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DAVID VERSUS GOLIATH AND MULTILATERAL DIPLOMATIC NEGOTIATIONS IN THE 21ST CENTURY: HOW THE GREEK DEBT CRISIS NEGOTIATIONS MARKED THE REVENGE OF GOLIATH

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"A nation's greatness is measured by how it treats its weakest members."

-Mahatma Gandhi

"The door is open to discussions. Europe is not just an economic, financial, and monetary construction. Europe is a whole set of principles and values. A conception of the world."[1]

* Dr. Avnita Lakhani is Assistant Professor at City University of Hong Kong School of Law. This article was inspired by the work of Harvard's Programme on Negotiation, my 2010 PhD dissertation on the topic of negotiation tactics and ethics, and the recent Greek debt crisis negotiations. As of 14 July 2015, the EC announced a 'unanimous agreement' in support of a new bailout programme for Greece that includes support for a three-year European Stability Mechanism (ESM) programme for Greece in exchange for Greece staying in the European Union and Eurozone, conditioned on implementing a series of serious and, some would argue, very harsh and unsustainable reforms.

1 Bruno Waterfield, *Greek debt crisis: Sign our deal or quit euro, Greece is told*, THE AUSTRALIAN (July 7, 2015), http://www.theaustralian.com.au/news/world/greek-debt-crisis-sign-our-deal-or-quit-eu

-French President Francois Hollande

ABSTRACT

The purpose of this article is to analyze the manner in which negotiations pertaining to the Greek debt crisis were conducted and whether there are lessons to be learned in terms of effective negotiation techniques, a mutually sound negotiated agreement, and whether the recently-announced 'unanimous agreement' between the European Union Council members to support a three-year European Stability Mechanism (ESM) programme for Greece has any prospects for success.

The central questions that this article aims to analyze are whether, from the perspective of well-established negotiation theory and practice, there a win-win solution for Greece, its creditors, and the European Union, and does the new ESM agreement, or bailout, have any prospects for long-term success? How the Greek debt crisis is ultimately resolved will convey enormous messages about the viability and challenge of the European Union as well as provide insightful lessons on the art of multilateral negotiations[2] in

ro-greece-is-told/story-fnb64oi6-1227431753561 (last accessed 9 July 2015) (quoting French President Francois Hollande who refers to the ongoing negotiations with Greece regarding its debt crisis. French Prime Minister Manuel Valls echoed this view.)

2 Robert H. Mnookin, *Strategic Barriers to Dispute Resolution: A Comparison of Bilateral and Multilateral Negotiations*, 8 HARV. NEGOT. L. REV. 1, 2-3 (Spring 2003) (highlighting the fact that, while there has been much work and literature on bilateral negotiations, more work needs to be done in terms of understanding multilateral negotiations). See also, HOWARD RAIFFA, THE ART AND SCIENCE OF NEGOTIATION 11 (1982) ("[t]here is a vast difference between conflicts involving two disputants and those involving more than two disputants."); David A. Lax & James K. Sebenius, *Thinking Coalitionally: Party Arithmetic, Process Opportunism, and Strategic Sequencing*, IN NEGOTIATION ANALYSIS 153 (H. Peyton Young ed., 1991) ("the clearest and most powerful advances in theory have been within or mainly inspired by the bi-lateral or two-party case."). While Mnookin disagrees with Zartman perspective on the matter and is more influenced by Raiffa and Lax & Sebenius' views, it is worth noting the Zartman perspective here also: WILLIAM ZARTMAN, INTERNATIONAL MULTILATERAL NEGOTIATION APPROACHES TO THE MANAGEMENT OF COMPLEXITY xi (William Zartman ed., 1994) ('[c]urrently no conceptual work addresses the vast area of multilateral negotiations . . . . Implicitly or explicitly all negotiation theory addresses bi-lateral negotiations, but the complexity of multilateral negotiations remains untreated."). One of the purpose of this article is to add to the field of understanding multilateral negotiations through an application-oriented analysis of current negotiation

light of established negotiation theory and principles.

I. INTRODUCTION

The story of David and Goliath is legendary. According to best-selling author Malcolm Gladwell, *David and Goliath* is "a book about what happens when ordinary people confront giants. . .meaning powerful opponents of all kinds – from armies and mighty warriors to disability, misfortune, and oppression."[3] The story of David and Goliath has come to be a metaphor "for improbable victory".[4] Gladwell believes that the version of events about how David, a shepherd boy, eventually defeated Goliath, a seasoned giant warrior, is wrong in the sense that David's victory was not improbable given the nature of ancient armies at that time.[5]

Three thousand years ago in the valley of Elah, David was a slinger in the category of projectile warriors (or artillery as it is known today).[6] Goliath was heavy infantry – "foot soldiers wearing heavy armour and carrying swords and shields."[7] While Goliath had physical strength, heavy armour, a metal helmet, three separate weapons, a thrusting javelin and skills in face-to-face "single-combat",[8] David had no armour but did have stones, a leather pouch, and absent the heavy armor, "speed and maneuverability",[9] skills essential for projectile warriors to defeat infantry.[10] In addition, according to Gladwell, medical experts now believe that Goliath had a serious medical condition called acromegaly – caused by a "benign tumor of the pituitary gland"[11]- that affected Goliath's vision.[12] Because of this condition, so the argument goes, Goliath did not walk into the forest for battle but was led into the forest by an attendant, wanted David to come to him for face-to-face battle instead of chasing David and was mistaken in his perception that David had multiple sticks instead of just one.[13] According to

principles to real-world multiparty conflicts.

