

Unmasking the Brexit Negotiations: The Behavioural Psychology of Two-level Games

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Abstract

The negotiation of the Brexit Withdrawal Agreement (2017-2020) puzzled scholars by appearing to show a weaker party (the United Kingdom) adopting a harder negotiation strategy than the stronger party (the European Union). This article attempts to explain this paradox, by combining a two-level game framework with a negotiation psychology lens. It finds that the United Kingdom's (UK) behaviour was indeed harder than the European Union's (EU) on the *domestic* level of the game, but, on the *international* level, the EU's behaviour was harder than the UK's. The article further explores the behavioural and psychological incentives behind the UK's hard behaviour, differentiating between negotiators at the political level and at the administrative level. The analysis shows that, while some aspects of the UK's hard stance were rational within the context of a two-level game, others were harmful and due to cognitive limitations.

Keywords: Brexit; Negotiation Theory; Two-level games; Social Psychology; Negotiation Behaviour

1. Introduction

The negotiation of the Withdrawal Agreement between the EU and the UK (from March 2017 to January 2020) was a crucial development in British political history. Despite the growing literature examining it (see, for example, Dunlop et al, 2020 and Martill and Staiger, 2021), some aspects of the negotiation are yet to be elucidated. In particular, a paradox was identified. Contrary to what negotiation theory would predict, the UK adopted a harder stance than the EU, despite being the weakest party in the negotiations (Martill and Staiger, 2021; Jones, 2019; Schimmelfennig, 2018). This article attempts to explain this paradox, by using a two-level game framework (Putnam, 1988) combined with insights from the literature on the social psychology of negotiations (Rubin and Brown, 1975; Pruitt, 1981; Thompson and Hastie, 1990; De Dreu et al, 2007). It argues that the UK's behaviour was indeed harder than the EU's on the domestic level of the negotiations, but, on the international level, the EU's behaviour was harder than the UK's. The analysis will also show that, while some aspects of the UK's

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hard stance were rational within the context of a two-level game, others were harmful and due to cognitive limitations and social pressures.

The negotiation theory literature distinguishes “hard” negotiation strategies – characterised by conflictual and hostile behaviour, within a tense atmosphere of threats and criticisms – and “soft” negotiation strategies – characterised by cooperative and friendly behaviour, within a warmer atmosphere of conciliation and cooperation (Fisher and Urry, 1981; Dür and Mateo, 2010).² There is consensus in this literature that a hard strategy is usually associated with a stronger negotiation position - as this is a riskier strategy, which could easily lead to retaliation or a collapse in the negotiations, and will be avoided by a more cautious weaker party (Dür and Mateo, 2010; Bailer, 2010; McKibben, 2010). The UK should, according to this prediction, have adopted the weaker behaviour in the Brexit negotiations, since its bargaining position was considerably weaker than the EU’s (Martill and Staiger, 2021; Jones, 2019; Schimmelfennig, 2018). However, on the contrary, the literature describes the UK’s behaviour as harder (Dunlop et al, 2020; Jones, 2019; Martill and Oliver, 2019). This article suggests that the concept of two-level games (Putnam, 1988) provides the basis to explain this paradox. Putnam argues that an international negotiation consists of two simultaneous “games” played on different levels; while each party is negotiating at the international level, it is also having to ensure that any agreement reached will be ratified at the national level. It is argued that the UK’s hard behaviour was adopted only on the domestic level of the game - since the domestic audience expected a hard approach due to concerns about sovereignty (Schimmelfennig, 2018). However, at the international level the UK’s behaviour can, on the contrary, be categorised as soft – in keeping with its weaker bargaining position, which demanded a soft approach. Conversely, the EU was able to adopt a hard approach internationally due to its stronger negotiating position, but it did not have the need to appear hard domestically. On the contrary, the EU’s domestic game, required, as will be argued below, a softer approach.

While previous authors have modelled the Brexit Negotiations as a two-level game (Schnapper, 2021; Biermann & Jagdhuber, 2021), this article argues that Putnam's framework needs to be combined with insights from the social psychology of negotiations (Rubin and Brown, 1975; Pruitt, 1981; Thompson and Hastie, 1990; De Dreu et al, 2007).³ This approach makes it

² The literature also distinguishes between bargaining or distributive behaviour – where negotiators are only concerned with their own self-interest and adopt a win-lose attitude – and problem-solving or integrative behaviour – where negotiators take into account common interests, and try to find a win-win solution (Hopmann, 1995). This dichotomy is closely connected with the hard versus soft distinction, as bargaining is often associated with hard behaviour, and problem-solving is often associated with a soft behaviour. However, it is not identical, since bargaining can also be expressed without hard language (Elgström and Jönsson, 2010). This article follows Dür and Mateo (2010) in their categorisation, which focuses only on classifying behaviour on a spectrum from soft to hard, depending on the degree to which it is conflictual, irrespective of whether intentions are integrative or distributive. This classification is particularly helpful when the focus is on examining behaviour, rather than on estimating the actors’ intentions and strategies (Dür and Mateo, 2010).

