CHAPTER 8

THE FRENCH REJECTION OF THE EUROPEAN CONSTITUTIONAL TREATY: TWO-LEVEL GAMES PERSPECTIVE

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INTRODUCTION

Unlike the 1992 French debate about the ratification of the Treaty on European Union (TEU), a two-level games analysis to explain the fate of the European Constitutional Treaty (ECT) must address an involuntary defection: the failure of the 29 May 2005 referendum to ratify the text in France. As Robert Putnam explains, “Credibility (and thus the ability to strike deals) at Level I is enhanced by a negotiator’s (demonstrated) ability to ‘deliver’ at Level II” (Putnam, 1988, 427-460). This explanation asserts that President Jacques Chirac’s ability to reach agreement in the constitutional negotiations was influenced by the prospect of a successful domestic ratification. This analysis focuses on a two-level games explanation of the French context and the Constitutional Treaty’s fate because as Putnam argues “Involuntary defection can only be understood within the framework of a two-level game.” The puzzle that the chapter addresses is that despite a relatively large win-set, the risk of involuntary defection increased in France as the ratification debate entered its final stage. President Chirac was rarely, if ever, able to use a small domestic win-set as a bargaining advantage. We do not imagine the French President stating to his counterparts at the table: “I’d like to accept your proposal, but I could never get it accepted at home.” In our reflections concerning the relevance of involuntary defection to the literature about dilemmas of collective action, can we implicitly assume, as Putnam does, uncertainty about the contours of the win-sets on the part of Level I negotiators? The argument we question is: if the win-sets were known with certainty, the negotiators would never propose for ratification an agreement that would be rejected.

In order to assemble the pieces of our puzzle, we must start at Level II, within the French domestic context, in order to grapple with events at Level I, at the table with the French President and other Heads of Government in the European Council. We must then return to the scene of the drama’s climax, inside the hexagon during spring 2005. The logic of two-level games is an interactive one in which the only link between Levels II and I is the chief negotiator, in this case Chirac. A careful reading of one institutional analysis regarding French preferences on the future of Europe concludes: “In
the end, therefore, the French President and his government were for the most part alone in deciding what France’s preferences were going to be: of course, it remains to be seen whether this will change as the debate on the future of Europe moves into the ratification phase—but that is another story” (Jabko, 2004, 282-301). The pieces in our puzzle begin to come together to reveal a picture in which the ratification is the integral part of the story. The thesis here is that a two-level games analysis must be revisited to assess its relevance as an explanation of the national referendum outcome. As we unpack the two-level games approach, the French case illustrates that it is not always a simple matter to ascertain which domestic game to play in order to escape an involuntary defection.1

**FRENCH PREFERENCES IN CONSTITUTIONAL REFORM: IS THERE LOGIC TO TWO-LEVEL GAMES?**

A traditional reading of France’s European Union policy, and its articulation of national preferences on the future of Europe, is interest-centred. This reading emphasises the primacy of France’s national calculations of national costs and benefits (see Moravcsik, 1998). The pursuit of hard-nosed deals with other Member States figures prominently in this equation (Jabko, 2004, 284). The French government, in its focus on proposals concerning the institutional architecture of the Union, aims to maximise France’s power and promote national objectives. Concessions are made in constitutional reform strictly for material gains to enhance the prospects of a French-dominated Union (ibid.). Other Member States are often wary of France’s historical preference for intergovernmental bargains in Council decision-making in which the big states dominate. President Chirac’s definition of the French national interest was very much in line with this traditional reading.

In France there were very few, if any, domestic demands for constitutional reforms during the European Convention and Intergovernmental Conference (IGC) negotiations. This fact and the relative lack of engagement by national Parliament representatives to the Convention until the ratification debate left French society disconnected from the issues involved in the Constitutional Treaty in the early stages (Crum, 2007, 13). France’s institutional focus at the Convention and during the IGC privileged a diplomatic priority: to restart the French-German engine “after the disastrous performance in Nice” (Mazzucelli, Guérot and Metz, 2007, 158-177). The

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1 The author is grateful to Dr. Adam Posen, Senior Fellow, Peterson Institute for International Economics, Washington DC, for the exchange of ideas during the 2007 European Union Studies Association (EUSA) conference in Montreal, Canada, which led her to develop the arguments in this chapter.