3 MALCOM GLADWELL, DAVID AND GOLIATH: UNDERDOGS, MISFITS AND THE ART OF BATTLING GIANTS 5 (2013).

4 *Id* at 8-9.

5 *Id.* at 9-10.

6 *Id.* at 9.

7 *Id.* at 9.

8 *Id.* at 6-7.

9 *Id.* at 11.

10 *Id.* at 10.

11 *Id.* at 14.

12 *Id.* at 14.

13 *Id.* at 14 (Goliath said: "Am I a dog that you come to me with sticks?"

Gladwell, these new insights into the story of David and Goliath show that "the very thing that gave the giant his size was also the source of his greatest weakness."[14] In that lies the lesson that "the powerful and the strong are not always what they seem"[15] – and, one could argue, neither are the weak and helpless what they appear to be at first blush.

The story of David and Goliath is also a story about power, for while King Saul, leader of the Israelites, saw power in terms of physical might and, therefore did not believe that a shepherd boy like David could ever defeat Goliath, "power can come in other forms as well – in breaking rules, in substituting speed and surprise for strength."[16] It is precisely such mistakes about power and the apparent power of the opposing giants, according to Gladwell, that "have consequences for everything from how we educate our children to how we fight crime and disorder."[17]

Power, whether perceived or not, is also at the heart of the multilateral negotiations between Greece and its international creditors. This article argues that Greece, represented by Prime Minister Alexis Tsipras and perceived as the weaker party (David), could have 'won'[18] the battle with its international creditors, the 'Troika'[19] (Goliath), if it was better prepared in term of the negotiations and had more clearly understood the use of key negotiation principles and tactics (e.g., BATNA, ZOPA, MPP, power, leverage, Pareto-criterion) to strengthen its negotiation position and achieve its broader objectives.

Part I of this article has provided a brief introduction. Part II describes recent events surrounding the Greek debt negotiations in order to establish the basic facts for analysis. Part II also provides a historical context to the unfortunate situation in which Greece finds

Goliath saw two sticks but David only had one.).

14 *Id.* at 14-15.

15 *Id*. at 15.

16 *Id.* at 12-13.

17 *Id.* at 13.

18 Note: By 'won', I mean that Greece could have gained greater concessions and ultimately achieved its broad goals of less austerity

19 The 'Troika' is the term used to describe the three major European lenders and is composed of the International Monetary Fund (IMF), the European Commission (EC), and the European Central Bank (ECB). This trio is also referred to as the EU-ECB-IMF. See *Parliament slams Troika, calls for a 'European Monetary Fund'*, EURACTIV.COM (March 14, 2014), http://www.euractiv.com/eurofinance/meps-call-creation-european-mone-news-534135 (last accessed 14 July 2015).

itself within the European Union. Part III of the article analyses the role of certain negotiation principles and tactics in the Greek debt crisis negotiations, including the use of BATNA, ZOPA, Pareto-criterion, power, leverage, and other aspects of the multi-party negotiations. Part III also attempts to dissect whether the moves made by the party were the best strategies to employ and whether there are/were any alternatives to achieving the negotiated outcomes. Part IV reviews any lessons learned from the Greek debt crisis negotiations as well as policy recommendations for improving future multi-lateral negotiations. This includes insights into whether and how Tsipras and the Greek negotiating team could have maintained or increased its negotiating strength in spite of the challenges presented. Finally, Part IV provides some concluding remarks.

II. GREEK DEBT CRISIS NEGOTIATIONS

A. Greece and the European Union

Greece is a member of the European Union and elected to adopt the euro currency. The European Union was created through the Maastricht Treaty of 1992, also known as the Treaty on European Union (TEU), which was signed by twelve (12) original 'High Contracting Parties' (member nations) on 7 February 1992 and entered into force on 1 November 1993.[20] The TEU also facilitated the creation of the Economic and Monetary Union, which led to the creation of the euro currency.[21] For the purposes of this article, it is important to appreciate how Greece came to be in such a precarious position of having to negotiate its way out of acrimonious relations with the EU because of its sovereign debt issues. The analysis in this section is primarily from a legal perspective, recognizing that there are cultural factors[22] that may have exacerbated Greece's negotiating power.

