

Accommodation or entrenchment? Exploring EU policy responses in contested international regimes

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Robert Kissack (Institut Barcelona d'Estudis Internacionals – IBEI)

rkissack@ibei.org

Benjamin Kienzle (King's College London)

ben.kienzle@kcl.ac.uk

Anna Herranz-Surrallés (Maastricht University)

anna.herranz@maastrichtuniversity.nl

Oriol Costa (Universitat Autònoma de Barcelona & IBEI)

oriol.costa@uab.cat

Esther Barbé (Institut Barcelona d'Estudis Internacionals – IBEI)

esther.barbe@uab.cat

Abstract

The European Union (EU) is increasingly confronted with revisionist demands by a variety of members of multilateral regimes. In broad terms, the EU has responded to multilateral regime contestation by (a) accommodating, which requires making concessions and compromises; and (b) entrenching, which is the maintenance of established positions. We argue that explaining the EU's choice between the two by identifying the 'Best Alternatives to a Negotiated Agreement' (BATNA) can be improved by incorporating the resistance point as an intervening variable. Drawing on literature from negotiation theory, the resistance point captures the ideational value an actor attaches to a BATNA. We argue that this is important because the EU's international identity is partly constituted by its commitment to multilateralism. We present three plausibility probes (climate change, the nuclear non-proliferation regime and the Energy Charter Treaty) to underpin this argument and consider the wider implications for the EU as an international actor.

Key Words: BATNA; Climate change; energy policy; EU external relations; international regimes; non-proliferation; resistance points

Introduction¹

The European Union (EU) must reconcile itself with the reconstitution of the post-World War II multilateral system as rapidly developing countries in the Global South challenge the status quo of global governance. These changes are widely perceived as adverse for the EU, as they weaken its relative position and that of its closest allies. Revisionist states leverage their increased influence in world politics to push for institutional reforms, because ‘as circumstances change or relative power shifts, [this leads] to efforts at renegotiation’ (Fearon 1998: 276). This article addresses the under researched question of how the EU responds to revisionist states’ efforts to renegotiate multilateral regimes.

We assume that systemic change weakens EU influence in the multilateral system on the basis of a decreased share of material power, a diminished acceptance of western liberal ideas about governance, and the threat of withdrawing from and/or establishing rivals to existing multilateral institutions (Hurrell 2006; Stephen 2012). These challenges are important to the EU because many of the constitutive norms and values of its international identity are either based on, or reinforced by, today’s multilateralism. In issues such as trade liberalisation, climate change mitigation or human rights, the EU presents itself as a leader, externalising its internal norms and values by uploading them into multilateral institutions (Manners 2002; Lavenex and Schimmelfennig 2009). It also defends general principles of multilateralism such as the importance of rule-based order and the role of international law as central tenets of effective multilateralism (Blavoukos and Bourantonis 2011). Until now, promoting particular norms *and* fostering multilateralism were unquestioningly assumed to be compatible objectives for the EU. However, as a consequence of revisionist renegotiation, the price of maintaining multilateralism as an organising principle may come at the cost of undermining hitherto embedded norms of the EU’s identity.

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In this article we ask specifically how willing is the EU to make concessions to revisionist states seeking to renegotiate the multilateral order, given the constitutive value of multilateralism and the associated norms to its international identity. In essence, the EU must decide between two alternative policy responses: accommodation and entrenchment. Accommodation requires adjusting one's own normative position in the face of adverse changes to institutions and regimes by making concessions and compromises with actors favouring new arrangements. Clear indicators of accommodation are the EU's acceptance of major changes to the status quo proposed by revisionist states, such as proposals implying changes in the decision-making bodies and procedures within multilateral institutions. In contradistinction, entrenchment is the tendency to maintain or harden positions held prior to structural changes taking place. Maximally, it is characterized by the EU's unwillingness to offer meaningful concessions deviating from the status quo; minimally, merely token concessions are conceded.

The recent literature on the EU in international negotiations (Conceição-Heldt 2013) and on contested multilateralism (Morse and Keohane 2014) suggests that the availability of outside options or, more specifically, Best Alternatives to a Negotiated Agreement (BATNA), plays an important role in explaining the variation between accommodation and entrenchment. Following this logic, if revisionist states have credible BATNA, the EU has strong incentives to accommodate their demands to ensure the continuity of the multilateral regime in question. Alternatively, the EU is likely to entrench and maintain the status quo when revisionist states have no credible BATNA. However, we do not believe this fully explains EU behaviour.

