might not be able to alter their strategic preferences or substantial interests as a result of instrumental or reflexive learning processes. Since the evolution of structures of interaction requires meaningful communication to take place, the maintenance (or evolution) or arguing as the structure of

²⁰ Paul Magnetete observes that the ‘conventioners indeed often talked in their own name, not on behalf of their country, party, or institution (...).’ (Magnetete, 2003: 10).

interaction is interrupted when actors (because of too restrictive mandates) are no longer able to react to an offered argumentative speech act (that induces processes of learning) with a proper argumentative speech act if the representation of altered interests would be beyond the mandate. In such cases, restricted mandates are conducive to the evolution of bargaining as the structure of interaction. Regarding the impact of mandates, the European Convention is more conducive to the maintenance of arguing as the structure of interaction than IGCs, since the mandates of the Convention's participants were freer.

While this is plausible when only one institutional variable is considered, the conclusions are modified if the institutional differentiations of IGCs and the European Convention are additionally taken into account. IGCs are characterised by a higher vertical and horizontal institutional differentiation than the European Convention. Since the mandates are especially restricted for participants in lower-level interactions of IGCs, as arenas conducive to arguing because of the high degree of specialization and shared expertise of actors, the effects are likely to cancel out each other. The same holds for the European Convention. While the unrestricted mandates allow for the maintenance of arguing as the structure of interaction, the institutional horizontal and vertical differentiation is low. This decreases the degree of specialization and, in turn, the likelihood that actors share standards for the equal evaluation of communicated ideas' content. Hence, the institutional differentiation in combination with the gestalt of the mandates suggests, that the institutional settings of the European Convention and of IGCs are likewise open for the development of both structures of interaction: arguing and bargaining.

Policy types might also influence the dynamics of interaction. Distributive and re-distributive issues (such as the distribution of formal votes and decision-making rules in the Council of Ministers) facilitate the evolution of bargaining as the structure of interaction because they are inherently value-laden in regard to questions of justice (Saretzki, 1996: 35-36). This is because justice-related questions refer to the evaluation standard of appropriateness, which serves as the evaluative standard for the quality of ideas relating to values. The standard of appropriateness itself is constituted by axiomatic interpretations of values as authentically (Habermas, 1995b: 41, Habermas, 1983) and is diffused through socialisation (Habermas, 1995b: 40-42). Since it is unlikely that the participants of the European Convention (as the participants in IGCs) are socialised completely identical, because of the ideological and

cultural diversity,²¹ the evolution and the maintenance of arguing as the structure of interaction cannot be expected with regard to elements of appropriateness.

Regulative issues, on the other hand, are less value-laden than distributional or re-distributional issues. Rather, they are strongly characterised by references to questions of truth and rightfulness (especially for the selection of an issue as a relevant subject-matter). Since the likelihood that standards for truth and rightfulness are shared among the actors is higher than a shared standard for appropriateness, it is more likely that arguing as the structure of interaction can evolve for regulative issues than for distributive and re-distributive issues.²²

²¹ The issue of how far the engagement within European institutions leads to the identity changes of the participating actors is highly debated (see Beyers, 1998, Beyers and Dierrickk, 1998, Laffan, 1998 vs. Hooghe, 2002, Wessels, 1998). The debate, however, centres rather on the question of degree of socialisation into European institutions rather than on the question of whether the identities of the actors are identical.

²² Zintl and Benz come to a similar assessment, but for different reasons. According to them distributive issues prevent argumentative dynamics because the actors are aware of distributional effects (Benz, 1992, Zintl, 1992).

Conclusion - The window of opportunity for political agency

Since the IGCs in Amsterdam and Nice had not solved controversial issues, such as the future institutional framework of an enlarged European Union, at the Laeken summit the member states decided to convene a European Convention. The expectations linked to the European Convention were high because of the hopes associated with the institutional design. Scholars and practitioners alike ranked the institutional setting as being discourse-prone and, in turn, conducive to argumentative dynamics of interactions allowing for outcomes beyond the lowest common denominator. The enormous importance attributed to institutional design variables is all the more surprising, if the varying success of the Maastricht, Amsterdam and Nice IGCs (with constant institutional design) is taken into account. This paper addresses the question, whether the institutional design variables of the European Convention can truly account for argumentative interactions. To this end, a theoretical framework was developed, which allows for the unbiased deduction of hypotheses on the relationship between institutional variables, on the one hand, and two structures of interaction, ‘arguing’ and ‘bargaining’, that can evolve, on the other. This framework takes interactions as units of analyses and does not rely on rationalist or constructivist action theoretical assumptions (instead it is based on a broad behavioural premise, namely that processes of instrumental and reflexive learning alike do not require a conscious motivation of the actors). It inquires the necessary (dominant pattern of speech acts) and sufficient (shared standards for the common evaluation of the communicated idea’s content) preconditions for meaningful communication, which, in turn, allow for processes of instrumental or reflexive collective learning to take place.

The hypotheses developed on the basis of the interactionist approach are summarized in the table below and reveal that the European Convention’s institutional design was not more conducive to the development of argumentative dynamics than the institutional design of IGCs. On the contrary, the comparison of the institutional designs reveals a rather surprising result: overall, IGCs are more conducive to the development of argumentative dynamics than the European Convention. This is mainly due to the lower diversity of norms in IGCs. Moreover, the vertical differentiation (conducive to arguing) is higher in IGCs than in the European Convention. However, the vertical differentiation and the gestalt of mandates are functional equivalents, since higher levels of differentiation go hand in hand with stronger restrictions of the mandates. Another interesting finding is that variables resembling some of the ideal discourse conditions, such as the transparency of interactions and the voice of

additional actors, have no influence on the development of either one of the structures of interaction.