³ This article also differs from previous applications of the two-level model to Brexit as it applies Putnam’s model without combining it with the concept of nested games (Tsebelis, 1988). Both Schnapper (2021) and Biermann & Jagdhuber (2021) argue that Putnam’s model needs to be adapted

possible to focus on the behavioural implications of the two-level model, as opposed to its strategic implications, and specifically to explain how the two-level game results in the UK talking hard (domestic game) but negotiating softly (international game), while the opposite occurs with the EU. The article thus seeks not only to contribute towards our understanding of these unique negotiations, but also to contribute towards a deeper understanding of the behavioural implications of Putnam's model.

The analysis relies on interviews undertaken in Brussels and Westminster between 2017 and 2021 with politicians, civil servants and experts. The rest of this article is organised as follows. Section 2 further develops the key argument by showing how the two levels of negotiation result in both sides adopting a behaviour at odds with the content of their strategy. Section 3 then explores in more detail the behavioural and psychological elements of the UK's strategy and differentiates between the rational and irrational elements of the UK's hard tone.

2. Two levels of behaviour

The main argument of the paper will now be further developed. It will be shown that the UK's behaviour was hard at the domestic level but soft at the international level - while, conversely, the EU's behaviour was soft on the domestic level but hard on the international level. This will be demonstrated via a theoretical framework combining Putnam's model with negotiation psychology, which will first be introduced in more detail.

Combining Two-Level Games with Behavioural Psychology

Putnam (1988) first proposed the concept of a two-level game in international negotiations. Each party is concerned simultaneously with finding a good agreement at the international level (level I) and ensuring that this is ratified at the national level (level II). For the negotiations to succeed, the level I agreement needs to be acceptable to the constituents at level II. Putnam thus defines the "win set" as the set of all possible level I agreements which would be acceptable to level II. This framework has since been applied extensively in the negotiation theory literature, including in relation to the Brexit negotiations (Schnapper, 2021; Biermann and Jagdhuber, 2021). However, applications focused mainly on the strategic implications of Putnam's model and, in particular, on how domestic concerns affect the feasibility of potential

to the specific case of the Brexit negotiations, and both combine it with the concept of nested games (Tsebelis, 1988). Nested games are considered relevant because, due to high levels of politicisation in the Brexit case, the domestic and international game become intertwined, meaning the two levels had to be played simultaneously rather than separately. While in two-level games the chief negotiator can make the most of the situation by using domestic constraints to increase his bargaining power in the international game, in nested games the position of the chief negotiator is weaker, as domestic conflicts make it difficult to even present a coherent position at the international table. However, this article argues that Putnam's original model already included those elements. Putnam does take into account the fact that domestic preferences can be heterogeneous, which he terms "heterogeneous conflict" (1988, 443). While this increases the complexity of the game (and its difficulty from the perspective of the chief negotiator), it does not make the model less applicable (ibid).

agreements in international negotiations. This is in line with how this model has traditionally been used in the negotiation literature (da Conceição-Heldt, E., 2013). By contrast, this article applies the model to the behavioural aspects of the two-level game. Combining two-level games with behavioural psychology offers the following key insights: (i) actors can present different behavioural typologies at each level; (ii) social pressures will affect negotiators' behaviour; (iii) behaviour can be partly irrational; (iv) within each side, behaviour of different individual actors can differ. Points (i) and (ii) will be further developed here, leaving the remaining two points for Section 3.

Despite the extensive literature on both negotiation behaviour and two-level games, to the knowledge of this author consideration has not yet been given to how behaviour can differ between the two levels of a game. To assess this, this analysis draws on a subfield of the negotiation social psychology literature which focuses specifically on how behaviour can differ depending on its social context (Druckman, 1967; Carnevale et al, 1979; Enzle et al, 1992; Gelfand and Realo, 1999). Social context has been acknowledged as a key situational variable with the potential to affect bargaining behaviour (Rubin and Brown, 1975; Bazerman et al, 2000). The key insight from this literature is that negotiation behaviour will be affected by the presence of an "audience" of constituents, which results in the negotiator being concerned, not only with the outcome of the negotiations, but also with their need to impress that audience (Druckman, 1967; Rubin and Brown, 1975; Carnevale et al, 1979). The negotiator is therefore a "social animal" (De Dreu et al, 2007, 618), and his/her behaviour will differ depending on the social context. Applying this insight to two-level games results in the following key hypothesis: *behaviour in the domestic game, where there is an audience of constituents, can differ from behaviour in the international game, where that audience is not present.* Naturally, the international game is not perfectly insulated from the audience of domestic constituents, as those will be aware of developments there. However, in accordance with Putnam's two-level model, it will be assumed that each game is being played in a different setting (or "game board") (1988, 434) allowing for "differences in rhetoric between the two" (ibid). Putnam's seminal article thus already sets the seeds for this analysis by mentioning those potential differences in tone between the two games but stops there. This article explores that possibility further.