When using BATNAs *post hoc* to explain negotiation outcomes, there is a tendency to frame relative power through the prism of a critical bargaining issue transposed into a single BATNA in order to explain why one actor prevailed and another conceded. We suggest that (a) this is not consistent with how the original developers of BATNA (Riaffa 1982, Ury and Fisher 1986) applied the concept and (b) when the revisionist preference opposes the prevailing norms and values of a regime, the utility of a single metric of the BATNA to locate relative bargaining power is diminished because interests are too heterogeneous. Therefore, we apply the concept of 'resistance point' drawn from the work of White and Neale (1991) to differentiate between the material

utility captured in conventional BATNA calculations and ideational value attached to best alternatives. Specifically, we claim that the EU is especially sensitive to BATNAs that diminish, damage or contradict norms and values nested in multilateralism that are constitutive of its international identity. To this end, we argue that the behaviour of the EU in negotiations over the future direction and form of multilateral institutions can be better understood using the intervening variable of the resistance point.

This article begins by outlining how BATNAs help to explain EU accommodation or entrenchment in the case of major challenges to multilateral institutions and how incorporating resistance points as an intervening variable accounts for the missing ideational dimension. Later, we present three plausibility probes in the areas of climate change, energy security and the non-proliferation of nuclear weapons to demonstrate the usefulness of the article's approach, as opposed to alternative explanations based on EU-agency or structural variables. We conclude that using the resistance point – the ideational value attached to a BATNA – as an intervening variable improves explanations of EU behaviour in international multilateral negotiations.

Revisiting negotiation theory: EU responses to challenges to multilateral regimes

Odell defines negotiations as a 'sequence of actions in which two or more parties address demands, arguments and proposal to each other for the ostensible purpose of reaching an agreement' (2012: 379). In this article we focus on the use of the BATNA to establish the relative power of negotiators, and to explain why certain outcomes happen based on the core claim that the negotiator with the better BATNA either (a) agrees only to outcomes close to his or her preferences, or (b) has a lower threshold for terminating negotiations without agreement. To recap briefly, the developers of BATNA within the context of industrial relations and business administration (Riaffa 1982; Ury and Fisher 1986) present it as an *a priori* tool used by actors entering into negotiations to establish individually (and separately) the preference ranking of possible outcomes. BATNAs are about objectives not positions and examples often pitch one negotiator who has extensively assessed the BATNA against one that has

not. Furthermore, BATNAs may be computed in two or more dimensions, frequently combining a monetary value with a metric relevant to negotiations, such as days of holiday in employment relations. Finally, negotiating theory also considers how the initial BATNA decided prior to the start of negotiations is modified through the process of bargaining.

A survey of the use of BATNA in relation to the EU reveals that it is applied differently, with potentially significant changes. The most important is the use of BATNA as an explanatory variable in *post hoc* analysis of international negotiations. In order to operationalise the variable, the BATNA is expressed as a single metric, whose attractiveness to the negotiating parties determines their relative positions regarding power and strategy (e.g. distributive or integrative Odell 2002: 41-2), such as Preferential Trade Agreements (PTAs) as alternatives to multilateral trade deals (Conceição-Heldt 2013). One potential problem with this approach is that the BATNA chosen reflects the preferences of the eventual winner. While we accept the utility of a parsimonious explanatory variable, we propose a refinement acknowledging that BATNAs differ between actors and may not be so easily commensurable in terms of predicting relative bargaining strength, by considering the ideational utility of alternatives alongside material utility calculations.

Our proposal is implicitly accepted in the literature. In recent applications of negotiation theory to EU trade policy, Conceição-Heldt argues that variation in the negotiation strategy of key actors in the WTO Doha Development Round is best explained by considering PTAs simultaneously being negotiated, thus equating number of PTAs with the quality of BATNA (2013: 118-120; 2014: 990). She reasons that at the Cancun 2003 WTO ministerial the US, Brazil and India used distributive strategies because all three were negotiating PTAs that provided them with better outside options and a stronger BATNA (2014: 991). The EU was forced to use an integrative strategy because '[u]nder Lamy's tenure the EU informally imposed a moratorium on new bilateral free trade agreements until the end of the Doha Round' (Meunier 2007: 912). With the publication in 2006 of a new trade strategy (Commission 2006), incoming Trade Commissioner Mandelson opened the door to PTAs (Meunier 2007: 917). Consequently, deadlock in the Doha negotiations is because 'all major trading nations are currently negotiating PTAs, this gives them a

good BATNA and increases their bargaining power' (Conceição-Heldt 2013: 126). Crucial to making sense of this story is acknowledging the change in position from Lamy to Mandelson and the 'doctrinal shift' towards 'trade-centred and mercantalist objectives', away from Lamy's vision of 'subordinating trade policy to ... multilateralism, social justice and sustainable development' (Meunier 2007: 906). This appears to us as clear example of an ideational change. The BATNA which in 2003 the EU did not consider an alternative of any sort, became a credible one after 2006.

