

'The Vital Cog: Agenda-Shaping and Brokerage by the Council Secretariat in IGC Negotiations.'

Abstract: This paper highlights a significant oversight in the literature on European integration, where the role and impact of the Council Secretariat is all but ignored. This paper produces evidence that shows that the Council Secretariat has played a significant role in IGC negotiations.

A bargaining model is developed that theorizes the causal impact that the IGC negotiation process can have upon how actors are able to translate bargaining resources into influence over IGC outcomes. The negotiation of the 1996-97 and 2000 IGC's are then investigated, showing that the Council Secretariat is in many respects the overlooked 'vital cog' of the IGC process, significantly influencing IGC outcomes. The Council Secretariat is found to be influential due to a combination of its high level of expertise, reputation as a trusted assistant, its privileged institutional position, and skillful use of pragmatic and behind-the-scenes agenda-shaping and brokering strategies.

IGC's are therefore not always intergovernmental affairs due to high bargaining costs and boundedly rational actors. The negotiation process grants the Secretariat and other EU institutions opportunities to translate their bargaining resources into influence over outcomes. The context of the negotiations and strategies employed by EU institutions then determines the level of influence that they have over outcomes.

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1. Introduction

The European Union (EU) is a unique entity in world politics. While internal policy-making within the EU more closely resembles a federal polity than an international organization, the intergovernmental conference (IGC) negotiations that amend the EU's founding treaties are more traditional international intergovernmental negotiations.¹ IGC negotiations are held outside of the institutional framework of the EU, and EU institutions like the European Commission and Council Secretariat have a very weak *formal* role.

Yet despite not having formal voting rights, credible coercive threats, or formal control of the agenda, EU institutions have been able to gain significant influence upon IGC outcomes. The manner in which the IGC negotiation process is structured and conducted opens for opportunities for EU institutions to translate their informational bargaining resources into influence over IGC outcomes that they otherwise would not possess. IGC negotiation processes are not purely intergovernmental affairs, but are relatively complex and unpredictable negotiations, where high bargaining costs grant EU institutions opportunities to intervene in the negotiation process, and depending upon the nature of the given negotiation and the appropriateness of the intervening strategy they employ, open for various opportunities for EU institutions to translate their bargaining resources into influence over outcomes.

While the roles and impact of the European Commission and the European Parliament in the 'big bangs' of the EU integration process have been subjected to considerable academic scrutiny,² the Council Secretariat³ has been all but discounted in the literature on European integration.⁴ The Council Secretariat is on paper only an administrative and technical secretarial assistant in IGC's, and therefore is in many respects a 'least likely' case for the impact of EU institutions.⁵ But a careful analysis that takes into account the causal impact of the actual negotiation process shows that, with the exception of the 1985 IGC, the Council Secretariat has had *more* influence upon IGC outcomes than either the Commission or European Parliament.⁶ The Council Secretariat is not merely a 'neutral' assistant to the

¹ - The EU is an amalgamation of four different major EU treaties: the original European Coal and Steel Community Treaty (which expires in 2002), the European Community Treaty (Treaty of Rome), Euratom, and the Treaty on European Union. Since 1985 five Intergovernmental Conferences (IGC's) that conducted major revisions of the Treaties have been convened, in which both the EU's policy scope has been widened and the EU's institutional structures have been substantially strengthened.

² - Christiansen, 2002; Christiansen and Jørgensen, 1998; Dinan, 2000; Gray, 2002; Maurer, 2002; Moravcsik, 1999; Petite, 2000.

³ - The official name of the Council Secretariat is the General Secretariat of the Council of the European Union.

⁴ - A notable exception is Christiansen, 2002.

⁵ - See Eckstein, 1975 for more on the use of a least likely case selection strategy.

⁶ - Beach, 2002b.

Member States as assumed by Moravcsik and others,⁷ but has its own institutional preferences that do not always reflect aggregate Member State positions (see below). The Council Secretariat therefore exploits the opportunities that the negotiation process opens for it. As the Council Secretariat has a reputation as a trusted assistant to IGC's, and has a central institutional position as drafter of texts and legal adviser, this offers the Council Secretariat numerous opportunities to shift IGC outcomes closer to its own preferred vision of the EU.

The argument in this paper proceeds in three steps. A bargaining model is first developed that theorizes the causal impact that the IGC negotiation process can have upon how actors are able to translate their bargaining resources into influence over IGC outcomes. The dependent variable is the level of influence of the EU institution upon IGC outcomes. The bargaining resources of the EU institution are treated as independent variables. Factors intrinsic to the negotiation process are depicted as intervening variables between the bargaining resources of EU institutions and their influence upon IGC outcomes.

Second, in section three I review the negotiation of two major IGC's (1996-97 and 2000), showing that the Council Secretariat in many respects is the overlooked 'vital cog'⁸ of the IGC process, but also the impact of the sometimes severe constraints under which the Secretariat works. The concluding section highlights the conditions under which the Council Secretariat influenced IGC outcomes, and then relates these findings to the literature on international negotiations and EU integration.

⁷ - 1999:292.

⁸ - The term 'vital cog' referring to role of the Council Secretariat is borrowed from Westlake, 1999:318.

2. A bargaining model of the IGC negotiation process

How does the negotiation process affect the ability of EU institutions to gain influence over outcomes in IGC negotiations? In this section I introduce a bargaining model based upon the twin assumptions of boundedly rational actors,⁹ and that negotiations have relatively high bargaining costs.¹⁰ The model theorizes on how negotiations matter for the ability of actors to translate their bargaining resources into influence over outcomes.

The following will first discuss the assumptions of the model, making a case for the argument that IGC's are not purely intergovernmental affairs. This is followed by a discussion of the model, where the dependent variable is the level of influence of a given EU institutional actor upon IGC outcomes. The theoretical significance of the bargaining resources possessed by EU institutions is elaborated first, treating them as independent variables in the model (see figure 1). Thereafter two categories of intervening variables that can affect how these bargaining resources are translated into influence will be put forward. In the first category are three contextual variables relating to the nature of the particular EU treaty reform negotiation. These contextual variables define the range of intervening strategies available to EU institutional actors during the negotiation process. The second category of intervening variables looks at how the EU institutions play their cards in the negotiations, focusing on the ability of EU institutional actors to either shape the agenda, or to play a brokering and mediating role in the negotiations.

But before we turn to the bargaining model, why should an *intergovernmental conference* ever be more than a purely intergovernmental affair? As EU institutions in an IGC lack formal voting rights, credible coercive threats, or formal control of the agenda, they do not have *material* bargaining resources that could be utilized to gain influence over outcomes. EU institutions are only able to use intervening strategies, for example providing assistance in the drafting process and in brokering compromises. Do these forms of intervention allow EU institutions to gain influence over IGC outcomes?

For intergovernmentalists and realist theorists the answer is a resounding 'no'. They argue that international negotiations such as IGC's are strictly intergovernmental affairs, offering no opportunities for intervening parties to gain influence.¹¹ In this world-view, negotiations are seen as inherently

⁹ - Simon, 1997.

¹⁰ - Bargaining costs are here defined as both the transaction costs of the negotiations, and the information costs of acquiring information prior to or during a negotiation.

¹¹ - E.g. Moravcsik, 1998, 1999a; Milward, 1993, Grieco, 1995.

efficient, with low bargaining costs. National delegations are seen as comprehensively rational, having close to perfect information on both their own preferences and the preferences of other actors across the multitude of issues under discussion. Governments are then relatively easily able to detect the zone of possible agreements (Pareto frontier), and negotiate amongst themselves to reach a Pareto-efficient outcome.¹² Outcomes of negotiations therefore reflect relative actor power prior to the start of the negotiations, with the actual negotiation process itself having little analytical significance. In such circumstances any intervention by a third party such as an EU institution is ‘...redundant, futile, and sometimes even counterproductive.’¹³

Yet as suggested by the literature on supranational entrepreneurship and multilateral negotiations, it is by no means certain that the parties in complex, multi-party negotiations such as an IGC will be able to first find a zone of possible agreements, and then subsequently agree upon an outcome within this zone.¹⁴ Multilateral and multi-issue negotiations generally have high bargaining costs.¹⁵ Due to the complex nature of international negotiating situations, with many cross-cutting cleavages on a large number of highly complex and technical issues, individual delegations often lack the analytical skills and substantive knowledge to find the Pareto frontier of mutually acceptable agreements, and are often unclear about their own preferences and even more uncertain of the preferences of other actors.¹⁶ And even if they do have adequate skills and knowledge to find the frontier, there is still the question of the distribution of gains along the frontier,¹⁷ with a proposed solution from one party often being perceived to be biased by other actors, thereby decreasing the probability of its acceptance.¹⁸

In such a complex, multilateral negotiating situation, third party intervention can be necessary in order to help the parties find a mutually acceptable agreement.¹⁹ Third parties can bring either material resources (great power intervention), or informational resources, such as substantive expertise on the issues at stake, and analytical skills that enable the intervener to discern possible agreements and broker compromises.²⁰ But by intervening in the negotiating process, the third party also gains opportunities to

¹² - Moravcsik's arguments here are more subtle, for he argues that the provision of entrepreneurship to solve potential collective action problems is cheap and easy *relative* to the gains of most forms of international co-operation. We can therefore proceed as if bargaining costs were zero. Moravcsik, 1999a, 1999b.

¹³ - Moravcsik, 1999a:269-270.

¹⁴ - Sebenius, 1992:338; Sandholtz, 1992:20-28; Melchior, 1998; Young, 1991, 1999; Bercovitch, 1996a, 1996b; Hampson with Hart, 1995; Caporaso, 1992; Raiffa, 1982; Tallberg, 2002; Garrett and Tsebelis, 1996.

¹⁵ - Hopmann, 1996:258; Sebenius, 1984, 1992; Pfetsch, 1999:198-199.

¹⁶ - Hampson with Hart, 1995; Zartmann and Berman, 1982.

¹⁷ - Krasner, 1991.

¹⁸ - Dupont and Faure, 2002:51.

¹⁹ - Hampson with Hart, 1995; Hopmann, 1996; Raiffa, 1982:chapters 15-16; and Young, 1991, 1999.

²⁰ - Wall and Lynn, 1993; Elgström, 2001.

influence the final outcome for private gain,²¹ by for example shifting the final agreement closer to its own preferred outcome.