As indicated above, Greece is both a member of the European

[20] See Civitas, *EU Factsheet: Treaty of Maastricht*, CIVITAS.ORG.UK (2014), http://www.civitas.org.uk/eufacts/FSTREAT/TR3.php (last accessed 14 July 2015)(hereinafter 'EU Factsheet').

[21] *Id.*

[22] Note: It is well noted that Greece's culture with respect to payment of taxes, social services, values and politics is markedly different from EU members such as Germany, UK, Finland or France. While the creators of the EU may have envisioned a convergence of cultural values, events such as these highlight the fact that this goal is far from being a reality.

Union and has adopted the euro as its official currency. This is different from, for example, the United Kingdom of Great Britain and Northern Ireland, which is a member of the EU but has not adopted the euro currency.[23] The Treaty on European Union (TEU) established convergence criteria to ensure sound social and economic performance of the member States.[24] Title II, Article 109j(1) sets out four convergence criteria for member States achieving 'economic and monetary union'.[25] The Maastricht convergence criteria, as it is also known, consists of the following: (i) high degree of price stability; (ii) a "sustainable government budgetary position without a deficit that is excessive. . .in accordance with Article 104c(6); (iii) normal fluctuation margins in the EU exchange-rate mechanism for at least 2 years without devaluation as against other EU member States currency; and (iv) 'durability of convergence achieved with respect to participation in the euro exchange-rate mechanism and long-term interest rate levels'.[26] According to Article 104c(1) of the TEU, Member States are prohibited from having excessive government (sovereign) deficits.[27]

The European Commission (EC or The Commission) is charged with monitoring the budget situation of Member States for 'gross errors'.[28] Under Article 104c, budgetary discipline of Member States

23 BBC News, *Timeline: The unfolding Eurozone crisis*, BBC NEWS (June 13, 2012); See also Treaty on European Union, Protocol on Certain Provisions Relating to the United Kingdom of Great Britain and Northern Ireland (stating that the UK "shall not be obliged or committed to moving to the third stage of economic and monetary union without a separate decision. . ." and that the UK "retains its powers in the field of monetary policy. . .").

24 The Preamble of the Treaty on European Union, Title II, Article 2 and Title II, Chapter 1, Article 103(3) all reference 'sustained convergence of the economic performance of the Member States. . ."; See generally Treaty on European Union (1992). This document is on file with the author; See also, Don Melvin, *Greece debt crisis: How did we get here*, CNN.COM (July 7, 2015), http://edition.cnn.com/2015/07/06/europe/greece-how-did-we-get-here/ (last accessed 14 July 2015) (regarding the status of Greece to join the Eurozone in 2001: "To join, a country had to demonstrate it had achieved "economic convergence" with the other Eurozone members—a requirement meant to ensure that different countries would not jeopardize the common currency.").

25 Treaty on European Union, *supra* note 24, Title II, Article 109j(1).

26 *Id.*

27 *Id.* Article 104c(1).

28 *Id.* Article 104c(2); See, for example, BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23 (noting that, in January 2010, an EU Report cited "severe irregularities" in Greek accounting procedures); See also BBC News, *Greek profile – Timeline*, BBC NEWS.COM (1 July 2015), http://www.bbc.com/news/world-europe-17373216 (last accessed 14 July 2015) (noting that in December 2004, "European Commission issues formal warning

is effectively centered on monitoring two criteria: (i) "whether the ratio of the planned or actual government deficit to gross domestic product exceeds *a reference value*. . .";[29] and (ii) "whether the ratio of government debt to gross domestic product exceeds *a reference value*,[30] unless the ratio is diminishing and heading towards the reference value at a satisfactory pace and out of danger".[31] According to Article 1 of the Protocol on the Excessive Deficit Procedure as annexed to the TEU, the reference values are: "(i) 3% for the ratio of the planned or actual government deficit to gross domestic product at market prices; and (ii) 60% for the ratio of government debt to gross domestic product at market prices."[32]

If a Member State, such as Greece in this case, violates these reference values and it results in uncontrollable, excessive government debt, Article 104c sets out the procedure for how the matter will be handled by the European Commission, the Council and the European Parliament.[33] In the case of Greece, since 2009, it has, unfortunately, run afoul of the convergence criteria related to avoiding excessive government debt despite numerous bailout programmes and attempts to implement austerity measures.

B. Greece Bailout: Historical Perspective and Timeline

Since 2009, Greece has been the subject of three debt crisis negotiations, including the current 2015 situation, and received two

after Greece found to have falsified budget deficit data in run-up to joining Eurozone." According to this BBC News timeline, Greece joined the EU in 1981 and the euro replaced Greece's drachma currency in January 2002).

29 Treaty on European Union, *supra* note 24, Article 104c(2)(a) (emphasis added).

30 *Id,* Article 104c(2)(b) (emphasis added).