Taking the EU's identity seriously: Resistance points in international negotiations

We have identified the ideational dimension as an important intervening variable in BATNA-based analyses moderating the relationship between negotiation strategy (DV) and the BATNA of negotiating actors (IV). Within the negotiation literature, the 'resistance point' developed by White and Neale (1991) explains 'why negotiators might choose ... settlements that would appear irrational within a strict profit maximisation framework' (White & Neale 1991: 383). They consider a number of 'subjective' factors that determine the negotiated outcome aggregate to the resistance point, which 'may be located above or below his or her reservation price' (White & Neale 1991: 386). All negotiating actors are potentially influenced by their resistance point, and therefore we argue that bargaining strategies can be better explained after assessing the reservation price *and* resistance point, operationalised as the latter acting as an intervening variable altering the utility calculations of the BATNA. In other words, when a single metric BATNA is used to establish relative positions, one way of incorporating a degree of variation between actors' preferences is to account for different ideational worth attached to that BATNA. A BATNA that the EU perceives to diminish or damage fundamentally important norms and values will provoke a different reaction compared to an actor that does not ascribe ideational importance to them.

Within the context of negotiating changes to the multilateral system, we assume that revisionist states are the drivers of the demand for renegotiation and are likely to (a)

seek reforms that weaken the power and preferences of the EU and its member states, and (b) have a lower threshold for exiting existing institutions and thus creating legitimacy problems for the remaining members. Our hypothesis is that the willingness of the EU to make concessions to challenges (accommodate) or remain steadfast (entrench) is dependent upon both the relative strength of the revisionists' BATNA and the extent to which the EU considers that BATNA to weaken norms and values constitutive of its international identity.

Accommodation and entrenchment in three regimes

To substantiate our argument, we present three plausibility probes of multilateral institutions in which challengers demanded reforms to the norms and principles of existing regimes, but the EU's policy response varied in terms of accommodation and entrenchment. To this end, we go beyond the traditional focus on either international trade or violent conflict in the existing studies on international negotiations and examine three more recent issues, where the EU pertains to play an important role in international negotiations, namely climate change, energy security and the non-proliferation of nuclear weapons. We take them as most similar cases in terms of the normative challenge posed by revisionist states because if successful, the outcome would be a change *of* regime, over and above a change *in* regime (Krasner 1983). Similarly, the normative underpinnings of each of the regimes are constitutive of the international identity of the EU.

Case variation allows for the control of two important alternative variables. Firstly, variation in EU competencies permits an examination of EU decision-making processes as an alternative variable: energy is closer to the trade-related core of EU competences, non-proliferation is at the intergovernmental end of the distribution of powers and climate change somewhere in between. Second, variation in terms of the revisionist actor(s) involved, for example emerging powers, re-emerging powers, or groups of states in the Global South, allows for the control of alternative explanations based on national power considerations such as bandwagoning or (soft) balancing.

Accommodation in the Climate Change Regime

Climate change negotiations have experienced a remarkable re-alignment. While the EU led the construction of the international climate regime from 1990 to 2005, the decade from 2005 to 2015 changed everything, with some of the key norms inserted by the EU into the Kyoto Protocol falling out of favour under the weight of emerging powers (and the traditionally reluctant US). Preferences differed starkly. On the one hand, the EU preferred a multilaterally-negotiated, legally-binding agreement with as many agreed-upon components as possible, including targets and timetables. On the other, BASIC countries (Brazil, South Africa, India and China) preferred an outcome in which only a minimal core was negotiated and the rest was open for states to establish unilaterally, under a non-binding pledge-and-review process (Torney, 2015: 90). In this case, it is difficult to locate negotiators on a single metric BATNA, but the alternative of not reaching any agreement at all was always further away from EU preferences than from BASIC ones. The EU had a rather weak BATNA and, as expected, finally chose to accommodate. However, the fact that accommodation took so hazardously long suggests that BATNAs do not explain it all.