And further, even if we can proceed as if actors were more comprehensively rational, and that the bargaining costs in IGC negotiations were low, there are factors intrinsic to the negotiation process, such as the possession of a privileged institutional positions, that potentially can privilege one actor vis-à-vis others.²² For instance, by being de facto in charge of the drafting process in an IGC, this ‘power of the pen’ gives the Council Secretariat significant opportunities to gain influence over IGC outcomes by subtly shifting outcomes. Finally, how an actor plays its cards also matters. For example there is evidence in the negotiation of the Treaty of Amsterdam in the 1996-97 IGC that France did poorly in the negotiations due to the incoherence and ill-prepared nature of its positions.²³

It is therefore necessary for analysts of EU treaty reform to open up the ‘black box’ to investigate how the actual negotiation process matters. How then can negotiations on treaty reform matter?

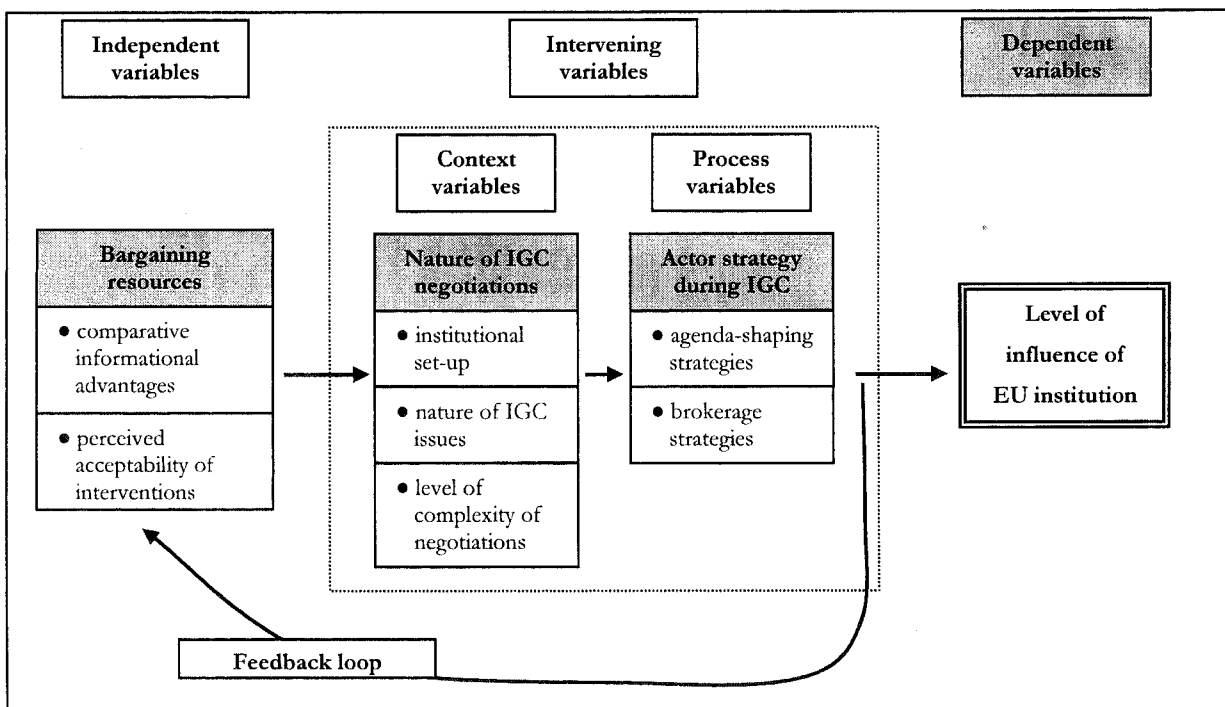


Figure 1 – A bargaining model of the impact of the IGC negotiation process.

²¹ - Young, 1991:296.

²² - See for example Tallberg, 2002 for an example as regards the impact of the institutional position of the Council Presidency. For a broader application to the EU, see Garrett and Tsebelis, 1996. More generally, see Shepsle, 1979; Raiffa, 1982.

²³ - Beach, 2002a:623.

2.1. The independent variables – bargaining resources

Comparative informational advantages

Complex, multilateral bargaining situations such as IGC negotiations are, despite extensive preparation at both the national and EU-level, often poorly defined negotiating situations, with actors possessing imperfect knowledge of the many complex issues on the agenda, and about their own and the preferences of other actors.²⁴ One well-informed EU insider has characterized them by stating that, ‘Governments and their negotiators do not always know what they want and the situation changes unpredictably with the dynamics of the negotiations where written and oral proposals are floated around the table by all the participants at frequent intervals.’²⁵ As actors in IGC negotiations realistically only are boundedly rational, there are natural cognitive limitations upon the negotiating abilities of actors. In such circumstances, the possession of comparative informational advantages, be they substantive expertise or bargaining skills, can potentially be translated into influence over outcomes.

First, not all actors are equal regarding their levels of substantive knowledge of the issues under discussion (content expertise), their analytical skills (process expertise), and their knowledge of the state-of-play of the negotiations.²⁶ Regarding *content expertise*, technical and legal knowledge are most relevant in treaty reform. Technical expertise relates to detailed and qualified knowledge of how a certain treaty provision works at present, and/or the anticipated consequences of the changes under consideration. Legal expertise is the possession of extensive knowledge of the body of EU law that can be used to estimate the potential impact and legality of changes in the EU Treaties.

Looking at *process expertise*, not all national delegations in IGC negotiations possess the analytical skills and experience to be able to digest the hundreds of often very complicated and technical proposals on the many different issues under discussion, preventing them from entering into an efficient joint problem-solving effort aimed at finding a mutually-acceptable outcome.

Finally, turning to the importance of *information on actor preferences and the state-of-play of negotiations*, there are two reasons why delegates in IGC negotiations often do not have detailed information on the nature and intensity of the preferences of other actors on the myriad of issues under discussion. First, it

²⁴ - See Stubb, 2002 on IGC negotiations. See Pollack, 1997 for more on daily EU policy-making negotiations. For more on boundedly rational actors in international multilateral negotiations more generally, see Midgaard and Underdahl, 1977; Hampson with Hart, 1995; Hopmann, 1996.

²⁵ - Stubb, 2002:27.

²⁶ - Wall and Lynn, 1993; Sandholtz, 1992:27-28; Cox and Jacobson, 1973:20; Finnemore and Sikkink, 1998:899-900.

is often difficult for a single delegation to keep track of different actor preferences on the large number of very detailed issues under discussion.²⁷ Second, governmental representatives, despite publishing opinions prior to a negotiation and presenting arguments and proposals during the negotiations, are often reluctant to reveal their 'true' preferences in an IGC.²⁸ Delegates can have strategic reasons for holding their cards, waiting to see how an issue plays out before revealing their hand.²⁹ In such a situation a trusted intervener such as the Council Secretariat can discuss with each party the nature and intensity of their preference in an attempt to find a mutually acceptable, Pareto-efficient outcome.³⁰ But by gaining private information about the zone of possible agreement, the intervening actor can also craft an agreement within this zone that is closest to its own preferred outcome.³¹

The perceived acceptability of the actor

Turning to the second category of independent variables, a further type of resource that EU institutional actors can possess is the *level of acceptability of their contributions* among other actors in the treaty reform negotiations. Levels of acceptance can be based recognition of the utility of the actor's contributions, and the legitimacy and/or reputation of the actor.³²

The reputation of the EU institutional actor can though be threatened if the actor is seen to be excessively partial either in the way in which they fulfill a specific institutional role (procedural bias), or as regards excessively promoting a particularly unwelcome outcome (outcome bias).³³ If an actor is perceived by the parties to be excessively pursuing its own interests, this may undermine their ability to gain influence over outcomes. The level of acceptance is modeled in my bargaining model as a feedback loop from actor strategies during the negotiations back into the perceived acceptability of EU institutional intervention (see figure 1, above).

²⁷ - For the magnitude of the task, see the papers published by the European Parliament in the 1996-97 IGC. E.g. European Parliament, 1996a, 1996b.

²⁸ - Metcalfe, 1998:425; Stenelo, 1972:54. Moravcsik, 1999a:279 makes the point that actors that have incentives to withhold information from one another would also have incentives to withhold it from a EU institutional actor. However, as the Council Secretariat sits at the center of a web of communications in an IGC, and given its reputation as a trusted insider, national governments often are more open with the Secretariat than they are with other national delegations.

²⁹ - Underdal, 2002: 115.

³⁰ - Scharpf, 1997:145; Raiffa, 1982; Metcalfe, 1998:424-425; Stenelo, 1972:54.

³¹ - Lax and Sebenius, 1986.

³² - Wehr and Lederach, 1996; Bercovitch and Houston, 1996:25-27; Hampson, 1995:18; Tallberg, forthcoming; Hopmann, 1996:225; Kleibor, 1998.

³³ - Bercovitch, 1996b:5. The distinction between perceived acceptability and excessive partiality is an invisible red-line, but the effects of crossing this are often very evident.

2.2. The intervening variables

Contextual variables

Looking first at the structure of the IGC negotiations, a widely held conjecture in negotiation theory and neo-institutional theory holds that how negotiations are structured affects how actor power resources are translated into influence over outcomes.³⁴ This is particularly evident when we are dealing with highly institutionalized, multilateral negotiations such as treaty reform negotiations.

First, the *institutional set-up of the negotiation* can matter in that actors either can start with or gain a privileged position during a negotiation that can be exploited to influence outcomes.³⁵ Examples of privileged institutional positions in the IGC method include being in charge of the formal drafting process of treaty texts, or by having control of the agenda for each individual negotiating session. These different institutional settings affect the opportunities and constraints upon actor strategies for gaining influence. Based upon general conjectures in negotiation theory and in rational choice institutionalism, we should expect that the ability of EU institutional actors to translate their bargaining resources into influence increases with the level of their involvement in the negotiation and drafting process.

The *nature of the issues* under negotiation can also have an impact upon the ability of EU institutional actors to gain influence. There are two dimensions to the nature of an issue: political saliency and complexity/technicality. First, while we can expect that very salient issues will be kept firmly under the control of national delegations, in less salient issues we would expect that EU institutional actors would have more discretion in shaping the discussions and outcome.³⁶ Second, if we assume that delegates in an IGC do not have perfect knowledge of the often very complex institutional and legal implications of the many issues under discussion due to high information costs, then we would expect that in complex and/or technical issues that EU institutional actors such as the Council Secretariat could more successfully utilize their comparative informational advantages.³⁷ Therefore we should expect that the ability of EU institutional actors to translate asymmetrically distributed informational resources into influence varies inversely with the level of political salience of the issue, and that levels of influence would increase the higher the technicality and complexity of the issue-area.