Negotiators are concerned with achieving a "positive evaluation" from the audience, and this will affect their bargaining behaviour (Rubin and Brown, 1975). Crucially, the impact of the audience on behaviour can differ depending on the expectations of the audience and can either make behaviour more conflictual or more cooperative (Enzle et al, 1992; Gelfand and Realo, 1999). An audience can make behaviour more conflictual if the negotiator believes that his/her reputation will be enhanced by appearing as a tough negotiator (Carnevale et al, 1979). In those cases, surveillance by constituents can lead to a need to appear strong and heighten the concerns about potential image loss if any weakness is demonstrated (Pruitt, 1981). However, accountability to an audience of constituents can make negotiation behaviour softer if this is what the audience prefers and expects (Enzle et al, 1992; Gelfand and Realo, 1999). The next sections will show that the former applied to the UK while the latter applied to the EU.

The domestic game in the UK

The domestic “game” consisted, in a narrower sense, of getting approval to the Withdrawal Agreement by the UK parliament, and in a broader sense, of satisfying the domestic population. Like any international treaty, the Withdrawal Agreement had to be approved by the UK Parliament. In addition, following concerns about parliament having a sufficient say on the Brexit process, legislation was passed to give the parliament more scrutiny than usual. The Withdrawal Agreement therefore had to be put to both houses and approved by MPs via a “meaningful vote” (Ziegler, 2018). This was not achieved during Theresa May’s premiership, as MPs rejected the Withdrawal Agreement in the three times that it was put to them, only finally accepting it under Boris Johnson’s premiership. However, in addition to getting approval for the deal in parliament, the domestic game also concerns the pressures caused by an audience of national constituents. Politicians like May and Johnson were concerned with getting the support of the electorate. In what follows, both aspects of the game will be taken into account.

An audience expecting hard behaviour

At the domestic level, the UK negotiating team was facing an audience of national constituents, and its behaviour therefore took that social pressure into account. As seen above, an audience can make behaviour more conflictual if the negotiator believes that his/her reputation will be enhanced by appearing as a tough negotiator (Carnevale et al, 1979). It will now be shown that this applied to the UK stance in the Brexit negotiations, as both May and Johnson were under pressure to act tough. This pressure came, firstly, during Theresa May’s tenure, from within the UK parliament itself. May faced considerable pressure to adopt a hard approach, as her strategy to win the approval of the parliament was centred on meeting the concerns of Conservative MPs, with a particular focus on the most Eurosceptic MPs (Stern, 2018). She therefore felt the need to show that she was driving a hard bargain with the EU. In the words of one interviewee, “the pressure that the British government is under (including the problems with uncertain majorities in the Commons, and the pressure the Prime Minister is under due to people who would like to replace her) put pressure on the UK side to look tough and show that they are fighting hard”.⁴

Secondly, both during May’s and during Johnson’s tenure, pressure also came from the public. The domestic audience also expected a hard approach due to concerns about sovereignty (Schimmelfennig, 2018). This was further enhanced by the politicisation of Brexit in the UK. The level of politicisation concerns how prominent an issue has become, in the media and public discourse. When an issue is highly politicised, negotiation strategies become harder (Elgström and Jönsson, 2010). Negotiators want to prove to their national audience that they are strongly defending national interest and will want to “posture” as highly inflexible (Stasavage, 2004). It is argued that the level of politicisation was considerably higher in the UK than in the EU, which helps explain the UK’s superficially harder behaviour. The Brexit negotiations clearly attracted the attention of the media, both in the UK and in the continent (Bijsmans, Galpin and Leruth, 2018). However, on the EU side media attention gradually

⁴ Telephone interview with former High Level EU official, 28 August 2018

diminished as the novelty passed, and the coverage was mainly neutral and fact-based, showing a lack of concern about the potential impact of Brexit on the EU27 (Reuters Institute, 2018). Moreover, during the time period covered by this research, Brexit was the central issue in UK political debate and perceived by voters as the most important electoral issue (YouGov, 2019). In accordance with the theory, this higher level of politicisation in the UK led to pressures for a superficially harder negotiation behaviour. This was confirmed by the interviews, including the comment that that “[flexibility is] less than usual because of the politics of it being so sensitive and because the extent of media scrutiny over it and the media narrative on it.”⁵ Another interviewee said: “The British population expected its leaders to appear tough towards the EU’s united front; so for domestic reasons they had to appear firm and even aggressive, confrontational”.⁶