In all truth, the rise of emerging powers had influenced negotiations since the mid-1990s, as shown by the adoption in 1997 of the Byrd-Hagel resolution by the US Senate. But it was not until the entry into force of the Kyoto Protocol (2005) that the issue took central stage. Given that the Kyoto targets expired in 2012, negotiations had to start over the future of the regime, and it was clear that they would have to reckon with the fact that rising powers had become large greenhouse gas (GHG) emitters. Almost immediately very apparent changes took place. The Bali Action Plan (2007) stipulated that such negotiations had to be concluded by 2009, but no consensus was possible on the legal status of the eventual “agreed outcome”. Copenhagen (2009) sent another ominous sign. Negotiated initially among BASIC countries, then with the U.S., and later presented to others to get their endorsement, the Copenhagen Accord consisted in a call for parties to unilaterally announce their non-binding commitments to limit emissions (developed states), or to adopt policies to curb climate change (developing ones). This was exactly the kind of agreement the EU wanted to avoid, as it aimed at deep, binding reduction targets: 25-40% by 2020

and 80-90% by 2050 for developed parties, and 15-30% below business-as-usual scenarios by 2050 for southern industrializing states.

The first hint at accommodation, if minor, arrived soon after Copenhagen. In February 2010, Commission President Barroso argued that the way forward was to build “on what we could agree [and find] new ways to instil trust” (European Commission, 2010b). Commissioner Connie Hedegaard pointed that Copenhagen “created unprecedented momentum” (European Commission 2010c). This preliminary instance of accommodation tried to avoid the unraveling of UN-centred climate negotiations. Hence the EU focused on the objective of making the Accord, which had not been adopted by the COP, part of the UNFCCC framework (European Commission, 2010a: 4). However, the EU looked at Copenhagen as if it was just a temporary deviation from its designs. Embracing it seemed to offer a “stepwise” path towards a legally-binding agreement (Oberthür and Groen, 2014: 4). Accommodation took a firmer step after COP 19 (Warsaw, 2013), which established unilateral pledges, instead of multilateral negotiations, as the method to set emission targets. It was finally sealed in December 2015, when the EU made its acceptance of the so-called hybrid model official, and formally dropped its insistence on the idea that targets had to be legally binding. Accordingly, the final Paris Agreement (2015) combines bottom-up, nationally-determined, non-binding pledges with top-down, legally-binding provisions regarding the revision and progression of such pledges.

Accommodation could perhaps be interpreted as the result of a lesser degree of European unity associated with the economic crisis and with a more diverse EU after enlargement. To the extent that entrenchment requires the EU to present itself as a luminous model, Polish proposals on the Emissions Trading Scheme, or the collapse of allowance prices could carry some explanatory weight. However, this mostly happened with accommodation already underway and never went far enough to make the EU anything less than a pioneer. In addition, the reform in 2004 of the EU representation system actually contributed to the EU’s agency in climate negotiations (Delreux and Van den Brande, 2013).

As said above, the respective BATNAs made accommodation a rational strategy. What is intriguing here is the fact that, for a number of years, the EU kept on dealing

with climate negotiations as it had done from the early 1990s, by trying to “upload its preferred policy solutions to the international level” (van Schaik and Schunz, 2012: 183). The EU was quick to recognize the power shift, as shown by the adoption in 2005 of partnerships with China and India (Torney, 2015), but it did not start accommodating until 2010, five years after negotiations on the post-2012 regime had started, and only accepted to formally renounce its approach in 2015.

This delay was not without costs. The EU had to endure its own marginalization in Copenhagen, and the chances of the COP process unravelling increased. The Bush Administration had initiated a number of non-universal, non-mandatory schemes that stood in open conflict with the regime built around the UNFCCC, such as the Carbon Sequestration Leadership Forum (2003), the International Partnership for the Hydrogen Economy (2003), the Methane to Markets Partnership (2004), the Asia-Pacific Partnership (2005), or the Major Economies Meeting on Energy Security and Climate Change (2007), which looked to “set its own rules for a more flexible strategy” (Keohane and Victor, 2011: 10). The more the deadlock lasted, the more appealing these alternatives seemed. After all, there was “a bigger and brighter picture” outside the COPs (Dimitrov 2010: 22).