³⁴ - Most prominently, Zartman, 2002. See also the work by Garrett, Tsebelis, Pollack and Tallberg within the EU context.

³⁵ - Watkins, 1999:257-258; Sebenius, 1984, 1991.

³⁶ - Epstein and Segal, 2000; Meier, 1989:279.

³⁷ - Meier, 1989:280; Pollack, 1997:126-127.

Finally, the number of issues and parties to the negotiations also matters, in that both can increase the level of complexity of a negotiation if they increase the number of cleavages in a given negotiation situation.³⁸ In highly complex, multilateral negotiations, with many cross-cutting cleavages, it is difficult for the parties to identify possible agreements, while meaningful communication between parties also becomes increasingly difficult.³⁹ In these types of complex situations the possession of analytical skills and the knowledge of actor preferences is a strategic asset that enables actors to both help the parties find a mutually agreeable outcome and, in the process, also grants them opportunities to influence the final outcome. Therefore we should expect that the ability of EU institutional actors to translate asymmetrically distributed informational bargaining resources into influence increases with the number of issues and parties to a given negotiation.

Process variables – actor strategy during the negotiations

While the contextual variables described above define the range of intervening strategies available, EU institutional actors must successfully use their bargaining resources and institutional position in order to gain actual influence over outcomes. In the following two types of strategy are discussed: agenda-shaping and brokerage.

First, EU institutional actors can attempt to set and shape the agenda of the conference through the use of a variety of tactics to both manipulate the existing agenda, and put new issues onto the agenda. Agenda manipulation involves actions to emphasize, de-emphasize, remove, or exclude issues from the negotiating agenda. Formal control of the agenda in an IGC method rests with the Presidency, but the Council Secretariat offers advice and suggestions to the Presidency, often structuring significant parts of an IGC agenda.

Second, EU institutional actors can attempt to play a brokering or mediating role, utilizing their bargaining resources to help the parties find a mutually acceptable outcome, but also gaining opportunities to influence outcomes in the process.⁴⁰ While there are many different typologies of brokering and mediating strategies, for the present purposes it is most useful to focus on the more active types that attempt to affect the actual content and substance of the negotiations. In the IGC context, the most relevant mediating strategies deal with putting forward compromise proposals, and brokering support for certain positions. Crucial in this respect is the possession of extensive and

³⁸ - Midgaard and Underdal, 1977; Hampson, 1995:28-29.

³⁹ - Hampson, 1995:28-29; Raiffa, 1982; Midgaard and Underdal, 1977; Hopmann, 1996.

⁴⁰ - Carnevale and Arad, 1996; Young, 1991; Kressel, 1989.

reliable information on the nature and intensities of national preferences, and having a reputation as an honest broker.

3. The role and impact of the Council Secretariat in recent IGC's

In the following the common features of how the five IGC's since 1985 have been negotiated will first be detailed. After this the general preferences of the Council Secretariat are discussed, showing that they did not always overlap with those of the Member State governments. The bargaining resources of the Secretariat are then reviewed. Following this, the level of influence that the Council Secretariat had upon the Treaty of Amsterdam, and the Treaty of Nice, will be briefly reviewed. Further document of the 'fingerprints' of the Council Secretariat is found in appendix 1.

After this review of the dependent variable the paper turns to explaining the differences in levels of Secretariat influence across the IGC's, looking at the impact of the contextual variables first. The contextual variables provide the range of opportunities and constraints for the Secretariat in the two IGC's. Thereafter the relative success of the agenda-shaping and brokering strategies employed are debated, asking whether Council Secretariat played its cards successfully in the two IGC's.

3.1. The organization of IGC negotiations

IGC's are convened in order to review and revise the EU Treaties. In effect, IGC's are 'constitutional conventions', where history-making decisions are taken by national representatives, assisted by the Commission and Council Secretariat, which alter the competences and decision-making procedures of the EU. Voting in IGC's is by unanimity among the Member States according to Article 48 EU, and the final treaty must then be ratified domestically in each Member State. The European Parliament must be consulted prior to convening an IGC, and if appropriate the Commission can also be consulted.

There are otherwise no formal treaty provisions for how IGC's should be negotiated, nor for how the agenda should be prepared. But a set of negotiating norms has developed since 1985 – the so-called *acquis conferencielle*. In practice, both the Commission and the Council Secretariat assist the IGC, and the IGC is chaired by the government holding the Presidency. The European Parliament had no role in the 1985 or 1990-91 IGC's, but played an observer role on the sidelines in the 1996-97 and 2000 IGC's.

IGC's since 1985 have been conducted on four levels. At the lowest level are the Friends of the Presidency; a forum used to prepare technical questions. The next level is composed of the personal representatives of the EU foreign ministers, together with Commission and Secretariat officials, who meet on average every week. Most of the negotiations are dealt with at this level, with discussions focusing on detailed and technical questions in a problem-solving environment.⁴¹ The third level of IGC's are the monthly meetings of Foreign Ministers, together with the President of the Commission, and representatives and officials from the Commission and the Council Secretariat. While it has been intended that this level would have the overall control of the negotiation process, in reality it is sandwiched between levels; lacking the informational skills to follow the lower-level discussions, and lacking the political weight of the heads of state and government to strike key deals.⁴² The highest level of the IGC is the meeting of heads of state and government⁴³ within the European Council, joined by representatives of the Commission and the Council Secretariat. It is at this level that the key deals are brokered, and that the final Treaty is concluded.

3.2. The preferences of the Council Secretariat

While the Council Secretariat formally only has a secretarial function, there are many indications that the Secretariat also has its own pro-integration agenda that does not merely reflect Member State preferences. The Secretariat has strong institutional interests in increasing the strength and scope of policy-areas dealt with at the European level, but only if the role of the Council of Ministers in EU policy-making is strengthened in the process.⁴⁴ Institutional issues are especially important to the Secretariat, as they have intimate knowledge of what works and what does not work in the EU through their daily work in the Council.⁴⁵ They are also quite pragmatic in their views in contrast to the Commission, believing that an incremental first-step is often a better way of achieving a final goal than a single 'big bang' decision that might not be accepted by the Member States.⁴⁶

⁴¹ - Stubb, 2002. For more on EU negotiations and the impact of a problem-solving environment, see Elgström and Jönsson, 2000.

⁴² - McDonagh, 1998:20.

⁴³ - France and Finland are represented by their heads of state (presidents), whereas the other thirteen Member States are represented by their prime ministers.

⁴⁴ - See Lipsius, 1995; Charlemagne, 1994 for the Secretariat's preferences in the 1996-97 IGC. See Piris, 1999 for the 2000 IGC. See also Beach, 2002b; Christiansen, 2002; and Westlake, 1999 for more.

⁴⁵ - Interviews with present and former Council Secretariat officials, Brussels, May 2001, January 2002 and February 2003.

⁴⁶ - Ibid.

3.3. The bargaining resources of the Council Secretariat

Looking first at the informational advantages of the Council Secretariat, the Secretariat plays an overlooked but vital role in the EU policy-making process. As its name suggests, the Council Secretariat officially provides administrative and technical assistance to the Council of Ministers, and the national Presidency chairing the Council. Despite it not being a Treaty-based institution of the Union in the manner of the Commission or European Parliament, it does play a very important role in the day-to-day policy-making process by: a) providing authoritative technical and legal advice to the Council itself and national representatives therein; b) playing the role of *confidante* and advisor to national delegations;⁴⁷ and c) stepping in and brokering compromise solutions in difficult impasse situations in the Council. Given this role of being the ‘vital cog’ in Council decision-making, this provides the Council Secretariat with detailed knowledge of the workings of the EU Treaties, the preferences of Member States, and extensive and unsurpassed experience with brokering compromises in the EU.⁴⁸ It is especially in the later that the Secretariat has a comparative advantage in comparison to all other actors in an IGC.⁴⁹

Turning to look at the perceived acceptability of the Secretariat, despite the Secretariat’s role changing from that of an unimportant ‘*notaire*’ to the ‘right hand man’ of the Presidency during the 1980’s,⁵⁰ most national delegates saw (and still see) the Secretariat as a relatively neutral institution that can be trusted to produce issue briefs of the highest quality, formulate fair compromises, and in general help the Member States achieve their wishes.⁵¹ This did vary though across the two IGC’s as will be seen below, and when the Secretariat attempted to too openly pursue its own interests, its acceptability as a useful and trusted assistant to the Presidency declined. This was seen in the Spanish Presidency in the fall of 1995, the Dutch Presidency in the spring of 1997, and the Portuguese Presidency in the spring of 2000.

⁴⁷ - Westlake, 1999:318.

⁴⁸ - Westlake, 1999; Metcalfe, 1998.

⁴⁹ - One former Secretariat official in an interview appropriately called the Secretariat the Council ‘Negotiating’ Secretariat.

⁵⁰ - Westlake, 1999:313.

⁵¹ - Interview with former Council Secretariat official, Copenhagen, January 2002; interviews with national civil servants, Brussels, May 2001 and April 2002, and London, February 2002.

3.4. The level of influence of the Council Secretariat in the 1996-97 and 2000 IGC's

Before we can turn to an analysis of how and when the Secretariat was able to gain influence, it is first necessary to briefly review the level of influence that the Secretariat had upon the outcome of the two IGC's (the dependent variable). This is depicted in tables 1 and 2, with the issues categorized according to the level of political salience.

	Issue-area	Overall influence of Council Secretariat upon outcome
Low political salience	(1) JHA - Decision-making in remaining parts of Third Pillar	High
	(2) Employment	Medium
	(2) Subsidiarity	High
	(3) Legal personality	High
	(3) CFSP - common strategy	High
	(4) Reform of Commission	Medium
	(6) Simplification of Treaty	High
<i>Overall level of influence in low salience issues</i>		High
Medium political salience	(1) Schengen	Low
	(2) Environment	Medium
	(3) CFSP - High Representative	Medium
	(3) CFSP - Petersburg tasks	Medium
	(3) CFSP - Legal Personality	High
	(4) Extension of co-decision	Medium
<i>Overall level of influence in medium salience issues</i>		Medium
High political salience	(1) JHA - Communitarisation of parts of Third Pillar	Medium
	(1) JHA - Amendment of remaining Third Pillar	Medium
	(3) CFSP - defense	Medium
	(3) CFSP - WEU relations	Medium
	(3) Common trade policy	Medium
	(4) Extension of QMV	Medium
	(4) Institutional change (reweigh Council votes, # of Commissioners)	Medium
	(5) Flexibility	High
<i>Overall level of influence in high salience issues</i>		Medium / High

Table 1 – The level of influence of Council Secretariat in the 1996-97 IGC.