31 *Id,* Article 104c(2). The relevant reference values are set out in the Protocol on the Excessive Debt Procedures as annexed to the TEU.

32 Treaty on European Union, *supra* note 24, Protocol on the Excessive Deficit Procedure, Article 1.

33 Treaty on European Union, *supra* note 24, Article 104c(3) – Article 104c(14). Interestingly, Article 138e refers to an Ombudsman, the Court of First Instance, and the Court of Justice with respect to complaints related to "instances of maladministration in the activities of the Community Institutions or bodies, with the exception of the Court of First Instance and Court of Justice acting in their judicial role." However, these dispute resolution mechanisms have not been officially invoked nor has a complaint been filed by Greece or any other Member State with respect to numerous criticisms of how Greece's bailout programmes have been handled by the Troika. Note also that Article 104c(10) states that within the framework of Article 104c(1) – 104c(9), "the right to bring actions provided for in Articles 169 and 170 may not be exercised."

bailout packages. In October 2009, a newly-elected Greek government announced that the overall budget deficit was not 6%-8% of gross domestic product (GDP) as previously thought but was actually much higher at between 12%-13% of GDP or a debt-to-GDP ratio of 115%.[34] This triggered a loss in consumer confidence, market confidence, and a decline in Greece's creditor ratings.[35] Starting in December 2009, because of low growth prospects and loss in consumer and market confidence, Greece suffered a series of credit rating downgrades.[36] In response, the Greek government instituted harsh austerity measures internally and, at the same time, sought out bailout options[37] from EU and non-EU institutions.

In May 2010, Greece concluded its first bailout agreement with the Troika to the tune of approximately €240 billion.[38] This first bailout agreement consisted of Greece bringing its budget deficit down to 3% of GDP by 2014 with detailed quarterly monitoring in exchange for "a significant amount of official financial assistance."[39] The IMF would lend to Greece £30 billion over three years while all other EU Member States would make bilateral loans to Greece, "roughly in proportion to the size of their economies, for a total of approximately £80 billion over three years."[40] According to projections at the time, deficit reductions were heavily front-loaded, Greece's largest and primary deficit would disappear by 2012, debt-

34 Sylvia Ardagna and Francesco Caselli, *The Political Economy of the Greek Debt Crisis: A Tale of Two Bailouts* (January 2014) 3. This paper is on file with the author. See also, BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23.

35 *Id.* at 3.

36 *Id.*; See also The New York Times Updated, *Greece's Debt Crisis Explained*, NEW YORK TIMES, July 8, 2015, http://www.nytimes.com/interactive/2015/business/international/greece-debt-crisis-euro.html (last accessed 14 July 2015).

37 Ardagna and Caselli, *supra* note 34, at 3. As we now know, the austerity measures failed to resolve the budget deficits.

38 *Id.* at 4; See also The New York Times Updated, *Greece's Debt Crisis Explained*, *supra* note 36; *Cf* See also, BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23 (saying the May 2010 bailout was a total of €110 billion).

39 Ardagna and Caselli, *supra* note 34, at 4.

40 Ardagna and Caselli, *supra* note 34, at 4. According to Ardagna and Caselli, Germany's contribution to Greece's May 2010 bailout was $29.3 billion. However, they also state that in June 2010, Germany's foreign claims vis-à-vis Greece was 0.3% (0.55%) of the total assets of all monetary and financial institutions, not a large enough exposure to threaten the solvency of Germany's financial institutions. However, from the perspective of debt crisis negotiations, this was hardly a major factor in Germany's hard-line position.

to-GDP ratio would stabilize by 2013 and Greece would be able to issue medium and long-term bonds in 2011, 2012, and 2013 to help offset the debt crisis.[41] Unfortunately, the same projections said that Greece would endure a severe recession until 2012 along with sub-par growth levels.[42] This was not a win-win deal. Economic and financial commentators as well as market analysts were extremely skeptical about the May 2010 bailout and the feasibility of the programme, yet given the macroeconomic status of the global markets at the time and the consequences of a default to Greece, it appeared that no other rational alternative seemed to be available.[43] As argued by Ardagna and Caselli, even though Greece's May 2010 bailout agreement was "socially inefficient"[44] with little chance of success from the perspective of a Pareto-efficiency analysis, an immediate Greek default[45] would have produced perceived catastrophic political, economic, psychological and social risks.[46]

Despite some initial successful steps at executing the May 2010 deal, the bailout failed to resolve Greece's debt crisis and by the beginning of 2011, it was clear that the May 2010 plan had to be revised.[47] According to Ardagna and Caselli, three factors contributed to the growing realization that the May 2010 bailout programme was no longer feasible. First, the deficit estimate was revised to be at 16% of GDP, 2% higher than initially estimated in

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41 *Id.*

42 *Id.*

43 *Id.* at 4-6 (see also discussion on rationality and Pareto-efficiency of this deal and an analysis of the factors that led to the ECB-IMF bailout programme instead of allowing a Greek default).