In resisting accommodation, the EU chose its attachment to stringent, targets-and-timetables multilateralism over agreement on climate negotiations. One important reason was the role such normative attachment played for the EU. The EU has seen its stance on climate negotiations as grounded in and contributing to its broader stance over multilateralism in global governance, and as a way to promote itself as an international actor. Climate change has been employed as a “polity-building instrument”. It is a “core-identity issue for the EU” (Torney, 2015: 49). This resistance point made it harder for the EU to stomach accommodation. Only the EU’s experience in Copenhagen, which “cast a long shadow over the EU’s self-perception as a climate leader”, could open a “period of reflection” (Torney, 2015: 66).

Entrenchment in the Energy Charter Treaty

In the highly fragmented architecture of global energy governance, the ECT is one of the few international energy regimes joining producer, transit and consumer countries. Born in the propitious pro-market environment of the immediate post-Cold War and under the sponsorship of the EU, the ECT pioneered setting binding rules on investments, trade and transit of energy resources. However, particularly during the second half of the 2000s, persistent disagreements over the scope and functions of the institution led the ECT to a standstill and virtual withdrawal of one of its key members, the Russian Federation, in August 2009.² Contrary to the case of climate change, the EU responded to this growing challenge with entrenchment.

The EU response may appear as puzzling, particularly when compared to its previous role in the creation of the ECT. In the early 1990s – a period of low energy prices, ascendancy of (neo)liberal ideas and weakness of post-soviet countries – the EU accommodated substantially to Russia and other producer countries' concerns, even challenging the position of the United States, which was then pressing for stricter investment protection provisions (Doré 1996: 140). Conversely, throughout the 2000s, in a much less propitious context for the EU, characterized by an unprecedented surge in energy prices, the reversal of liberalization trends in several parts of the world and global ascendancy of state-owned companies, the EU showed less disposition to accommodate. The relative strength of the BATNAs of the two main actors, the EU and Russia, does not directly explain the ECT developments, given that the best alternatives outside the ECT were rather weak for both actors. As this section spells out, the changing resistance points or ideational value ascribed to the respective BATNAs provides a more accurate account.

One of Russia's persistent criticisms against the ECT has been that the institution is biased towards the interests of Western consumer-countries (Pominova, 2014: 5).

² Russia was one of the signatories of the ECT in 1994 but never ratified it. However, the country accepted to apply the ECT provisionally. Russia's 2009 withdrawal was therefore from the *provisional application* of the ECT. As a signatory, Russia could still be considered part of the Energy Charter process and still decide to ratify the ECT. However, the country has not been paying the annual contributions since 2010 and from 2014 onwards has not been participating in any of the meetings.

Russia's growing dissatisfaction was expressed in the negotiations for a Transit Protocol (TP) initiated in 2000, which the Russian government used to advance some of its broader concerns about the ECT, such as the inclusion of the Right of First Refusal (ROFR) to prevent situations of mismatch between the duration of supply and transit contracts as a result of the EU's rules on mandatory third party access (Yafimava 2011: 304); or the rejection of the EU's claim of being a Regional Economic Integration Organisation (REIO), as this was deemed as an EU attempt at "exempting itself from the multilateral process" (Belyi, 2014a: 325). Russia also expressed discomfort with the ECT's dispute settlement provisions, particularly after the start of the *Yukos versus Russia* court-case in 2006. The little use of the ECT in preventing/managing the gas crises of 2006 and 2009 further contributed to Russia's dissatisfaction.

Russia's open challenge to the status quo in the ECT was articulated in a proposal for a "Draft Convention on Energy Security" in April 2009. This was a rather ambiguous document that could either be interpreted as a roadmap for reforming the ECT (Konoplyanik, 2009) or a proposal for setting up an alternative regime, similar to the ECT in terms of subject matters and pretension of universality, but more flexible and less market-centric (Belyi et al. 2011). However, the option of setting an alternative regime was a weak BATNA, given the low credibility of Russia's ability to garner support for such an initiative. Yet another BATNA for Russia was the withdrawal from the ECT and its replacement with either regional agreements with its like-minded neighbours or Bilateral Investment Treaties (BITs) where needed. The material utility of this option was hard to identify, given the standard interpretation that, by virtue of a 20-year sunset clause, Russia would remain bound by the obligation to protect existing foreign investments in its territory until 2029, while Russian companies would lose an important instrument to defend their future investments in the ECT countries (Pominova, 2014: 20). However, in a context of growing energy nationalism and "international norms revision attempts (or proposals) by the Kremlin" (Belyi, 2014b: 8), Russia's threat of exercising its BATNA to delegitimize the Energy Charter process and "deny the EU a monopoly over the energy governance initiative" (*Ibid.*), was gaining credence.