Low influence in the tables means that the Secretariat had no substantial influence upon the final outcome. Medium influence refers to the Secretariat being able to shift an outcome in an issue-area within existing zones of possible agreement, whereas a high levels of influence implies being able to skew an outcome outside of the existing zone of possible agreements.

The sources for the information are a series of twenty-five interviews conducted with national and EU civil servants and politicians in the period 2000-2002, together with an extensive comparative analysis of actor proposals prior to and during the IGC with the official agenda during the IGC (Presidency papers), and the final outcome. Issues were classified according to level of political salience based upon the perceptions of participants in the negotiations. Fuller documentation of the ‘fingerprints’ of the Secretariat in the different issues is found in appendix 1 of this paper.

	Issue-area	Overall influence of Council Secretariat upon outcome
Low Salience Political	Status of Inter-institutional Agreements	High
	Internal reforms of the Commission	Low - Medium
	Reform of the Union’s legal system	Medium
	Political parties at EU-level	Low - Medium
<i>Overall level of influence in low salience issues</i>		Medium
Medium Salience Political	Creation of separate legal bases for policies under Article 308 EC	High
	Fundamental rights	Low
	Extension of co-decision procedure	Low- Medium
	Hierarchy of legal norms	Low
	Flexible co-operation	Medium -High
	Venue for European Councils	Medium
<i>Overall level of influence in medium salience issues</i>		Medium
High Salience Political	Size of the Commission	Low
	Re-weighting of Council voting	Low- Medium
	Allocation of EP seats	Low- Medium
	Extension of QMV in politically sensitive areas (taxation, social policy, and JHA)	Medium
	Changes to the common trade policy	Low- Medium
<i>Overall level of influence in high salience issues</i>		Low- Medium

Table 2 – The level of influence of the Council Secretariat in the 2000 IGC.

Looking at the two IGC's, it is apparent that the Council Secretariat had a relatively high level of influence upon the whole Treaty of Amsterdam, and was even able to shift outcomes to points outside of existing zones of possible agreement in several political salient issues (e.g. flexibility, legal personality). In the 2000 IGC the Secretariat had medium to high levels of influence in low salience issues, but proved unable to gain influence upon the central issues in the IGC. What explains the relatively high level of Secretariat influence in 1996-97, and relatively low level of influence in 2000?

3.5. The impact of the contextual intervening variables

As was pointed out earlier, contextual variables define the range of opportunities and constraints upon attempts by supranational actors to translate their resources into influence. The following section will compare the contextual conditions in the two IGC's, and their impact upon the ability of supranational actors to translate their bargaining resources into influence.

The impact of the institutional structure of the negotiations

Based upon negotiation theory, we expected that a privileged institutional position would give supranational actors more opportunities to shape the agenda and broker key deals, and vice versa. Table 3 below illustrates the institution role of the Secretariat for the two IGC's.

	Council Secretariat
1996-97 IGC	<ul style="list-style-type: none"> • privileged institutional position, including: <ul style="list-style-type: none"> ▫ exclusive drafter of treaty texts ▫ offering advice to Presidency ▫ being the center of communication ▫ and providing sole legal advice to the IGC
2000 IGC	<ul style="list-style-type: none"> • less privileged institutional position, due to the role that it was allowed to play during the Portuguese and French Presidencies, although the Secretariat did: <ul style="list-style-type: none"> ▫ draft some treaty texts ▫ offered advice to Presidency ▫ and provided legal advice to the IGC

Table 3 – Institutional role played by the Council Secretariat in the two IGC's.

Comparing the two IGC's, the Secretariat had a very privileged position in the 1996-97 IGC, with two of the Presidencies during the IGC being very dependent upon the informational resources of the Secretariat (Irish and Dutch), and the third Presidency during the IGC was unable to provide leadership or brokerage due to a political crisis (Italy).

The Council Secretariat's role in the 1996-97 IGC was based upon a mandate given to it prior to the opening of an IGC by the European Council. Its basic function was to support the IGC itself and the Presidencies in charge of the negotiations. First, the Secretariat offered advice to the Presidencies in helping set the agenda for meetings, and suggestions on the overall conduct of the negotiations based upon its estimate of the state-of-play of the negotiations drawn from: the Secretariat's considerable negotiating experience in the Council; the knowledge gained from following the IGC at every level, including the bilateral 'confessionals' between the Presidency and each Member State held prior to the final summit of each Presidency during an IGC;⁵² and from its experience in previous major and minor IGC's. Secretariat advice often takes the form of tactical advice such as 'the Danes can be isolated', and 'there is strong resistance to this in Spain and Portugal so caution is advised'...⁵³

The Presidency-Secretariat relationship is quite fluid, with some Presidencies relying extensively upon the Secretariat, and others going it alone. Therefore Secretariat influence is *contingent* upon the role that a given Presidency allows it to play – a point in my argumentation that cannot be underlined too strongly. As will be seen below, when the Secretariat was perceived as pursuing its own interests too openly this fed back into the level of Secretariat acceptance, and could and did lead Presidencies to draw less upon the Secretariat, thereby also limiting the ability of the Secretariat to gain influence.

Second, regarding the drafting process, Member States often put forward relatively vague ideas that then must be translated into draft legal text. In the 1996-97 IGC, almost all of the draft texts were written and developed by the Secretariat. The Secretariat often formulates its advice in the manner that, 'If you want co-operation in this issue-area, then it can be done in this way, while you should also be careful about this...'.⁵⁴ The Secretariat then develops an initial draft legal text for the Presidency, which can be modified by the Presidency if so desired. Yet as insiders point out, the drafts put forward by the Secretariat often contain points that either were not on the agenda, or that even were opposed by a

⁵² - The participation by the Secretariat in these bilateral confessionals gives them an edge regarding knowledge of national positions over the Commission, which does not take part in these meetings.

⁵³ - Nugent, 1999:153.

⁵⁴ - Interview with former Council Secretariat official, January , 2002.

majority of Member States.⁵⁵ These unwanted shifts are however masked by the opaque, legal language that they are written in – giving the Secretariat a considerable power of the pen, which can in theory at least grant the Secretariat numerous opportunities to translate its expertise into influence over outcomes.

Thirdly, the Secretariat provides assistance to Presidencies in brokering agreements based upon its extensive experience in brokering compromises in day-to-day Council policy-making. This role is further facilitated by the centrality of the position of the Secretariat, and its privileged knowledge of the state-of-play. All proposals in an IGC go through the Secretariat for example, and national delegations in an IGC use the Secretariat as a *confidante* and advisor as they do in daily Council work. This puts the Secretariat at the center a web of communications, which in the negotiation literature is referred to as a ‘hub-and-spoke’ communications pattern, where ‘one actor stands at the center of a relatively nonhierarchical communications pattern...’⁵⁶ strengthening the ability of the actor to play a strong brokering role.

Finally, the Secretariat provides expert legal counsel to the IGC, with the head of the Secretariat’s Legal Services taking part in all IGC meetings. Importantly, while the Secretariat itself only works through the Presidency, the head of the Legal Services is an independent actor in the IGC, acting as the legal adviser to the IGC with the function of answering questions from national delegates, and also taking the floor on his/her own initiative when he/she deems it necessary.

By being the primary interpreter of EC law during an IGC, this opens for opportunities for the Secretariat’s Legal Service to convert its expertise into influence.⁵⁷ EC law is often ambiguous, and open to many differing interpretations ranging from a literal interpretation that tends to downplay the scope and strength of EC-level competences, to a teleological method of interpreting Treaty provisions in the light of the goal of building an ‘ever-closer union’.⁵⁸ There are indications that given the pro-integration (but also pro-Council) preferences of key lawyers in the Legal Services, their interpretations of EC law are often teleological. By having the role of the authoritative interpreter of EC law in an IGC, this strengthens the authority of their interventions by allowing them to draw upon the moral weight of ‘the law’. This enables the Secretariat to say that there is no other *legal* course of action other than their own standpoint – in effect creating a focal point that cannot be refused.

⁵⁵ - Interview with former Council Secretariat official, January , 2002; national civil servants, Brussels, May 2001 and April 2002 and London, February 2002.

⁵⁶ - Hopmann, 1996:265.

⁵⁷ - They shared this role with the Commission in the SEA IGC, but have enjoyed a monopoly since (Christiansen, 2002).

⁵⁸ - See Beach, 2001.

Concluding, the Secretariat enjoyed a very central position in the 1996-97 IGC, especially through its power of the pen, with the Secretariat drafting most of the Presidency draft texts and briefs put before Member State delegations during the negotiations, and by acting as the legal adviser to the IGC. If used actively, we should expect that these factors alone would have granted the Secretariat numerous opportunities to influence the IGC outcome.

In the 2000 IGC, the Secretariat played many of the same functions, although they were not allowed as central a role during both the Portuguese and French Presidencies due to a lower level of acceptability of Secretariat interventions (see below). This was especially evident during the French Presidency, where the French attempted to undertake many of the functions that the Secretariat usually plays, opening for fewer opportunities for the Secretariat to attempt to shape the agenda and broker outcomes.

The impact of the nature of the issue being negotiated

We would expect that EU institutions should be able to translate informational advantages into influence in both relatively low salience and in complex, technical issues. Table 4 shows the nature of the issues being negotiated in the two IGC’s based upon the data in tables 1 and 2, together with interview information of actor perceptions of the technicality/complexity of issues in the two IGC’s.