44 *Id.* at 10 (defining a bargaining outcome as "socially inefficient if it is not on the Pareto frontier constructed from the objective functions of this set of social planners." For Ardagna and Caselli, the objective functions appears to mean symmetric and unbiased beliefs in terms of external reviews of the May 2010 bailout as well as an analysis of similar stabilization programmes).

45 *Cf* Edward Harrison, *Negotiating Strategies and Political Constraints Regarding Greece*, CREDIT WRITEDOWNS.COM (February 20, 2015), https://www.creditwritedowns.com/2015/02/negotiating-strategies-and-political-constraints-regarding-greece.html (last accessed 14 July 2015) (regarding the 2015 debt crisis negotiations, Harrison seems to have a different perspective of Greek's potential default: "I still believe this is an option that has a high likelihood of occurring. Greece now has a primary surplus, which means that it doesn't necessarily need fresh funding to maintain itself. It could simply default and meet non-interest obligations indefinitely until the existing debt obligations get restructured. This was always going to be the trump card for Greece.").

46 Ardagna and Caselli, *supra* note 34, at 9-10

47 *Id.* at 15.

May 2010. Second, the "Dauville announcement" by Germany's Chancellor Merkel and France's President Sarkozy, caused yields to increase sharply and meant greater contributions and higher spread of funds would be required by all member countries, including Greece, which was already stretched too thin.[48] Finally, Greece's implementation of the May 2010 austerity reforms slipped significantly, perhaps due in part to what Ardagna and Caselli characterize as "the political costs of implementing reforms that may later appear to have been pointless was perceived as higher"[49] than not implementing any reforms. Adding to this, Greece found it would be increasingly difficult to implement the structural reforms and foster privatization projects that were essential to the 2011-2013 proposed bailout programme.[50]

After further negotiations, in July 2011, Greece and its international creditors agreed to a new revised bailout programme,[51] valued at €109 billion ($155 billion; £96.3 billion) in exchange for reforms.[52] The July 2011 bailout consisted of: (i) even tougher austerity measures and structural reforms, including selling many state-owned assets; (ii) eurozone countries, through the newly-created European Financial Stability Facility (EFSF) would contribute €109 billion in bailout funds; and (iii) an ECB compromise on the element of Private Sector Involvement (PSI

48 *Id.*

49 *Id.* at 15-16. One could argue that, even before Merkel stated in recent media reports that there was a loss of trust and reliability between Greece and the EU with respect to the 2015 bailout negotiations, there appears to have been doubts and a lack of trust by Greece towards the EU that the May 2010 austerity programme was viable both politically and economically. Thus, there was little hope of a deal that had legitimacy from the standpoint of a successful negotiated outcome. See for example, Steven Erlanger, *Deal on Greek Debt Crisis Exposes Europe's Deepening Fissures*, THE NEW YORK TIMES (July 13, 2015), http://www.nytimes.com/2015/07/14/world/europe/greece-debt-deal.html (last accessed 14 July 2015)
(last accessed 14 July 2015) (quoting Germany's Chancellor Angela Merkel's view of Greece that "the most important currency has been lost: that is trust and reliability.").

50 Ardagna and Caselli, *supra* note 34, at 16. See also The New York Times Updated, *Greece's Debt Crisis Explained*, *supra* note 36 (stating that the majority of funds received as part of the bailout programme were actually used to pay off Greece's international loans instead of going directly into the Greek economy). This has been one of the major arguments by Greece as well as a criticism of how the Troika handled the bailout programme in terms of setting Greece back on the road to recovery.

51 Ardagna and Caselli, *supra* note 34, at 16.

52 BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23.

component),[53] considered to be a novel addition to the July 2011 bailout programme. Similar to Greece's May 2010 bailout, Ardagna and Caselli state that the July 2011 bailout programme was equally "outside the feasible set",[54] was "even more suboptimal that the May 2010 one"[55] and both the May 2010 and July 2011 agreements were "socially inefficient".[56] According to Ardagna and Caselli, "a set of benevolent planners (one for each country), all sharing the beliefs expressed by the vast majority of commentators and analysts at the time, would have been made better off by deals allowing more time to Greece, and (in the case of the 2011 bailout), no PSI component."[57] Specifically with respect to the PSI component, it was included as a means it was thought to serve as a means to seek debt swap and debt relief but, in the end, it was only a symbolic PSI rather than a true negotiated element that would meet the needs and interests of Greece. The PSI component was symbolic[58] in the sense that, after all calculations are done, the most Greece might get is the mid-point of the bargaining range at only 6% reduction across all creditors, not enough to provide true debt relief.[59] According to Ardagna and Caselli, "a meaningful PSI component which would have truly reduced the present value of the debt could conceivably

53 Ardagna and Caselli, *supra* note 34, at 16-17 (Private Sector Involvement (PSI) meant that Greek negotiators could bargain with private lenders to "achieve a voluntary reduction in the value of the debt of approximately 20%."). However, as argued by Ardagna and Caselli, this would not give Greece any real relief when calculation are done with respect to debt exposure by private lenders. This PSI component was an additional non-value- added negotiated item that would only compound Greece's debt crisis and offer no real relief.