Evidence of hard behaviour

Having established that UK negotiators were under pressure to adopt hard behaviour, this section will offer evidence to show both that the UK’s behaviour was indeed hard, and that this was particularly the case whenever it was aimed at the domestic game. UK public statements often displayed a confrontational attitude and an aggressive tone (Martill and Staiger, 2021; Durrant et al, 2019). For example, in July 2017, Boris Johnson suggested European leaders should “go whistle” if they expected Britain to pay a divorce bill for withdrawing from the EU (Mason, 2017). In August 2017, Jacob Rees Mogg said, “Mr Juncker is a pound shop Bismark, arrogant and bullying but without the charm” (Dallison, 2017). The UK side also accused the EU repeatedly of being unreasonable and wanting to punish the UK (Jones, 2019). For example, in September 2018, Theresa May accused the EU of not treating the UK with respect (Sabbagh and Boffey, 2018). One interviewee said: “The UK’s tone was very hard; the UK had to justify its decision to leave the EU, by appearing tough and being firm”.⁷

In addition to the confrontational tone, the UK’s behaviour also sought to appear uncompromising and rigid, as Theresa May set firm “red lines” before the start of the negotiations. In the words of one interviewee: “Britain has these red lines over the role of the institutions. So, that creates all sorts of inflexibilities from there, maybe it wasn't too clever to define that quite so strongly.”⁸ Specifically, May announced that the UK would not be under ECJ jurisdiction in any way; that the UK was to leave the EU Single Market; and an end to free movement between the UK and the EU (HM Government, 2017). Theresa May’s famous statement “Brexit means Brexit” (Cowburn, 2016) also reduced flexibility, by expressing the UK government’s intention to leave the EU at any cost (Eidenmuller, 2016). Threats are another example of non-constructive behaviour, as they do not help to move towards a realistic solution. UK negotiators mentioned several times that they were well prepared for the possibility of a “no deal Brexit”, thus threatening that they would rather leave the negotiations

⁵ Interview with European Parliament official, Brussels, 19 July 2018

⁶ Telephone interview with former European Commission official, 23 August 2021

⁷ Telephone interview with former European Commission official, 23 August 2021

⁸ Interview with a Member of the British House of Lords, London, 18 July 2018

than accept a deal they were dissatisfied with. As Theresa May repeatedly said “No deal is better than a bad deal” (for example, Domninkzak, 2017).

However, it is possible to note a difference between those statements, which captured the attention of the domestic media, and the tone of UK negotiators when dealing directly with their EU counterparts. An interview with Michel Barnier in July 2019 revealed that Theresa May’s approach when dealing with EU negotiators directly was different, and softer, from what she presented to the UK press (Brunsden, 2019). EU diplomats were aware of this and saw May’s most aggressive statements as merely “designed to bolster her political position at home” (BBC News, 2018). This was confirmed by our interviewees: “Of course the hard language by May and Johnson was aimed at domestic consumption”.⁹ It is also worth noting that some of the more aggressive language came from actors not directly involved in the negotiations. Rees-Mogg, while an influential figure in the House of Commons as the then leader of the Eurosceptic European Research Group (ERG), was not a member of the cabinet, and therefore not involved in the negotiations with the EU. Similarly, statements by UKIP politicians, such as Nigel Farage urging Theresa May to stand up against the EU’s “unelected bullies” (BBC News, 2018), while contributing towards an atmosphere of tension within the UK, are unlikely to have had any impact on the negotiations, in which UKIP, was of course, not involved. The confrontational language was also amplified by another actor not involved in the negotiations - the Eurosceptic tabloid press (Zappettini, 2019). Moreover, while May’s threat of “no deal” was repeatedly referred to by British politicians when talking to the press, presenting it as a key element of the British strategy, the above-mentioned interview with Michel Barnier also revealed that May did not actually include the threat in her negotiation strategy (Brunsden, 2019).

The domestic game in the EU

The EU’s domestic game was very different. While any future trade agreement between the EU and the UK needed to be ratified by each Member State, the Withdrawal Agreement only had to be approved by the European Parliament (by simple majority) and by the Council of the EU (by super-qualified majority) (Ziegler, 2018). As the EU was able to keep a unified stance throughout the negotiations (Jones, 2019; Laffan, 2019), none of these presented difficulties.

An audience expecting soft behaviour

However, keeping unity was essential on the EU side because the EU’s key objective in these negotiations was not to achieve a certain outcome from the negotiations, but rather to ensure the survival of the EU in the face of Brexit, which was seen as an existential threat (Laffan, 2019). Any disagreements on a desired outcome or strategy paled in comparison with the need to safeguard the EU project. Maintaining unity throughout the Brexit negotiations was crucial to ensure the survival of the EU project (ibid). As one interviewee commented, “on the EU side (...) geopolitical interests have more weight (in particular, keeping EU unity).”¹⁰ Another

⁹ Telephone interview with European Commission official, 12 August 2021

¹⁰ Telephone interview with former High Level EU official, 28 August 2018

interviewee said: “There was a huge effort to appear as an united front, perfectly united and firm, to discourage citizens in other EU countries from considering leaving the EU”.¹¹ The EU’s domestic game was therefore, not so much about ensuring ratification, but rather about ensuring that unity and harmony prevailed. A soft approach was therefore preferred for this domestic level, to ensure that no tensions would emerge, and to help with “nurturing an environment of trust” (Laffan, 2019, 6) among the EU27, that would help secure unity throughout the negotiations. Since the EU’s key objective was to “save face”, a softer, more dignified tone, was also in order. This is therefore a case where accountability to an audience of constituents made negotiation behaviour softer, as this is what the audience preferred and expected (Enzle et al, 1992; Gelfand and Realo, 1999).