	Nature of the issue being negotiated
1996-97 IGC	<ul style="list-style-type: none"> • most of the issues in the IGC were quite complex, such as flexibility and the communitarization of Justice and Home Affairs (JHA), although the most salient issues dealing with the so-called ‘institutional triangle’ were relatively simple issues; • most issues were low salience, with the exception of the Common Foreign and Security Policy (CFSP) and JHA, and the ‘institutional triangle’, which were high politics issues and/or distributive issues; • <u>empirical results:</u> <ul style="list-style-type: none"> ▫ not strong correlation between salience and influence for the Secretariat; ▫ correlation between complexity and influence for the Secretariat, especially as regards core subject-matters of the EC;
2000 IGC	<ul style="list-style-type: none"> • most of the issues were relatively simple; • most of the issues were very sensitive, as they dealt with distributive issues; • <u>empirical results:</u> <ul style="list-style-type: none"> ▫ no correlation between salience and influence for the Secretariat; ▫ some correlation between complexity and influence for the Secretariat, especially as regards core subject-matters of the EC;

Table 4 – The impact of the nature of the issues being negotiated in the two IGC’s.

In the 1996-97 IGC, most of the issues were both low salience and quite complex, opening for many opportunities for EU institutions to translate informational advantages into influence. However pointing in the other direction were the extensive preparations of the negotiations by national governments prior to their start, where the agenda was well-prepared within the Reflection Group.⁵⁹ Pointing further in this direction was the fact that there were also politically sensitive issues on the agenda, such as the negotiation of changes in the second pillar (CFSP), and the institutional triangle that dealt with re-weighting of Council votes, number of Commissioners, and the extension of QMV. In these sensitive institutional issues, 'Compromises did not lie in skillful drafting or the gradual refining of texts. These were points of gut difference and fundamental importance such as cannot be resolved until the end of any negotiation.'⁶⁰ Therefore we would expect that EU institutions would be strongly constrained in these types of issues. Looking at the empirical results, the Secretariat was influential in both low and high salience issues, but its relative influence varied according to the complexity of the issue, with high Secretariat influence in complex, first pillar institutional issues such as flexibility, and low influence upon the simple and sensitive institutional issues.

The nature of the issues dealt with in the 2000 IGC opened for fewer opportunities for Secretariat influence. There were only a few highly salient issues on the agenda, including the sensitive institutional triangle of re-weighting of Council votes, number of Commissioners, and the extension of majority voting – issues that were either zero-sum issues and/or that dealt with sensitive matters of national prestige. Several of the sensitive issues were though quite complex, such as reforms of social security co-ordination (Article 42 EC) and the common trade policy (Article 133 EC), opening for certain opportunities for EU institutions to gain influence. As seen in table 2, the Secretariat had influence in both high and low salience issues in the 2000 IGC, with its influence varying only according to the complexity of the issue. In simple issues such as the re-weighting of votes, the Secretariat had little influence, and vice versa.

The impact of the level of complexity of the negotiating situation

Based upon multilateral negotiation theories, we would expect that as the number of parties and issues increases in the IGC's, and as the number of cleavages increases, that this would increase the demand for third party intervention in order to help the Member States find a mutually acceptable outcome, which in the process would open for enhanced opportunities for interveners to gain influence.

⁵⁹ - For more on this, see Beach, 2002???

⁶⁰ - McDonagh, 1998:155.

Table 5 depicts the complexity of the negotiating situation for the two IGC's. The 2000 IGC was a relatively simple situation, with two primary cleavages. One cleavage was between supranationalists/federalists and intergovernmentalists, while the other split small and larger Member States.⁶¹ National delegates were therefore aware of the zone of possible agreement, lowering the demand for third party brokerage.

	Level of complexity of the negotiating situation
1996-97 IGC	• highly complex situation, with numerous different cleavages;
2000 IGC	• simple negotiating context, with two primary cleavages;

Table 5 – The level of complexity of the negotiating situation in the two IGC's.

In contrast, the 1996-97 IGC was an extremely complex negotiation, with dozens of cross-cutting cleavages on over 200 issues, creating a strong demand for brokerage and agenda-shaping in order to find and/or create zones of possible agreements. Yet we must also take into account the strength of the cleavages in the negotiations. While the 2000 IGC was a simple bargaining situation, the very sensitive small-large Member State cleavage in the IGC did create a strong demand for brokerage, which was partially supplied by the French Presidency, partially by the Secretariat, and also by individual Member States.⁶²

3.5. The impact of the process-related intervening variables

While the context of the 1996-97 IGC opened for many opportunities for Secretariat influence, the context of the 2000 IGC opened for a much more limited range of options for the Secretariat. Was the Secretariat able to successfully exploit the privileged context in the 1996-97 IGC? Was the Secretariat able to use the limited instruments that it possessed to gain influence upon the Treaty of Nice?

The following will first discuss the empirical findings for agenda-shaping strategies, showing that low-profile agenda-shaping tactics coupled with a reputation of trust and a central institutional position were the most significant factors that allowed the Secretariat to translate its informational advantages

⁶¹ - Galloway, 2001. It must be noted that within the small/larger Member State cleavage, there were also disagreements between France and Germany, and Belgium and the Netherlands regarding whether to maintain their parity of Council voting weights.

⁶² - See Schout and Vanhoonacker, forthcoming.

into influence over outcomes. Following this, the findings for brokering strategies will be reviewed, with the study pointing again to the impact of the level of acceptance of the interventions of the Secretariat, and its institutional centrality as being vital for their success in brokering key deals.

Agenda-shaping by the Council Secretariat

The 1996-97 IGC

While the 'high water' mark of Commission influence was the 1985 IGC, the Secretariat's 'high water' mark was the negotiation of the Treaty of Amsterdam. The context of the IGC opened for a range of opportunities that were then skillfully taken by the Secretariat.

During the Spanish Presidency in the fall of 1995, a Reflection Group (RG) was charged with preparing the negotiation agenda. The Secretariat wrote the questionnaires that formed the basis of discussions in the RG,⁶³ inserting several of its priority issues into the document including legal personality and a hierarchy of norms.⁶⁴ The Secretariat also downplayed the issue of flexibility in the report, as it was concerned about the potential implications of flexibility without safeguards. The Spanish Presidency though perceived that the Secretariat was excessively promoting its own agenda in the texts, which led the Spanish Presidency to draft much of the later material for the RG without assistance from the Secretariat.⁶⁵ This corroborates the impact of the feedback loop in figure 1 from actor choice of strategy back to the perceived acceptability of the supranational actor's interventions, demonstrating the contingent nature of influence of EU institutions. After the Spanish took control, there is no available evidence indicating that the Secretariat was able to significantly shape the content of the final RG report.⁶⁶

The Council Secretariat filled in the political vacuum left by the political crisis in Italy during its Presidency of the Union in the spring of 1996. The Italian Presidency effectively gave the Secretariat a *carte blanche* regarding the preparation and presentation of negotiation materials to the IGC. This allowed the Secretariat to insert certain proposals that reflected their own pro-integration and pro-Council agenda.⁶⁷ The pro-Council slant was especially evident in the papers produced on the powers of the Commission or EP.⁶⁸ For instance, the Secretariat produced a proposal on the powers of the EP

⁶³ - Letter from the Chairman of the Reflection Group to its Members, Madrid, 23 May 1995, SN 2488/1/95 Rev 1.

⁶⁴ - See points 6 and 8 of the document.

⁶⁵ - Svensson, 2000:56.

⁶⁶ - Reflection Group, 1995.

⁶⁷ - Svensson, 2000:83

⁶⁸ - Interview with Commission official, Brussels, April 2002.

prior to the start of the IGC in March 1996 that was not asked for by any national delegation.⁶⁹ The Secretariat also wrote the conclusions for the Florence European Council Summit towards the end of the Italian Presidency.⁷⁰

The Irish Presidency in the second half of 1996 drew extensively upon the Secretariat, with most of the draft texts coming from Brussels, through guided and sometimes amended by the Presidency.⁷¹ However there are no indications that the Irish lost control of the negotiations, thereby preventing the Secretariat from pushing its own agenda as strongly as it had during the Italian Presidency.⁷² The only example during the Irish Presidency where it can be argued that the Secretariat was able to openly promote its own interests by drafting texts for the negotiations was when they presented a non-paper on flexibility after the Dublin II Summit in December 1996.⁷³ The general rule when the Secretariat distributes a paper in an IGC is that either the Presidency or a Member State has asked for the proposal to be prepared. However the Secretariat non-paper on flexibility was submitted on its own initiative, something which has not happened before or since in an IGC, although both the Irish and Dutch Presidencies agreed to its distribution.⁷⁴

The non-paper on flexibility clearly echoed the Secretariat skeptical attitude towards flexibility,⁷⁵ arguing for strict conditions in order to protect the institutional framework of the Community. The view in the Secretariat was that the debates in the IGC were too 'theoretical', and it was therefore seen to be necessary to both alert Member States to the risk of unbalancing the institutional equilibrium, and to move the debate forward by proposing a practical institutional framework for flexibility.⁷⁶ A participant pointed out that delegates were at in the dark in the issue, not knowing how it could be used, or what the implications of flexibility were.⁷⁷

While certain parts of the non-paper were clearly based upon the state-of-play in the IGC negotiations, with the proposal attempting to translate the vague political discussions into concrete legal texts, the Secretariat was also able to insert many of its own ideas, substantially shaping the agenda and

⁶⁹ - CONF/3812/96. The Secretariat proposed a significant strengthening of the EP by giving it a right of initiative, and also extending co-decision - reforms which would have weakened the institutional power of the Commission while maintaining the same level of power in the decision-making process for the Council of Ministers.

⁷⁰ - Gray, 2002:393.

⁷¹ - McDonagh, 1998:44, 104-105; Gray, 2002.

⁷² - Gray, 2002.

⁷³ - SN/639/96 (C 31).

⁷⁴ - Stubb, 1998:217-218; Interview with Council Secretariat official, Brussels, May 2001.

⁷⁵ - See the writings of the head of the Secretariat's Legal Service, Jean-Claude Piris, under the pseudonym Lipsius (1995).

⁷⁶ - Based on interviews with officials in the Council Secretariat, Brussels, May 2001, and national civil servant, Brussels, April 2002.

⁷⁷ - Interview with national civil servant, Brussels, May 2001. See also Stubb, 2002.

thereby successfully translating informational advantages into influence in what was a very complex issue.