54 *Id.* at 16.

55 *Id.*

56 *Id.* at 17-19; See also BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23 (quoting the former Greek Finance Minister Evangelos Venizelos as saying that Greece had been "blackmailed and humiliated" and used as a "scapegoat" for the EU's incompetence). Similar language has been use by both Tsipras and former Finance Minister Yanis Varoufakis regarding the 2015 bailout negotiations.

57 Ardagna and Caselli, *supra* note 34, at 19.

58 *Id.* at 17 ("Needless to say, by specifying a target haircut of 20%, the agreement effectively made it an upper bound on the size of the equilibrium outcome. With a publicly stated goal of 20%, the Greek negotiators could hardly have picked an initial negotiating position of, say, 50%. *Hence, it was built into the bailout agreement that the haircut on private holders was to be between 0 and 20%.*") (emphasis added). This cap on the 'haircut' percentage effectively undermined the negotiation position of Greek negotiators with respect to private lenders).

59 *Id.* at 19

have made at least some participants better off than no PSI at all."[60] All in all, one could argue that Greece was out-negotiated at every step of the 2010 and 2011 bailout agreements.

Fast forward to 2015 and Greece is no better off after having negotiated two arguably unsuccessful bailout programmes.[61] In January 2015, Greek voters took to the polls again and elected the anti-austerity, radical leftist Syriza party into power.[62] In January 2015, Alexis Tsipras of the Syriza Party became Prime Minister of Greece and formed a coalition with the nationalist Independent Greeks party.[63] Thus began a game of negotiation brinksmanship, which, despite a July 2015 'unanimous agreement' between Greece and its international creditors,[64] is yet to be over. In February 2015, Tsipras's government negotiated a four-month extension to Greece's existing bailout programme "in return for dropping key anti-austerity measures and undertaking a Eurozone approved reform programme."[65] In June 2015, negotiations broke off and the ECB ended emergency funding to Greece,[66] presumably to see if Greece would adapt to the austerity reforms but, according to some, it was really a way to 'punish' Greece and 'tighten the noose' regarding the required reforms for any further aid. As a result, Greece closed its banks (reopened in late July 2015), imposed capital controls (still

60 *Id.*

61 BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23 (noting that the 13 January 2012 talks between Greece and its private creditors to discuss debt write-of stalled and were re-scheduled for 18 January. In addition, the Troika demanded even more spending cuts to get the second bailout payment of €130 billion); See also Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24 (". . .the bailout medicine didn't do the trick." The amount Greece owed to international lenders was no 135% of GDP, general unemployment was near 30% and youth unemployment was over 50%).

62 BBC News, *Greek profile – Timeline*, *supra* note 28.

63 *Id.*

64 BBC News, *Greek debt crisis: Eurozone summit strikes deal*, BBC NEWS.COM (July 13, 2015), http://www.bbc.com/news/world-europe-33503955 (last accessed 14 July 2015) (quoting Donald Tusk that "17 hours of negotiations, we have reached agreement" and "the risk of Greece leaving the Eurozone has been averted."). At the point of this announcement, further negotiations on the details of the bailout programme still remained to be negotiated and passed via respective Parliaments.

65 BBC News, *Greek profile – Timeline*, *supra* note 28 (Relations between Greece and its international creditors was on shaky ground to begin with. Relations between Tsipras, the former Greek Finance Minister Yanis Varoufakis and reps of the international lenders soured during negotiations, leading to a stalemate, a 'blame-game', and games of brinksmanship on which side would eventually cause the 'Grexit' from the Euro).

66 *Id.*

ongoing),[67] and called a referendum for early July 2015 on a new European Union bailout programme. In addition, Greece missed its early July 2015 payment to the IMF, becoming the first developed country to do so.[68] The Greek referendum was seen as a bold move by Greeks, somewhat confusing to the international community and a waste of time by the Troika and Europe.[69] One can also consider Tsipras's call for the Greek referendum as a strategic negotiating move, designed, in part, to perhaps seek enough vote of confidence from the Greek people, to only then agree to a deal regardless of whether it would subsequently betray the Greek people's desire for no more austerity in exchange for a deal. Others have commented that Tsipras' real motive behind the delay tactics and the negotiation posturing has really been to leave the Eurozone but at the hands of Brussels so that the EU would be to blame.[70] Publically, however, Tsipras told Greeks that they should vote 'No' during the referendum to give him greater negotiating power with the Troika[71] and that the referendum was not an 'in-out' referendum on staying in the Eurozone. While, according to Tsipras, Varoufakis, and the Greek people, the referendum is about gaining greater leverage in the negotiations, the tone is decidedly opposite from the perspective of the Greece's international creditors and the EU. France's Hollande was quoted as saying, "What is at stake is whether or not Greeks

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67 Capital controls = Greeks could only withdraw €60 per day and most foreign transfers were unavailable though foreign credit cards appear to be unaffected.