Evidence of soft behaviour

As a result, a more polite and measured language prevailed, reflecting a more professional and effective approach (Durrant et al, 2019). EU representatives emphasised their goodwill and efforts to reach a deal constructively. Barnier and others stated repeatedly that they respected the UK’s “sovereign decision” to leave (Barnier, 2018) and were committed to achieving a deal for an “orderly exit” (ibid). An interviewee commented: “The EU’s attitude was never arrogant or disagreeable; this was helped by the personality of the EU’s chief negotiator, Michel Barnier, it lent great sobriety to the EU’s external communications.”¹²

However, here again it can be seen that the EU’s soft tone was mainly aimed at the domestic audience, and less at the international level of the game. In particular, despite the moderate tone there were stern criticisms of the UK side. In August 2017, Michel Barnier criticised the “ambiguity” of Britain’s stance in the negotiations, and said it was necessary to “start negotiating seriously” (Stone, 2017). The next day, Jean-Claude Juncker said that the UK’s position papers on the negotiations were not “satisfactory” (ibid). This shows that, in the international game, the EU was less interested in a compromising approach, and more interested in putting its opponent under pressure, as befits a harder strategy. It will also be shown below that the EU’s approach was harder because it was more rigid and less compromising than the UK. Therefore, in direct opposition to the UK case, here an audience expectation of soft manners led the EU to adopt a polite approach on the domestic level, at odds with its hard approach on the international level.

The international game

At the international level, the audience of domestic constituents is not directly present, and negotiation behaviour will be less influenced by social pressures. Therefore, here we can expect to see behaviour more in keeping with the negotiators’ strategies and objectives. There is widespread agreement in the literature that the EU was in a stronger negotiating position than the UK (Hix, 2018; Martill and Staiger, 2021; Jones, 2019). Accordingly, it will be shown that the UK side, as the weaker party, pursued a soft strategy, and the EU, as the stronger party,

¹¹ Telephone interview with European Commission official, 12 August 2021

¹² Telephone interview with former European Commission official, 23 August 2021

pursued a hard strategy. This is in keeping with the literature's prediction of a link between a stronger position and a harder behaviour, whereby a negotiator with more bargaining power is more likely to adopt a hard bargaining strategy, while a weaker negotiator will tend to choose a softer problem-solving approach (Dür and Mateo, 2010; Bailer, 2010; McKibben, 2010). This is because a hard strategy is only credible and beneficial if a negotiator has sufficient power to be able to sustain it, by actually delivering on its threats if the other party does not comply, and by being able to sustain any retaliatory measures, including the termination of the negotiations without a deal (ibid). Conversely, weak actors will prefer a soft bargaining approach, as they cannot credibly sustain a hard bargaining approach, and are in more need of the negotiated deal.

Behaviour at the international level

Therefore, at the international level, the UK adopted a soft behaviour in accordance with its weaker stance, while the EU adopted a hard behaviour. The previous section has already shown that both the UK's hard tone and the EU's soft tone were less evident at the international level. This section will now show that, at the international level, the EU's position was rigid and uncompromising, while the UK repeatedly gave in to the other side. This lack of flexibility is a key element of a hard strategy (Dür and Mateo, 2010).

Although, as seen above, the UK tried to convey an appearance of rigidity, it ended up compromising on many of its red lines (Jones, 2019). A first capitulation happened in the first day of the negotiations. The UK accepted the timeline of the negotiations suggested by the EU, which it had previously argued against (BBC News, 2017) and which Davis had previously indicated would generate "the row of the summer" (Wright, 2017). One interviewee said, "there was a lot of rhetoric from the British side but, of course, rollover took place in day one, we immediately accepted that there would be a sequencing".¹³ Another capitulation took place when the UK abandoned its refusal to negotiate the details of the financial settlement unless this was in combination with discussions on future trade (Jones, 2019). Theresa May's red lines relating to ECJ rule in the UK, customs union and free movement were also abandoned when the UK agreed to the EU's proposal of a transition period, during which the UK would leave the EU while still having to accept all those aspects of EU membership. An interviewee said: "Many of the UK's demands were unrealistic from the start – as a result they had to give in on a lot of them".¹⁴