Of the innovative ideas presented by the Council Secretariat, the following formed significant focal points for further negotiation, and made their way into the final Treaty of Amsterdam.⁷⁸ Most prominently were the eight conditions that were proposed for the use of flexibility, which were included almost word-for-word in the subsequent Dutch draft article in February 1997, and in the final Treaty of Amsterdam.⁷⁹ Additionally, contrary to the state of the debate in the IGC at the time,⁸⁰ the Secretariat argued that flexibility should *not* be applicable in CFSP, which also turned out to be the final outcome in the Treaty of Amsterdam. The proposals for the financial provisions contained in the Secretariat's non-paper were also with few exceptions accepted.⁸¹ Further, the Secretariat also suggested splitting the EP into MEP's from participating Member States only when voting on flexibility⁸² – an idea that was opposed by a majority of the Member States, but kept re-appearing in Presidency drafts due to Secretariat advocacy.⁸³ It was though not adopted in the Treaty of Amsterdam.

The Dutch Presidency in the first half of 1997 was also dependent upon the resources of the Secretariat, although they did not use the Secretariat in certain issues, as the Dutch believed that the issue briefs and draft texts produced by the Secretariat were excessively partial to their own interests in these issues. In complex issues where the Dutch Presidency did not have strong interests, such as flexibility and legal personality, the Secretariat had substantial leeway in drafting texts, enabling them to draft them in such a way that they echoed the Secretariat's own institutional preferences. As seen above, the Secretariat's non-paper from December 1996 shaped the final outcome on flexibility. Regarding legal personality, the Secretariat, and in particular Director-General of the Secretariat's Legal Service, Jean-Claude Piris, was a strong advocate for an independent legal personality for the Union.⁸⁴ The question of legal personality is a very complex legal question – one in which Piris as a highly skilled international law expert had a comparative informational advantage in relation to national delegates, who for the most did not have the same level of expertise in the issue. While many Member States

⁷⁸ - Stubb goes so far to say that the Council was not only an 'advocate' of flexibility, but also became the 'judge' of the form of flexibility embodied in the final Treaty (1998:218).

⁷⁹ - Stubb, 1998:218-219.

⁸⁰ - See Stubb, 1998:199-200; See also joint Franco-German letter in December 1996, (Agence Europe, Europe Daily Bulletins, No. 6871, 11/12/96); and European Parliament, 1996b:27. According to Stubb, the Member States favoring CFSP flexibility in November 1996 were Belgium, Finland, France, Germany, Italy, Luxembourg, the Netherlands, and Spain.

⁸¹ - Ibid.

⁸² - See SN 639/96 (C 31), Article F quater TEU (Dispositions institutionnelles).

⁸³ - Gray, 1999:218-219 footnote.

⁸⁴ - See for instance the suggesting wording produced by the Secretariat in Note 27 of 26 April 1996, which states that the 'most straightforward option' is full legal personality (CONF/3827/96). Interview with two national civil servants, London, February and April 2002.

supported creating a legal personality for the Union, there were several prominent opponents (France and the United Kingdom),⁸⁵ and given the lack of interest that the Dutch Presidency had in it, the issue could very likely have fallen by the wayside if it had not been for the constant advocacy of the Secretariat for the creation of some form of legal personality.⁸⁶

In contrast, in issues where the Dutch Presidency had strong interests that did not overlap with the preferences of the Council Secretariat's, the Secretariat's level of involvement in the drafting of texts was lower, again corroborating the contingent nature of EU institutional influence. This was particularly evident regarding the integration of Schengen into the Community, to which the Secretariat was opposed. One of the reasons for the Secretariat's opposition was due to its concern about the legal implications of incorporating the entire Schengen *acquis* into the EU's *acquis communautaire*,⁸⁷ as the Schengen *acquis* was developed in a different institutional setting than the EC. However the primary reason for Secretariat opposition was an institutional interest in not having the Schengen secretariat incorporated into the Council Secretariat. This opposition influenced the provisions that they drafted for the Dutch Presidency, eventually leading the Dutch to exclude the Secretariat from the drafting of these provisions, drawing instead upon their own officials assisted by Commission experts.

Concluding, by being extensively involved in the negotiation and drafting of Treaty texts in the IGC, the Secretariat was able to translate its technical expertise into influence over outcomes. Through low-profile agenda-shaping tactics, the Secretariat was able to use its power of the pen to gain influence in several salient issues, illustrating the, '...influence of those who provide draft texts for debate - they run the show.'⁸⁸ This influence was dependent upon the acquiescence of the Presidency in charge, and when the Secretariat attempted to more strongly advocate its own positions, these tactics proved unsuccessful, as was seen in the question of Schengen.

It is also important to underline that in most of the issues where the Secretariat was able to influence outcomes, this resulted in the skewing of outcomes *within* the zone of possible agreements among the Member States (medium influence). The most significant exception to this was in the negotiation of flexibility, where the Secretariat shifted the zone of possible agreements itself (high levels of influence). At the start of the IGC, based upon national preferences we would have predicted that the final outcome in flexibility would have been the creation of a form of 'hard core', and that it dealt

⁸⁵ - European Parliament, 1996a:27.

⁸⁶ - This advocacy led the Irish diplomat Bobby McDonagh to in jest present Pirus with a T-shirt with the caption 'The Legal Personality of the Union' during the IGC.

⁸⁷ - Body of existing EU legislation.

⁸⁸ - Stubb, 1998:219.

primarily with CFSP. The Secretariat shifted this zone to create a complex legal formula that included many institutional safeguards, and even excluded CFSP!

The 2000 IGC

The negotiation of the Treaty of Nice clearly showed the impact of the contextual variables upon the level of Secretariat influence. All three contextual variables placed the Secretariat in a weak position. Yet despite this difficult situation, the Secretariat was able to step in and shape the IGC agenda in several cases.

For instance, during the Finnish Presidency that prepared the IGC agenda, deputy Secretary-General of the Council Secretariat Pierre de Boissieu was able to significantly modify the original Finnish report, which had originally been oriented towards small states and was somewhat close to the Commission's opinions.⁸⁹ De Boissieu for example prevented the Finns from attempting to widen the IGC agenda along the lines advocated by the Commission.⁹⁰ The Secretariat put forward the first papers on flexibility, and suggested that it should be put on the official agenda, while other issues such as defense should be excluded from the agenda.⁹¹

The Secretariat had relatively poor relations with the Portuguese Presidency in the spring of 2000, preventing it from successfully playing the role of trusted adviser and confidante in the negotiations as in previous IGC's. One of the main problems was that Portuguese State Secretary for European Affairs de Costa perceived that de Boissieu was pursuing a pro-large state (read French) agenda, and made it clear that Portugal would not accept de Boissieu changing the Presidency's papers and drafts as had been the case with the Finnish IGC report. De Costa even went so far as to exclude de Boissieu from co-ordinating meetings between the Secretariat and the Presidency, choosing instead to work with lower level Secretariat officials.⁹²

Despite this relative handicap, the Secretariat was able to influence the Portuguese to take up the question of creating specific legal bases for policies that had until then been adopted using Article 308 EC.⁹³ The Secretariat was interested in this both to: bolster the number of articles that might move to QMV, as it was politically impossible for the Member States to agree to transfer Article 308 EC itself to QMV; and to 'tidy up' the legal bases of EU policies. No Member State was pushing for this, and it

⁸⁹ - Interviews with national civil servants that took part in the 2000 IGC, Brussels, May 2001 and April 2002.

⁹⁰ - Interviews with national civil servant, Brussels, May 2001 and April 2002; Commission official, Brussels, April 2002, national civil servant, London, February 2002.

⁹¹ - Interview with national civil servant, Brussels, May, 2001.

⁹² - Interview with Commission official, Brussels, April 2002.

⁹³ - Interview with national civil servant, London, February 2002.

would not have been on the agenda had it not been for the advocacy of the Secretariat.⁹⁴ Additionally, the subsequent discussions on the subject were very dependent upon the legal expertise of the Secretariat, as they possessed information on what the EU was currently doing under Article 308 EC that no Member State possessed.⁹⁵ The final outcome was though disappointing for the Secretariat, with only one new legal base created for provisions on financial and technical co-operation with non-developing countries.⁹⁶

During the French Presidency, the Secretariat played an even more limited role than during the Portuguese Presidency, being effectively cut out of the loop of the negotiations on most of the major points on the agenda. The main problem for the Secretariat as a whole was that the French attempted to run their Presidency from Paris, and not from their Permanent Representation in Brussels as is usual practice.⁹⁷ While a Presidency run from a national capital is often more concerned with national interests than common European interests, a Permanent Representation in Brussels is naturally used to working within the EU institutions, and has close relations both with other national representatives, and with Secretariat and often Commission officials. The Secretariat did work relatively closely with French Permanent Representative Vimont, and in issues where Vimont was responsible for conducting the negotiations, the Secretariat played its traditional role of trusted partner of the Presidency, gaining significant influence upon the outcome in the process.⁹⁸ This included the negotiation of flexibility and the extension of QMV (see below), both of which were primarily dealt with at the Preparatory Group level.⁹⁹ Further, the Secretariat did play a significant role in shaping the agenda in the issue of re-weighting of Council votes, and was also able to insert several of its 'pet projects' in the end-game.

First, in flexibility the Secretariat wrote all of the draft articles without much input or guidance from the Presidency, as the French did not fully understand the complex implications of the issue.¹⁰⁰ While the overall contours of agreement on revision of flexibility were both defined and broadly agreed upon by national delegates prior to the informal European Council Summit in Biarritz,¹⁰¹ the Secretariat filled in the details, even ensuring that a deal would be reached by placating the fears of hesitant Member States. This was done by 'ring fencing' core areas of the internal market and economic and

⁹⁴ - Interviews with national civil servants, Brussels, May 2001 and April 2002.

⁹⁵ - Interview with national civil servant, London, February 2002.

⁹⁶ - Article 181a EC was inserted into the Treaties, which gave a specific legal base to these policies coupled with QMV. Galloway, 2001:109-111.

⁹⁷ - Christiansen, 2002:48.

⁹⁸ - Interviews with national civil servant, Brussels, May 2001 and April 2002; and Commission official, Brussels, April 2002.

⁹⁹ - Schout and Vanhoonacker, forthcoming; Gray and Stubb, 2001:11; Interviews with national civil servant, Brussels, May 2001 and April 2002.

¹⁰⁰ - Interviews with national civil servant, Brussels, May 2001 and April 2002; Commission official, Brussels, April 2002.