68 BBC News, *Greek profile – Timeline*, *supra* note 28.

69 Waterfield, *supra* note 1 (stating that the rejection by Greece of the EU-IMF bailout programme in a historic referendum "was a political victory for Tsipras but infuriated Europe.").

70 BBC News, *Greece debt crisis: Tsipras promises 'credible reforms'*, BBC NEWS.COM (July 9, 2014), http://www.bbc.com/news/world-europe-33441183 (last accessed 14 July 2015) ("One widely held view is that Mr Tsipras has always intended to leave the euro, but wants to get kicked out rather than leave of his own volition. That way it's Brussels and Berlin which get the blame.").

71 Daniela Deane, *Greece's flamboyant finance minister quits, decries 'debt bondage'*, THE WASHINGTON POST.COM (July 6, 2015) (quoting Alexis Tsipras after Sunday's referendum: "The mandate you gave me is not the mandate of a rupture with Europe, but a mandate to strengthen our negotiating position to seek a viable solution,"); Ambrose Evans-Pritchard, *Greece threatens top court action to block Grexit*, THE TELEGRAPH.CO.UK (June 29, 2015), http://www.telegraph.co.uk/finance/economics/11707092/Greece-threatens-top-court-a. . . (last accessed 14 July 2015) (quoting Varoufakis as saying "We are taking advice and will certainly consider an injunction at the European Court of Justice. The EU treaties make no provision for euro exit and we refuse to accept it. Our membership is not negotiable.").

want to stay in the Eurozone or want to take the risk of leaving."[72] Evans-Pritchard also quotes Sigmar Gabriel, Germany's vice-chancellor and Social Democrat leader, as saying: "It must be crystal clear what is at stake. At the core, it is a yes or no to remaining in the Eurozone."[73] In addition, Jean-Claude Juncker, the European Commission's president echoes the same sentiment by saying "A 'No' would mean that Greece had said 'No' to Europe."[74] Clearly this negotiation and political posturing only exacerbates the degree of misinformation and miscommunication between the negotiating parties and the people of Greece, who are left flabbergasted by the seemingly turn-about betrayal of Tsipras and the Greek government.

Regardless, this seemingly double, yet contradictory purpose of the referendum only led to more confusion and, ultimately, a backlash against Tsipras by the Greek people as well as mutiny by members of his own Syriza party and the coalition nationalist party.[75]

The confusion (or 'fog of war' to use a well-known negotiating term) surrounding the referendum was further exacerbated by the general perception among analysts and commentators in the international that Greece wants to stay in the Eurozone but does not want austerity measures.[76] In the 5 July 2015 referendum, the Greek people overwhelmingly (61% of the vote) voted "No" to more austerity for aid in the form of additional tax increases and pension cuts.[77] At the same time, the deal that was on the table before the

72 Evans-Pritchard, *supra* note 71.

73 *Id.*

74 *Id.*

75 Matina Stevis and Georgi Kantchev, *Greek Debt Crisis: In Athens, Jubilation Gives Way to Dismay and Confusion*, THE WALL STREET JOURNAL.COM (July 12, 2015), http://www.wsj.com/articles/greek-debt-crisis-in-athens-jubilation-gives-way-to-disma. . . (last accessed 14 July 2015).

76 Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24; See also Stevis and Kantchev, *supra* note 75 (quoting John Dimakis, director at Athens-based communications consultancy STR, which conducts public-opinion research: "An alarming proportion of the Greek public is showing deeply irrational behavior, and over the past few weeks we are seeing striking contradictions between what people say they want and how they vote or who they support," he said. "How can we decipher their preferences when they have no rational basis?")

77 Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24; See also Gabriele Steinhauser, Andrea Thomas and Matthew Dalton, *Greek Debt Crisis: Athens, Creditors Scramble to Find Solution After Vote*, THE WALL STREET JOURNAL.COM (July 6, 2015), http://www.wsj.com/articles/conditions-not-right-for-new-negotiations-on-greek-bailout-germany-says-1436180226 (last accessed 14 July 2015). A casualty of the referendum was that

referendum was no longer on the table.[78] Despite the resounding "No" vote by the Greek people, Tsipras was not able to translate this into an equal victory at the negotiating table with Greece's international creditors. Speaking to the European Parliament on Tuesday after the referendum, Tsipras hailed the results of the referendum, saying that the Greek people "stood up and were counted – we have to listen to what they said."[79] It seems the international creditors had little sympathy for this.[80] At the same time, Tsipras presented no new concrete proposals at the time, seemingly dismissing the calls by the Troika, Germany, France and others who expected to see serious alternative reform proposals if the Greek people rejected the EU bailout terms.[81] Some members of the European Parliament received Tsipras with praise while others expressed anger and frustration.[82] On 9 July 2015, creditors expected Greece to submit serious reform proposals, which Tsipras did with the help, support, and mediation efforts by France's Hollande. In the intervening meetings, Tsipras faced the daunting choice of abandoning the euro currency and watching the Greek economy and banking system collapse or accepting even more austerity measures for aid.[83] He chose the latter option, though one might argue whether the austerity-for-aid was the lesser of two evils.