Table 2 Overview of the hypothesis

Independent Variables	Implications for the evolution and maintenance of structures of interaction	Comparison IGCs and European Convention
Polity: vertical institutional differentiation	High vertical differentiation is conducive to the structure ‘arguing’	IGCs favour ‘arguing’ stronger than the Convention
Polity: horizontal institutional differentiation	Conducive to the development of both structures of interaction (as opposed to authoritative decision-making or voting)	---
Polity: diversity of norms	High norm density is conducive to bargaining as the structure of interaction	IGCs favour ‘arguing’ stronger than the Convention
Polity: degree of transparency	-- no effect --	---
Polity: actors with voice and no veto	-- no effect --	---
Polity: Mandates	Restricted mandates are conducive to bargaining as the structure of interaction, while open mandates are conducive to the maintenance of the structure arguing	The European Convention is more conducive to the maintenance of arguing as the structure of interaction than IGCs
Polity: Shadow of ex-post approval	-- no effect --	---
Policy: type of issue	Regulative issues are conducive to arguing, while distributive issues are conducive to bargaining	---

Comparing the hypotheses on institutional design variables, IGCs are more prone to discourse than the European Convention. The institutional design variables are partially pointing in opposite directions and do not determine the evolution and maintenance of either one of the two structures of interaction. Also policy variables are important for the evolution and interruption of structures of interaction. While distributive and re-distributive issues are conducive to the development of the structure ‘bargaining’, regulative issues are more likely to be dealt with under the structure ‘arguing’ (at least until a norm is finally drafted). Since the institutional framework leaves wide margins for political agency and since policy variables influence the success of argumentative or bargaining strategies, the interplay of

political agencies' strategies and policy-variables (as contextual conditions for the prospects of the success of strategies) is a very interesting field of future research.

Summed up, the added value of the systemic approach on interactions is threefold. On the meta-theoretical level, the interactionist approach offers a bridge between rationalism and constructivism, since it serves as an overarching frame based on which ideal scopes of rationalist and of constructivist approaches with similar substantial foci can be deduced. On the level of substantive theories, the outlined approach on interactions allows for the deduction of hypotheses on the influence of institutional design variables on policy-outcomes without recurring to one-sided rationalist or constructivist action theoretical assumptions. Finally, the interactionist approach has implications for the conduct of empirical research on interactions. The emphasis is not on the transport of ideas and the motivations to select arguing or bargaining speech acts. Instead of counting and analyzing pattern of speech acts in interactions, the interactionist approach suggests that emphasis should be put on the contextual preconditions for the impacts of ideas. Hence empirical studies, which are concerned with politics and concrete outputs, should focus on the examination of whether the preconditions for either one of the structures of interactions are given in particular interactions.

An empirical analysis of the role of political agency in the European Convention in comparison to IGCs would be beyond the scope of this paper. I therefore conclude with some reflections on how research on political agency might provide answers to the puzzle of why the 'quality' of outcomes varies; e.g. why the Convention achieved results (such as the double-majority) regarding issues that remained unresolved in preceding IGCs. Which argumentative and bargaining strategies were successful and why? The argumentative success of political agency strongly depends on policy-related variables. Since standards for truth are more likely to be shared among actors than standards for appropriateness and rightfulness, technical issues (referring to truth aspects) are especially conducive for the argumentative influence. However, even when standards for the evaluation of argumentative speech acts are shared within an arena of interaction, the communication of ideas alone gives no clue on their quality. Argumentative strategies require high quality ideas for being successful. Hence, the more extensive actors can draw on networks with experts and organised interests regarding the issue at hand and the higher the informational and knowledge-related advantage to the other actors, the better political agency can exercise political influence within European

arenas of interaction (see at length Panke, 2002). It is striking that the most important issues the European Convention dealt with, were questions of institutional design (polity and politics) (see also Emmanouilidis and Giering, 2003). This is an area in which reform-minded institutional actors, such as the European Commission, have considerable expertise. The very fact that the European Commission's access to the Convention was broader than to the previous IGCs can probably not explain the variation in outcomes. It is striking that institutional reform was strongly debated in terms of questions of truth (such as efficiency) and rightfulness (such as legitimacy) within the Convention, while the legitimacy-efficiency discussion was almost exclusively academic during the IGCs. Empirical research could examine two questions. Firstly, why could the efficiency-legitimacy frame have been adopted within the Convention but not within IGCs? Secondly, does it hold the theoretical expectation of serving at least partially as a common yardstick for the evaluation of the quality of communicated ideas being conducive to the development of arguing as the structure of interaction?

Even within the European Convention, there is considerable variation as regards the 'quality' of outcomes (compare decision-making rules for the field of foreign and security policy with the creation of the position of a European Foreign Minister). Which answers would the interactionist approach suggest? Magnette and Nicolaidis argue that via a working group a frame of 'simplification' has been adopted within the European Convention (Magnette and Nicolaidis, 2004). It might be interesting to inquire why all matters dealt with by the working group on simplification were successful. The interactionist approach would inquire whether the group could successfully institutionalize a frame of simplification, in which truth aspects gained high importance. Since aspects of truth are conducive to the development of arguing as the structure of interaction, processes of reflexive collective learning might have taken place and prevented lowest common denominator outcomes (such as the reform of decision-making rules in matters of foreign and security policy).

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