¹⁰¹ - Stubb, 2002:118, 121.

social cohesion, thereby putting them outside of the remit of flexibility.¹⁰² This made it easier for skeptical countries to accept the reforms of flexibility that would make it easier to use, as for example Spain had threatened to veto the changes if they did not explicitly exclude the internal market from the scope of flexible co-operation.¹⁰³ On aspects of flexibility such as the criteria, threshold for use, and voting, the Secretariat wrote the draft provisions, often together with Commission officials.¹⁰⁴ Further, the head of the Secretariat's Legal Service prevented the creation of a single cross-pillar flexibility provision, as he was concerned of the legal complications that a cross-pillar provision could have for both the supranational and intergovernmental pillars, given the mixed legal nature of the Treaties.¹⁰⁵

Turning to the extension of QMV, the French Presidency together with the Secretariat drafted numerous proposals that attempted to find texts that sufficiently took into account various national sensitivities, while at the same time trying to maximize the number of articles on the list to be transferred to QMV.¹⁰⁶ Because of the technical complexity of the issues involved, much of the time was spent on clarifying texts and refining successive drafts, especially in taxation, and trade and social policies. Yet with the available information it is difficult to find the concrete fingerprints of the Secretariat, and some participants interviewed argued that the Secretariat made a crucial mistake in the issue, as together with the French Presidency they put forward so many drafts with different formulas and lists that national delegates were overwhelmed, and were unable to co-ordinate a national position on one draft with their respective capital before another proposal hit the table.¹⁰⁷ Delegates therefore were forced to start rejecting proposals out of hand.¹⁰⁸

In the debates on the re-weighting of Council votes – arguably the most sensitive issue together with the size of the Commission - the Secretariat had a large state bias in the issue. Participants point out that the Secretariat used agenda-shaping tactics to keep the issue wide open during the French Presidency.¹⁰⁹ The rationale behind these tactics was to both: block the emerging consensus around the Commission's proposed simple dual majority option; and hope that if the issue would be resolved in the end-game, that the smaller states would be forced to swallow a simple re-weighting of votes favoring the larger Member States in exchange for being guaranteed the right to nominate a

¹⁰² - Galloway, 2001:134; Schout and Vanhoonacker, forthcoming;

¹⁰³ - Interview with national civil servant, London, February 2002.

¹⁰⁴ - Interview with Commission official, Brussels, April 2002.

¹⁰⁵ - The first pillar is supranational, whereas co-operation in the other two pillars is predominantly intergovernmental. Stubb, 2002:120; See also Galloway, 2001:139-140. For more on the pillar structure, see Bainbridge, 2000; Weatherill and Beaumont, 1999.

¹⁰⁶ - Galloway, 2001:101-111.

¹⁰⁷ - Gray and Stubb, 2001:12.

¹⁰⁸ - Interview with Commission official, Brussels, April 2002.

¹⁰⁹ - Interviews with national civil servants, London, February 2002; and Commission official, Brussels, April 2002.

Commissioner.¹¹⁰ But besides blocking the Commission's simple dual majority option, the Secretariat did not have significant influence upon the outcome in the issue – which ending in the messy horse-trade of a triple majority system.

The Secretariat fared much better with several of its 'pet projects' during the IGC end game. For example, during a lunch in the Val Duchesse informal Preparatory Group meeting on the 25th of November, the Secretariat presented several proposals that were accepted outright by delegates without discussion – in the words of one participant, 'the Member States rolled over and took them without debate'.¹¹¹ This was partly due to the lack of national experts at the lunch,¹¹² and partly due to the perceived low political salience of several of the issues. Among the proposals accepted were provisions on the financial consequences of the expiry of the ECSC Treaty, Eurojust co-operation, a declaration on inter-institutional agreements, and reforms of the court of auditors.

However in most of the other issues, Paris attempted to control the negotiations.¹¹³ The exception to this was the role that Paris allowed deputy Secretary-General de Boissieu to play. De Boissieu's personal relationship with Chirac gave him privileged access to Chirac, and Chirac drew directly upon de Boissieu as a source of advice. For example, according to participants in the IGC, on the last evening of the Nice Summit, de Boissieu sat on the left hand side of Chirac and 'wrote' his script.¹¹⁴ Several declarations were for example written by de Boissieu, including the declaration on the venue of European Council summits,¹¹⁵ which enabled Belgium to swallow being granted fewer Council votes than the Netherlands.¹¹⁶

Concluding, while the Secretariat did gain significant influence in several salient issues, and much of the IGC's outcome came 'from the Secretariat's kitchen',¹¹⁷ the Secretariat was unable to successfully translate its expertise through the use of the power of the pen and through giving advice as effectively as it had in previous IGC's. This was both due to reservations on the part of the Portuguese Presidency to de Boissieu's assertive role, and due to the Paris-based French Presidency, which relied more on Parisian civil servants than on the expertise of the Secretariat.

¹¹⁰ - Interviews with national civil servant, London, February 2002; and national civil servant, Brussels, May 2001 and April 2002.

¹¹¹ - Interview with national civil servant, London, February 2002; Commission official, Brussels, April 2002.

¹¹² - Interviews with national civil servant, Brussels, May 2001 and April 2002.

¹¹³ - Interviews with national civil servant, London, February 2002; and national civil servant, Brussels, May 2001 and April 2002; Christiansen, 2002:48.

¹¹⁴ - Interview with national civil servant, London, February 2002.

¹¹⁵ - Interviews with national civil servant, Brussels, May 2001 and April 2002; Gray and Stubb, 2001:21.

¹¹⁶ - Galloway, 2001:82-3.

¹¹⁷ - Interview with Commission official, Brussels, April 2002.

Conclusion

The key to the success of the Secretariat was its use of low key tactics such as agenda-shaping through behind-the-scenes drafting and informational tactics. In the 1996-97 IGC, these tactics enabled the Secretariat to significantly shift outcomes closer to their own preferred outcome of a more integrated but also more Council-based Union. When the Secretariat departed from these behind-the-scenes tactics, and attempted to more openly pursue its own interests by using more politicized agenda-shaping tactics such as open advocacy, this damaged the perceived acceptability of the Secretariat's interventions (independent variable), which then through a feedback loop affected the role that the Secretariat was allowed to play in the negotiations (contextual intervening variable) (see figure 1). This was most evident in the 2000 IGC, where the Portuguese Presidency excluded the Secretariat from many of its traditional roles that it plays during small state Presidencies, as the Portuguese perceived that the Secretariat's interventions were excessively biased towards the interests of the larger Member States.

Brokerage by the Council Secretariat

The 1996-97 IGC

In issues where Presidencies had weak interests there is some evidence suggesting that the Secretariat was able to step in and play a mediating role by crafting compromises, in the process shifting outcomes closer to their own preferred outcomes. For example the Secretariat was able to build a coalition around its own position on the need for some form of legal personality of the Union (see above).

In the end game of the IGC the Secretariat was able to use mediating tactics to broker compromises on several highly politicized issues. In negotiation of the common trade policy,¹¹⁸ regarding a possible extension of Commission competences in international trade negotiations such as GATT/WTO, the insights of the Secretariat for what would be acceptable by a majority of Member States, together with its technical and legal knowledge of the present scope of Commission competences, allowed it to craft a solution in the final Amsterdam Summit that it preferred over the no-agreement outcome, which would have been the case had the Secretariat not put forward the compromise proposal.¹¹⁹ The state-of-play in the IGC end game was that a consensus was emerging around the German proposal of granting the Commission across-the-board exclusive competence,

¹¹⁸ - Article 113 of the EC Treaty (now, after amendment, Article 133 EC).

¹¹⁹ - Interview with national civil servant, London, February 2002; and Council Secretariat official, February 2003.

coupled with a long list of exceptions.¹²⁰ The Commission on the last day of negotiations pulled back its support from this proposal due to the ever-growing list of exceptions.¹²¹ The Secretariat's Legal Service then proposed a solution to the impasse that became the final outcome, crafting an agreement that arguably no other actor except the Dutch Presidency or the Commission would have been able to create given the absence of national experts in the actual Summit meeting.¹²²

While the revision of Article 113 of the EC Treaty (now, after amendment, Article 133 EC) did not grant the Commission exclusive competence in practice, the new section five of the article did open up for the transferal of competences *in principle* through a unanimous Council vote (a so-called *passerelle*). This solution echoed the pragmatic, incremental preferences of the Secretariat as the best strategy of attaining exclusive Commission competences: a view that was later vindicated in the 2000 IGC. The principled acceptance by the Member States of exclusive competence in Amsterdam influenced the debates in the 2000 IGC, resulting in the Treaty of Nice that significantly extended Commission negotiating competences within Article 133 EC.¹²³

Additionally, the Secretariat suggested a compromise solution regarding the placement of the High Representative for CFSP, brokering a compromise between the French ideas for a strong independent CFSP representative, and those delegations who wanted to utilize the Secretary General of the Council. Tellingly, the final deal placed the High Representative within the Council Secretariat by significantly upgrading the post of Secretary General of the Council, thereby also strengthening the institutional prestige of the Council Secretariat in the process.

Concluding, there is evidence supporting the contention that the Secretariat was able to take advantage of the demand for brokerage in several politically salient issues, utilizing its comparative informational advantage through brokering strategies to shift outcomes closer to its own preferences.

The 2000 IGC

In contrast to previous IGC's, there were few examples of successful brokerage by the Secretariat in the 2000 IGC. One example was the compromise proposal that head of the Secretariat's Legal Service, Piris, put forward on trade policy. Piris provided a legal formula in Article 133(6) EC which arguably no other actor except the Commission could have formulated in the Nice Summit. Piris's proposal excluded the sensitive areas of culture and shipping, thereby enabling France, Denmark and Greece to

¹²⁰ - CONF 3912/97.

¹²¹ - Gray, 2002.

¹²² - Interview with national civil servant, London, February 2002; and Council Secretariat official, February 2003.

¹²³ - See Beach, 2002a. Also Galloway, 2001.

accept the final outcome.¹²⁴ Another example was the declaration on the venue for European Councils which was written by de Boissieu during the Nice Summit. This declaration enabled Belgium to swallow being granted fewer Council votes than the Netherlands.¹²⁵

But two factors limited the ability of the Secretariat to play a broker role. First, the French Presidency attempted to undertake most of the brokering functions itself – with somewhat predictable results given its strongly partial behavior. Further, the Secretariat had no relative informational advantages regarding the state-of-play or most of the issues being negotiated, as the most salient were simple, zero-sum or distributive issues.