The EU side, on the contrary, kept firm on its initial demands (Martill and Staiger, 2021; Jones, 2019). Even at points when the negotiations had reached a deadlock, such as following the rejection by the House of Commons of Theresa May's deal in January and March 2019, the EU refused to offer more flexibility. This was noted by scholars at the time, as Martill and Oliver (2019) argued the EU could benefit from a more flexible approach, particularly in certain areas such as security and research funding. Menon (2019) also argued that the EU's lack of flexibility in the negotiations was undermining its own aims. There was also widespread

¹³ Interview with Conservative MEP, Brussels, 18 July 2017

¹⁴ Telephone interview with former European Commission official, 23 August 2021

agreement among our interviewees that the EU had less flexibility than the UK. Interviewees confirmed this saying that “on the EU side, [there is] very little flexibility but then their negotiating position has been formulated by the negotiators.”¹⁵ Another interviewee said: “The UK team as I understand it has more flexibility than the EU team and that's partly because the EU team has to be responsible to all 27 remaining member states.”¹⁶ Another added “I think on the European side, Barnier has a remit which has been agreed so it's because it's been agreed amongst the 27 then it's going to be fairly inflexible.”¹⁷

As argued by Laffan (2019, 5), defending the “integrity of the single market and (..) the four freedoms” became a central part of the EU’s narrative to “frame” Brexit, and ensure the survival of the union in the face of the potential existential threat of UK departure. Limiting flexibility was therefore an objective in itself for the EU, irrespective of its impact on the outcome of the negotiations. Even before the negotiations started, the EU made clear that there would be no “cherry-picking” – the UK would not be allowed to keep some aspects of EU membership but not others (European Council, 2017). Taking such a “positional commitment” (Pruitt, 1981, 75) is a tool well recognised in the negotiation psychology literature to harden behaviour, through a reduction in the flexibility of the negotiations. This was presented by the EU as essential to maintain the integrity of the Union,. However, it could be argued that this was not the case, as the EU had previously granted several opt-outs to the UK and other Member States, as part of a process of “differentiated integration” (Martill and Oliver, 2019).

The EU also insisted that negotiations could only start once Article 50 had been triggered. This worsened the UK’s negotiating position by ensuring that its best alternative to a negotiated agreement (BATNA) was no longer the status quo, but rather a “no deal Brexit” (Eidenmuller, 2016). This also increased time pressure on the UK side, a typical hard negotiation tactic (Pruitt, 1981). The EU reduced flexibility further by giving Michel Barnier a rigid mandate with little room for manoeuvre (Martill and Oliver, 2019), and through the above-mentioned sequencing of the negotiations, which compartmentalised issues into three phases. This approach brought a clear advantage to the EU side, as it made it impossible for the UK to present any concessions on phase one withdrawal items as being made in return for a better deal on phase two trade relationship items. However, it also reduced the flexibility of the negotiations, and thus contributed towards the difficulty of the talks and the failure to reach an agreement under the May government (Jones, 2019). The EU therefore compromised significantly less than the UK side (Martill and Oliver, 2019).

3. The UK’s hard talk: rational or irrational?

The UK’s hard tone will now be explored in more detail, using further insights from the negotiation psychology literature. First, this section will explore the different actors involved in the UK side of the negotiations, showing that each of those actors had different psychological and behavioural incentives, and differentiating between the political (as opposed to the

¹⁵ Interview with an expert on EU-UK relations, London, 24 July 2018

¹⁶ Interview with an anonymous source, July 2017

¹⁷ Interview with a member of the British House of Lords, London, 18 July 2018

administrative) level of the negotiations. Second, it will show that there were both rational and irrational elements to the UK's hard talk. Some of this hard talk can be explained by strategic reasons in a two-level game, but other elements were counterproductive and can only be explained by accepting that the actors involved suffered from cognitive limitations and bounded rationality (Simon, 1955; Thompson and Hastie, 1990).

Differentiating between actors

The simplifying assumption that there is only one actor on each side of the negotiations will now be discarded to account for the psychological incentives of the different individual players involved. On each side of the negotiations, there was not only a chief negotiator, but also a range of advisors at political and administrative level. The behaviour and incentives of each of those individuals and groups may differ, so they should be looked at separately. Putnam already offered some initial insights in his seminal article, as he emphasises the importance of the role of the *chief negotiator* (1988, 465), since in this principal-agent setting, the chief negotiator may not have identical goals to the constituents he/she is representing (ibid). This was particularly relevant to the UK side, since on the EU side, the principal-agent problem was successfully addressed by giving chief negotiator Michel Barnier a very tight and specific mandate, as previously shown. In particular, Putnam foresees that the Chief Negotiator may perceive enhancing his popularity among level II constituents as his main goal, as opposed to prioritising the success of the negotiations. This appears relevant here, as Theresa May was fighting for her political survival (Stern, 2018) while Boris Johnson was concerned with satisfying pro-Brexit voters from the so-called Red Wall of Labour-held seats in the midlands and the north of England (Piper, 2019). Both chief negotiators were therefore highly focused on using the domestic game to satisfy their own political goals, as opposed to prioritising obtaining a good outcome at the international game.