Despite the growing risk of Russia's withdrawal and the generalized perception that an ECT without Russia would be "like Hamlet without the Prince" (Buchan, 2009: 84), the EU did not change its stance on the main sticking points, for example on the REIO article in the TP negotiations (Konoplyanik, 2009: 483). This is all the more surprising considering that the EU's BATNA was not particularly strong either. Although since 2005 the EU was sponsoring another regional multilateral energy regime, the Energy Community (EnC), this cannot be considered a substitute for the ECT, at least not in terms of incorporating the relevant producer countries for the EU. Prospects for a bilateral legal framework for EU-Russia energy cooperation looked also rather bleak given the failure of the negotiations of a new Partnership and Cooperation Agreement and the difficulties of the EU-Russia Energy Dialogue (Romanova, 2016). However, the ideational value of the EU BATNA has been growing. On the one hand, with gradual construction of an EU internal energy market (in particular after the second and third energy packages of 2003 and 2009), the EU energy acquis far outpaced the ECT. This became an uncomfortable misalignment given that the legal provisions of the latter could potentially be used against the former (Hadfield and Amkhan-Bayno, 2012). The urgency, particularly on the European Commission's side, to assert the primacy of EU rules over the ECT's thus explains the EU's entrenchment over issues such as being recognized as a REIO. On the other hand, in the background of growing EU energy dependency, the gas crises of the late 2000s and the increasingly strained relations with Russia, a new consensus emerged on the need to diversify the EU's portfolio of suppliers. Therefore, the value ascribed to EU-Russia energy cooperation became lower than in previous times.

Admittedly, Russia's virtual withdrawal since late 2009 motivated some accommodative stance within the Energy Charter, which launched a modernization process to make the regime 'more open and attractive particularly for developing countries and rising energy powers' (Rusnák 2013) and to position again the institution as a 'neutral platform' to deal with transit disputes and facilitate EU-Russia dialogue (Rusnák 2014). The main result of this effort was the adoption of a political declaration, the International Energy Charter (IEC) in June 2015, signed by 74 countries from different continents, including the US and China. The extent to which this marks a change in the EU position towards a more accommodative stance is unclear, however. The IEC was certainly more aligned with the Russian "Draft

Convention” proposal by being broader in scope and looser in terms of obligations compared to the ECT. The ECT Secretariat has also been promoting an approach to dispute settlement that increases the chances for friendly resolution of disputes prior to arbitration. However, the EU has not changed its stance when it comes to the core legally-binding provisions of the ECT. Moreover, during the IEC negotiations, the European Commission insisted on the recognition of the EU’s special status as a REIO, defending the position that “due to the nature of the EU internal legal order”, the provisions on dispute settlement mechanisms would not apply in the relations between the Member States or in their relations with the Union (Council of the EU, 2015). The EU’s position in the ECT after Russia’s withdrawal has thus been interpreted as an “EU strategy of self-centred multilateralism” (cf. Kustova, 2016: 367).

In sum, resistance points help explain both why Russia exercised its outside option despite the costly balance sheet of this move and why the EU entrenched, even at the risk of growing fragmentation and marginalization of the Energy Charter process. Ideational changes on both sides undermined the attachment to the ECT as a multilateral venue for managing interdependence. In this context, the two actors have growingly given precedence to their respective BATNAs of regional integration (the EU via the Energy Community and Russia via the Eurasian Economic Union Agreement) and bilateral agreements (energy partnerships with main players and BITs) over global energy governance.

Entrenchment in the Non-Proliferation Regime

In recent years, the nuclear non-proliferation regime and its core treaty – the 1970 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) – has seen intensified conflict among regime members over its future direction (Evans et al. 2015; Findlay 2006). Certain non-nuclear weapon states are increasingly dissatisfied with the pace of nuclear disarmament by the five official nuclear weapon states and challenge what is widely seen to be the non-proliferation regime’s ‘grand bargain’, namely to initiate a process of nuclear disarmament – as stipulated in Article VI of the NPT – in exchange for the non-nuclear weapon states’ promise to forego the development of

their own nuclear arsenals (Müller 2010; Tannenwald 2013). Some non-nuclear weapon states have begun questioning the very survival of the NPT and the non-proliferation regime. They promote specifically rival treaties, such as the proposed Nuclear Weapons Convention that would outlaw any nuclear weapon activity (United Nations General Assembly 2016). In short, revisionist states appear to threaten to leave the existing non-proliferation regime and to establish an alternative regime. The EU as a group of states has largely responded to this challenge by entrenching rather than accommodating the growing demands for increasing nuclear disarmament, as evidenced by its policies at NPT review conferences. Whereas many non-nuclear weapon states have increasingly emphasized the importance of nuclear disarmament steps at these conferences, the EU's common position on nuclear disarmament has hardly changed since the end of the Cold War (Smetana 2016). In essence, it has kept the traditional focus on non-proliferation and downplays the importance of nuclear disarmament.