Conclusions

The key to the success of Secretariat brokerage attempts was a strong demand for a trusted expert broker. In the two IGC's this was seen in the brokerage of a compromise on Commission competences in external trade negotiations. Yet the Secretariat was only able to broker compromises when allowed to by the given Presidency chairing the negotiations, and for example was prevented from playing its usual behind-the-scenes task of oiling the wheels of agreement during the French Presidency – with somewhat predictable results for the overall efficiency of the Treaty of Nice.

¹²⁴ - Interview with national civil servant, London, February 2002. See also Galloway, 2001:106-109.

¹²⁵ - Galloway, 2001:82-3, 158.

4. Conclusions

The central argument of this paper is that the Council Secretariat plays an important, but overlooked role in IGC negotiations. By playing the role of trusted assistant to the formal parties in an IGC, the Council Secretariat was often a 'vital cog' in ensuring efficient agreements. Yet by playing this role the Secretariat gained opportunities to influence outcomes.

The impact of the Council Secretariat upon the Treaty of Amsterdam was substantial, and led to outcomes that were even outside of existing zones of possible agreement in politically sensitive issues (flexibility and legal personality) (see table 1 and appendix 1). And even in the context of the 2000 IGC, where there were few opportunities for EU institutions to gain influence, the Secretariat was able to translate its bargaining resources into influence over outcomes in several salient policy-areas (see table 2 and appendix 1).

IGC's are therefore not always purely intergovernmental affairs, but, due to often high bargaining costs, the negotiation process granted the Council Secretariat opportunities to translate its bargaining resources into influence over outcomes through agenda-shaping and brokering strategies. The argument was not that the Secretariat was always influential in IGC's, nor even that they were always necessary in order for the Member States to reach an agreement. But the paper did find that the context of the negotiations, and strategies employed by the Secretariat in a given IGC can open for opportunities for it to successfully intervene in the negotiations, and thereby gain influence over outcomes.

The Council Secretariat was influential due to a combination of its high level of expertise, its reputation as a trusted intervening actor, its privileged institutional position, and the skillful use of pragmatic and behind-the-scenes agenda-shaping and brokering strategies. This combination allowed the Secretariat to skew final IGC outcomes closer to its own preferences on numerous occasions. This highlights a significant empirical oversight in the existing literature on the EU, which has almost exclusively focused upon the role of the Commission and EP.

These findings also have broader implications than the EU. As international negotiations increasingly move away from classic bilateral, power-based negotiations, and become increasingly complex, multilateral, and institutionalized, this opens significant opportunities for actors that possess comparative informational advantages to influence international outcomes.

There are naturally differences between IGC's and other types of international negotiations. Among the main differences are the substantially higher level of institutionalization and formalization

of IGC's in comparison to most international organizations, and the intensity of interaction among participants, with the EU perhaps the penultimate iterated game, with delegates in IGC's working with each other on a day-to-day basis within daily EU policy-making process.

However the conclusions of this chapter underline the basic point made by supranational entrepreneur theory¹²⁶ that we should expect that as the nature of international politics and negotiations becomes increasingly complex, multilateral, and institutionalized within the WTO, NAFTA, and other international organizations, negotiation processes will become increasingly important intervening variables. This will open up significant opportunities for actors possessing relative informational advantages to gain influence over outcomes, contingent upon the conduct and context of the given negotiation. Instead of being relegated to being mere assistants without influence that help low bargaining costs by providing administrative assistance as argued by Keohane and Nye,¹²⁷ centrally placed secretariats, and other intervening actors such as small states, that possess informational advantages will have increased opportunities to gain influence in future international negotiations. But this influence is contingent, and as was demonstrated in for example the 2000 IGC, intervening actors can be cut out of all influence by governments. As the Nice Summit in December 2000 demonstrated, the death of interstate politics is greatly exaggerated.

¹²⁶ - Most prominently, Young, 1991, 1999.

¹²⁷ - See Keohane, 1983; Keohane and Nye, 1989.

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Appendix 1 – The influence of the Council Secretariat in the two IGC’s

Council Secretariat influence in the 1996-97 IGC

	Issue-area	Overall influence of Council Secretariat upon outcome
Low political salience issues in the 1996-97 IGC	(1) JHA - Decision-making in remaining parts of Third Pillar	High (idea of framework decisions was from Secretariat) (interview with Council Secretariat official, Brussels, May 2001)
	(2) Employment	Medium (interview with national civil servant, Brussels, April 2002)
	(2) Subsidiarity	High (Council Secretariat wrote the subsidiarity protocol without significant input from national delegates) (interview with Council Secretariat official, Brussels, May 2001)
	(3) Legal personality	High (pushed for legal personality for Union despite opposition from France and the UK) (interviews with national civil servants, London, February and April 2002)
	(3) CFSP - common strategy	High (interview with national civil servant, Brussels, April 2002)
	(4) Reform of Commission	Medium (interview with national civil servant, Brussels, April 2002)
	(6) Simplification of Treaty	High (interview with national civil servant, Brussels, April 2002)
<i>Overall level of influence in low salience issues</i>		High

Medium political salience issues in the 1996-97 IGC	(1) Schengen	Low (Council Secretariat was opposed to incorporation)(interview with national civil servant, London, April 2002)
	(2) Environment	Medium (interview with national civil servant, Brussels, April 2002)
	(3) CFSP - High Representative	Medium (brokered compromise between French and British positions, upgrading the post of Secretary General of the Council Secretariat to also be the High Representative) (interview with national civil servant, Brussels, May 2001)
	(3) CFSP - Petersburg tasks	Medium (interview with national civil servant, Brussels, April 2002)
	(4) Extension of co-decision	Medium
<i>Overall level of influence in medium salience issues</i>		Medium

High political salience issues in the 1996-97 IGC	(1) JHA - Communitarisation of parts of Third Pillar	Medium
	(1) JHA - Amendment of remaining Third Pillar	Medium
	(3) CFSP - defense	Medium (interview with national civil servant, Brussels, April 2002)
	(3) CFSP - WEU relations	Medium (interview with national civil servant, Brussels, April 2002)
	(3) Common trade policy	Medium (brokered compromise that no other actor except the Commission could have drafted, and in a situation where the alternative was no agreement) (interview with Council Secretariat official, Brussels, May 2001; national civil servant, London, February 2002; Commission official, Brussels, February 2003)
	(4) Extension of QMV	Medium (wrote lists of potential areas to be transferred to QMV and manipulated the numbers of articles) (interview with national civil servant, Brussels, April 2002)
	(4) Institutional change (reweigh Council votes, # of Commissioners)	Medium (Head of Legal Services wrote protocol on institutional change in the Amsterdam Summit) (interview with national civil servant, Brussels, April 2002)
(5) Flexibility	High (Council Secretariat drafted a non-paper (SN 639/96) that shaped the outcome on: conditions for its application; flexibility not applicable in CFSP; and financial provisions) (Stubb, 1998:199-200, 218-9; European Parliament, 1996b)	
<i>Overall level of influence in high salience issues</i>		Medium / High

Council Secretariat influence in the 2000 IGC

	Issue-area	Overall influence of Council Secretariat upon outcome
Low political salience issues in the 2000 IGC	Status of Inter-institutional Agreements	High (put forward proposal that was accepted as is by Member States) (interview with Commission official, Brussels, April 2002; national civil servant, London, February 2002)
	Internal reforms of the Commission	Low/Medium (interview with national civil servant, Brussels, April 2002; Commission official, Brussels, April 2002)
	Reform of the Union's legal system	Medium (interviews with two national civil servants, Brussels, April 2002; Commission official, Brussels, April 2002)
	Political parties at EU-level	Low- Medium (interviews with two national civil servants, Brussels, April 2002; Commission official, Brussels, April 2002)
<i>Overall level of influence in low salience issues</i>		Medium

Medium political salience issues in the 2000 IGC	Creation of separate legal bases for policies under Article 308 EC	High (succeeded in getting Portuguese Presidency to take up issue in situation where no Member State was pushing for it. Only one new legal base created though) (interviews with national civil servants, London, February 2002, Brussels, May 2001 and April 2002)
	Fundamental rights	Low (interviews with national civil servant, Brussels, April 2002; Commission official, Brussels, April 2002)
	Extension of co-decision procedure	Low- Medium (interviews with national civil servant, Brussels, April 2002; Commission official, Brussels, April 2002)
	Hierarchy of legal norms	Low (Secretariat put forward suggestively worded issue brief (SN 3068/00) which had no impact upon outcomes)
	Flexible co-operation	Medium –High (Secretariat wrote all of the draft articles, often with little input from the French Presidency – Secretariat filled in the details, while also ensuring that a deal was reached by ‘ring fencing’ core areas of the <i>acquis</i> . Influential in sections on criteria and threshold for use, and voting) (interview with Commission official, Brussels, April 2002; national civil servant, London, February 2002; Galloway, 2001:134; Schout and Vanhoonacker, 2001:14-15)
	Venue for European Councils	Medium (Deputy Secretary General wrote declaration on the venue at Nice Summit) (interview with national civil servant, London, February 2002)
<i>Overall level of influence in medium salience issues</i>		Medium

High political salience issues in the 2000 IGC	Size of the Commission	Low (interviews with national civil servant, Brussels, April 2002; Commission official, Brussels, April 2002)
	Re-weighting of Council voting	Low- Medium (assisted and advised the French Presidency in keeping issue open until the IGC end-game – blocking the emerging consensus around the Commission’s simple dual majority proposal) (interviews with national civil servants, London, February 2002, Brussels, May 2001 and April 2002)
	Allocation of EP seats	Low- Medium (interviews with national civil servant, Brussels, April 2002; Commission official, Brussels, April 2002)
	Extension of QMV in politically sensitive areas (taxation, social policy, and JHA)	Medium (attempted to maximize the number of articles while taking account of national sensitivities)(Galloway, 2001:101-111; Gray and Stubb, 2001:12; interview with Commission official, Brussels, April 2002)
	Changes to the common trade policy	Low- Medium (Secretariat provided legal formula for Art. 133(6) EC which arguably no other actor other than Commission could have provided in Nice Summit – enabled France, Denmark and Greece to accept changes to common trade policy.) (interview with national civil servant, London, February 2002; Galloway, 2001:106-109)
<i>Overall level of influence in high salience issues</i>		Low- Medium