In addition, it is possible to differentiate between the political level and the technical level in the negotiations. This is relevant in the case of the Brexit negotiations, as in the UK the behaviour and attitude of both levels was significantly different (Jones, 2019). While tensions grew at the political level, at technical level the tone was conciliatory on both sides, as UK civil servants and EU officials both focused on the task at hand and refrained from unhelpful criticisms (ibid). One interviewee commented that “any creative solutions the civil service come up with are almost always immediately undermined by Boris Johnson’s statements”.¹⁸ We therefore see that the UK’s hard behaviour characterised the political level, rather than the technical level.

It is useful to combine this insight with this paper’s main hypothesis that the UK’s hard behaviour was present in the domestic level but not the international level. Technical actors such as civil servants are, of course, aware of the two levels of the game. However, typically they will not be themselves affected by the stakes of the domestic game. Therefore, they are in a position where they have to facilitate the two-level game, though without having an interest in playing it themselves. Political actors, on the contrary, will typically share the concerns of

¹⁸ Interview with a Member of the House of Lords, July 2016

the chief negotiator about the domestic objectives. As an interviewee said: “The political level adopted a harder tone than the technical level, because they are under pressure to show results, while technical officials are not”.¹⁹ While all actors are aware of the presence of an “audience” of national constituents, only the political actors feel directly pressured by that audience. We can therefore conclude that, *in a two-level setting, political actors are playing the two-level game, while technical actors are only facilitating it*. If we focus exclusively on behaviour, it is argued that only the political actors will feel the need to adopt a hard behaviour to satisfy domestic concerns. Technical actors, on the contrary, will not feel pressured into adopting a certain behaviour.²⁰

Cognitive Limitations

Behavioural psychology provides a further tool for understanding the UK’s behaviour in a two-level setting: cognitive limitations due to bounded rationality (Simon, 1955). The negotiation psychology literature acknowledges that bargaining behaviour is heavily affected by cognitive biases and heuristics (Raiffa, 1982; Neale and Bazerman, 1985, Thompson and Hastie, 1990) but, so far, the literature has not focused on how those biases occur in a two-level game. There is widespread agreement within the Brexit literature that the UK negotiating strategy was suboptimal (Dunlop et al, 2020; Jones, 2019; Martill and Staiger, 2021) as the UK negotiation team was hampered by several cognitive limitations and biases (Figueira and Martill, 2020). This article adds to that existing analysis by focusing on the cognitive biases specific to a two-level setting.

It is argued that the hard tone on the British side was partly rational in a two-level setting, and partly irrational. The rational element is that, for elected politicians such as May and Johnson, it is rational to be concerned above all with being re-elected (Downs, 1957). Therefore, the domestic game, which is directly about satisfying voters, takes priority over the international game, which only has an indirect impact on voter satisfaction. As shown in the previous section, a hard tone helps the domestic game – as it satisfies voters’ preferences – while hindering the international game – as it is not in keeping with the UK’s weakest position in the negotiations and makes reaching a deal more difficult. So, a hard tone is in keeping with a rational prioritisation of the domestic game over the international game.

However, when that hard approach is taken to excess, the negative impact on the international game can undermine any gains at the domestic level. This was most evident in the case of Theresa May, when a failure to achieve a deal ended her political career. Such excesses in hard tone can thus be explained through cognitive limitations. This article argues that the *irrational behaviour by the UK negotiators relates to the cognitive biases of myopia and fixed-pie bias*. Firstly, the zero-sum or fixed-pie bias (Thompson and Hastie, 1990) occurs when negotiators fail to realise that there are opportunities for win-win outcomes, and instead think that a gain to one party always corresponds to a loss for the other – thus missing out on potential gains

¹⁹ Telephone interview with European Commission official, 12 August 2021

²⁰ Another way in which the British side could be disaggregated is by exploring its sub-national dynamics. Due to space limitations, this is left for future research.

from an integrative approach (De Dreu and Carnevale, 2003). While present in any negotiation, in a two-level game it can be enhanced by the fact that a zero-sum bias can occur, not only between the two negotiating parties, but also between the two levels of the game. Negotiators can believe that a gain in the domestic game has to come at the expense of a gain in the international game, without realising that the two can complement each other. In this case the UK negotiators, in adopting a hard tone, chose a strategy which benefited the domestic game but harmed the international game. Instead, a strategy which satisfies both levels would have been preferable – adopting a more constructive behaviour would have made it possible to obtain better outcomes in the negotiations, which in turn would also have brought benefits at the domestic level (Figueira and Martill, 2020; Martill and Staiger, 2021; Jones, 2019).