The existing literature attributes the EU's entrenchment to exclusively EU-agency variables, specifically the lack of consensus and lowest common denominator positions regarding nuclear disarmament (Dee 2015; Smetana 2016). However, internal divisions do not fully explain why the EU as a block of states responds to the current regime challenge with entrenchment rather than accommodation. Although EU-agency variables such as the lack of coherence may explain how the EU performs inside the regime, the question remains why a relatively large group of EU member states – not only the EU's two nuclear weapon states but also the majority of the EU member states benefiting from the North Atlantic Treaty Organization's (NATO) nuclear umbrella – reject the accommodation of more substantial nuclear disarmament demands – and consequently prevent a more forceful EU common position on nuclear disarmament. From a national power perspective, it could be argued that the position of the EU member states simply reflects the relatively coherent position of the major systemic powers in the international system, in particular the United States, Russia and China. Although it is plausible that this alignment between the positions of the EU and major powers make the EU's entrenchment more tenable, it still begs the question why both major powers and the EU do not favour the accommodation of the revisionist states' nuclear disarmament demands. After all, they did accept the NPT's call to work towards nuclear

disarmament, when they ratified the treaty. And especially the EU member states – with their strong commitment to multilateralism – do not want to be perceived as overly eschewing these kind of international obligations. Moreover, a world without a well-functioning NPT has the potential to re-open the Pandora’s Box of nuclear proliferation and undermine the stability of the international system as we know it today.

As suggested by the conceptual framework, the analysis of the resistance points of both the EU and the revisionist states may offer new insights into this question. In the case of the EU, the resistance point and BATNA largely align. In essence, the EU’s BATNA is the existing non-proliferation regime. Since the NPT was extended indefinitely in 1995, the NPT as the regime’s core element continues to exist, even if there is no agreement regarding the nuclear disarmament demands by the revisionist states. Although the regime might suffer from minor setbacks in the future, for example in the form of NPT Review Conferences without a final declaration, no agreement on disarmament would still largely preserve the status quo of the regime. At the same time, the EU attaches great ideational value to the status quo, as evidenced by the EU’s consistent emphasis on the non-proliferation regime in its strategic documents in the nuclear sphere (Kienzle 2013). Consequently, the EU’s resistance point in ideational terms overlaps with the EU’s BATNA. In other words, as an intervening variable it remains indeterminate.

By contrast, the resistance point of revisionist states is close to the existing nuclear non-proliferation regime, making it substantially lower than their BATNA (negotiating a new treaty rivalling the NPT). This is evidenced firstly by their continued participation both regularly and actively in the various elements of the regime, in particular the quinquennial Review Conferences of the NPT. They might express their discontent vocally, but their protest has never gone beyond symbolic measures such as a staged walk-out during a preparatory meeting (Tannenwald 2013). Second, although they consistently associate the failure to disarm with the fragility of the non-proliferation regime, they have not communicated their willingness or ability to leave the existing regime and let it fail. All declarations made in this regard have remained relatively vague (Horowitz 2015; Kornprobst 2012). Third, even the revisionist states’ concrete efforts to advance nuclear disarmament outside the formal

NPT review process re-affirm their commitment to the NPT and the existing non-proliferation regime. For example, the large, 127-member states strong Humanitarian Impacts of Nuclear Weapons Initiative, a recent effort to strengthen nuclear disarmament, emphasizes the relevance of the NPT (c.f. Humanitarian Pledge 2014). Likewise, the UN General Assembly decision to ‘to convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination’ recognizes the NPT as the ‘the cornerstone of the nuclear non-proliferation and disarmament regime’ (United Nations General Assembly 2016). In sum, the closeness of the revisionist states’ resistance point to the existing regime suggests that – independent of the credibility of their BATNA – they are not prepared to abandon the existing regime and move forcefully towards alternative arrangements.

Crucially, the resistance point of the revisionist states is, in comparison, fairly close to the resistance point of the EU. Although the EU as an entity does not attach the same ideational value to the nuclear disarmament pillar of the NPT as the revisionist states, both the EU and the revisionist states are firmly committed to the NPT and the nuclear non-proliferation regime as a whole. Consequently, the P5, the EU’s nuclear weapon states or the NATO member states inside the EU have few incentives to reconsider their position on nuclear disarmament and to accommodate the demands for a greater emphasis on nuclear disarmament in the regime. Given the EU’s lowest common denominator position in the nuclear field, this means that the EU’s overall approach remains focused on entrenchment.

Conclusions

The relative decline of Western power in the international system has the conditions under which the EU pursues its foreign policy objectives in multilateral institutions. The growing relevance of revisionist actors means that the EU is more frequently forced to choose between accommodation or entrenchment in the face of their demands. This choice has wider implications. We argue that each of the two courses of action can be linked to one of two broad goals that seem to be of critical importance in EU foreign policy, perhaps even the most important ones; namely the

promotion of multilateralism and the promotion of norms taken to be constitutive of the EU's international identity. In as much as this is true, they appear to have become less compatible. Explaining how the EU approaches the choice between entrenchment and accommodation provides insights into how the EU reconciles its preference for multilateralism and its preference for norms that it considers its own.

The first general conclusion is that the EU does not systematically prefer accommodation over entrenchment or vice versa. In spite of depictions of the EU as a rigid, inflexible international actor crippled by a cumbersome decision-making process, it shows enough flexibility to both accommodate and entrench. Therefore, our three cases caution us against assuming the EU externalises its internal arrangements, and consequently, is unresponsive to international constraints. They also caution us against the depiction of the EU as constitutively committed to the preservation of multilateral institutions and thus as ready to forego its substantive objectives for the sake of its procedural or milieu goals. Second, while we agree with recent studies utilising negotiation theory that BATNAs are important variables in post-hoc explanations of multilateral regime contestation, we have argued that in line with original negotiation studies, the resistance point – understood as the ideational attachment to an option in international negotiations – is also important to fully explain accommodation or entrenchment. In this way, the ideational value attached to different options emerges as a factor shaping the behaviour of actors. Incongruence between resistance point and BATNA forces actors to choose between material and ideational value. Resistance points offer a way to conceptualize the relationship between ideational and strategic considerations in a complex way.

Three plausibility probes have been conducted to underpin this argument. They have covered three areas outside the field of trade and commerce, which is traditionally the main focus of the EU in international negotiations. In this way, it has been possible to demonstrate the usefulness of resistance points in a wide array of multilateral settings. In all three settings, the initial expectation was that the EU should move towards the accommodation of some of the demands of the revisionist states. When it comes to climate negotiations after 2005, respective BATNAs for the EU and revisionist states made accommodation the most rational strategy. Nevertheless, the EU's resistance point was higher than its BATNA – it was normatively attached to prompting

rigorous, binding, top-down legal targets, in which as many aspects as possible would be agreed upon. This explains why accommodation took so hazardously long. In the case of energy, the consideration of the BATNA would have driven the EU to accommodate. Nevertheless, resistance points moved. Energy nationalism made the de-legitimization of the Energy Charter process more appealing for Russia, while the European Commission's urgency to assert the primacy of EU rules, as well as the drive to diversify energy supplies, decreased the value of accommodation for the EU – and led the EU to entrench. Finally, as regards the nuclear non-proliferation regime the EU's BATNA (the status quo) and resistance point were broadly congruent, given that the EU is ideationally attached to the status quo. Yet, the revisionist states were also ideationally attached to the existing NPT regime, meaning that their resistance point was much closer to the EU's resistance point than their BATNA (an alternative treaty to the NPT). Under these conditions, the EU has opted for entrenchment.

In sum, the three plausibility probes suggest that the broad EU response in terms of either accommodation or entrenchment cannot be only traced back to BATNAs but also resistance points. In this regard, both the EU's and the revisionist states' resistance point have to be taken into consideration. Although internal decision-making procedures, the formal status of the EU in an international regime, and other variables may still remain important in shaping EU responses to changes in multilateral institutions, our three cases do not seem to support the idea that these are the key explanatory variables. With uncertainty over US commitments to multilateral institutions under the Trump administration, as well as continued efforts by emerging powers to see institutions serve their interests, contested multilateralism will likely increase in the coming years. If that is so, then exploring the ways in which the EU tackles this new strategic reality in a field that it considers central to its international role has important analytical, policy and normative implications.

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