Myopia occurs when actors focus excessively on short-term objectives, neglecting future outcomes (Chi and Fan, 1997). This bias can be more prevalent when one or both negotiators are politicians subject to election cycles (Congleton, 1992). In a two-level setting, this can also lead to focusing excessively on the domestic game, since this is directly related to voter satisfaction and therefore to chances at the next election, or, in the case where pressures come from within the parliament, directly related to satisfying MPs. However, if the international game does not go well, this can also eventually affect voter satisfaction and/or the parliament. As previously mentioned, this was clear in the case of Theresa May, when a focus on satisfying the Conservative MPs through a hard approach (Stern, 2018) resulted in a deal which could not be passed through parliament, ultimately ending her premiership. If, instead, the international game had been given relatively more importance than the domestic game, this could have increased the chances of obtaining a viable deal. In addition, this article proposes that myopia can be identified between the individual and the collective level. A narrow focus on the next elections may be rational for the individual politician concerned, but if it feeds into the strategy of the entire government as an institution, becomes irrational on a collective level, as it hampers the institution's objectives. As an interviewee said, "Johnson's decisions in the negotiations often took into account his domestic political interests – while this made sense from his individual perspective, it hampered the collective decision-making of the UK side".²¹

4. Conclusion

This paper combined a behavioural psychology approach with a two-level game framework, resulting in several insights regarding the negotiation of the Withdrawal Agreement. Firstly, the analysis has shown that the two sides had different behaviours at each level of the negotiations. The UK's hard behaviour was mainly aimed at the domestic game, and largely absent from the international game. On the contrary, the EU adopted a harder negotiation strategy than the UK on the international level, while at domestic level the reverse can be observed. Secondly, it has been hypothesised that the difference between behaviours at the national and international level is due to the direct presence of an audience of constituents at the national level, from which the negotiators wished to extract a positive evaluation. Thirdly, the analysis has shown that the hard behaviour was largely confined to the political actors within the negotiating team, and absent from the technical actors. Finally, it has shown that the

²¹ Telephone interview with former European Commission official, 23 August 2021

UK's hard behaviour was partly rational in a two-level setting, and partly irrational due to cognitive limitations. Aside from shining new light on these important negotiations, the key theoretical contribution is that negotiation behaviours can differ at each level of the game, and that those differences can be understood through a behavioural lens, including social pressures, egoistic concerns, and cognitive limitations. The existing literature on two-level games, with its emphasis on identifying strategic objectives at each level, could therefore be complemented with an analysis focusing on behaviour.

These findings could potentially be extended to the analysis of two-level international negotiations in any context. While at the international level, this paper consolidates the existing theory that the weaker party adopts a softer behaviour, it opens up new possibilities at the domestic level. At that level, the behaviour will be associated with how negotiators want to be perceived by voters. As seen through the examples of the UK and the EU side, that audience pressure can lead to either a harder or a softer behaviour. However, in cases where one party is significantly stronger than the other, it will often happen that the weaker party, while being forced to have a softer approach at the international level, will want to mask this through a harder rhetoric at the domestic level. Conversely, the stronger party may feel less need to prove its power domestically. Future research could also examine whether this pattern can be expected to emerge whenever there is a negotiation taking place between the EU and an individual (departing, acceding or current) Member State. In the case of the Greek bailout negotiations, scholars were also puzzled by the apparent paradox of a weaker party (Greece) adopting a harder negotiation behaviour (Zahariadis, 2017), so it would be interesting to investigate whether behavioural patterns were similar. This article's insights could also be relevant to understand particularly tense episodes of (past and future) accession negotiations. Future negotiations concerning the rule of law could also potentially follow this pattern, provided the EU is in a position of strength.

Understanding these patterns of behaviour, and how they differ between games, is important for two main reasons. Firstly, they can mask what is really happening in the negotiations. In this case, the UK's hard behaviour in the domestic game gave the mistaken impression that the country was adopting a hard strategy in its negotiations as a whole – masking the fact that, at the international level, the strategy was actually soft. Secondly, this research can also contribute towards improving our understanding of UK-EU negotiations after the initial departure, phase. The literature agrees that a problem-solving approach is more desirable (Hopmann, 1995; Eidenmuller, 2016), as it will tend to emphasise the common good, offer benefits to both parties and maximise the total gains available from the negotiation or extend the pie. A better understanding of the causes, symptoms, and consequences of adopting a hard negotiation approach can help to incentivise actors on both sides to move towards a softer approach. The Brexit negotiations, first portrayed as a one-off event expected to last two years (from 29 March 2017 to 29 March 2019), are instead best seen as a continuous state of bargaining between the UK and the EU, in much the same way as the EU itself exists in a permanent state of negotiation (Dür and Mateo, 2010). The insights offered here are therefore likely to remain relevant over the foreseeable future.

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