By 14 July 2015, all 28 members of the European Union met in

Yanis Varoufakis was ousted as finance minister, having resigned due to his 'confrontational style' that apparently alienated other European finance ministers in negotiations.

78 Steinhauser et al, *supra* note 77 (noting that Germany's Chancellor Merkel, Greece's largest debt holder and lender using an age-old negotiation tactic of limited time, stating "Time is pressing here and it is important to us that such proposals must come this week so we can resolve the situation.").

79 BBC News, *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70

80 *Id.*. The Troika of international creditors as well as other EU members did not seem to have much sympathy with the Greek people or the outcome of the referendum apart from the understanding and acceptance that the Greek people wanted to remain part of the EU, a point which ultimately became the 'walkaway point' as well as a 'checkmate' move for EU in forcing Greece to accept aid for austerity.

81 BBC News, *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70; Steinhauser et al, *supra* note 77.

82 BBC News, *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70 (one German MEP accused Tsipras of insulting other European leaders).

83 Don Melvin, *Between rock, hard place, Greece picks austerity: How did it get into this mess?*, CNN.COM (July 13, 2015), http://edition.cnn.com/2015/07/13/europe/how-greece-reached-this-point/ (last accessed 14 July 2015); Waterfield, *supra* note 1.

an emergency meeting and 'unanimously agreed' that there would not be a 'Grexit' and that a new bailout programme conditioned on austerity measures, worth approximately €86 billion ($127.8 billion), would be approved, subject to approval by Greece's Parliament and the legislative bodies of other EU members, most notably Germany and France.[84] The July 2015 EU Summit agreement for Greece's new bailout programme also includes a requirement for Greece "to transfer 50 billion euro of state assets to a holding company that will seek to either sell or generate cash from them."[85] Perhaps the only consolation is that these funds/assets will reside in trust within Greece instead of in Luxembourg as originally planned.[86] In addition, the ECB (European Central Bank) maintained the Emergency Liquidity Assistance (ELA) for Greece at its current level of €89 billion.[87] For Tsipras, it was a hollow victory, with many calling it a further humiliation for Tsipras and Greece,[88] exacerbated by the fact that since Greece owes money to many EU members under prior bailout deals, those same countries neither want to see Greece leave the euro because they would lose out on repayments or can ill afford any debt relief given the staggering amounts to be repaid.[89] For example, Greece owes Finland over €5 billion, nearly 2.5% of Finland's GDP.[90] The exposure is worse for other EU Member States, including EU's largest lenders, France and Germany, as well as The Netherlands, Spain, Ireland, and eastern

[84] *Id.* (the July 2015 bailout agreement "averted a worst-case outcome for Greece in terms of a 'Grexit' but it "only established the basis for [further] negotiations on an aid package", including recapitalizing the Greek banks for a further €25 billion); See also Eleni Chrepa, Ian Wishart and Rebecca Christie, *Greece debt crisis: PM Alexis Tsipras faces Syriza mutiny after capitulating to demands*, THE SYDNEY MORNING HERALD.COM (July 14, 2015), http://www.smh.com.au/action/printArticle?id=998228763 (last accessed 14 July 2015).

[85] See also Chrepa et al, *supra* note 84.

[86] *Id.* Tsipras used this 'consolation prize' as a message to the Greek people that it was a 'win' for Greece, missing the bigger picture or 'loss' that Greek assets would be subject to external oversight and disposal.

[87] Waterfield, *supra* note 1.

[88] Stevis and Kantchev, *supra* note 75.

[89] Waterfield, *supra* note 1 (citing how Tsipras demanded debt relief while other EU member states, except France, rejected that idea and wanted only "a serious plan" for how Greece was going to deal with its debt issues); *Cf* Marcus Walker, *Greek Debt Crisis: Germany Flexes Its Muscles in Talks with Bailout Ultimatum*, THE WALL STREET JOURNAL.COM (July 12, 2015), http://www.wsj.com/articles/greek-debt-crisis-europe-pushes-athens-to-brink-with-bail. . . (last accessed 14 July 2015) (Germany expresses its ok with Greece leaving euro).

[90] Waterfield, *supra* note 1.

European countries.[91]

Ultimately, was this outcome the best possible outcome – a win-win negotiated outcome? Was the outcome Pareto-efficient? Some commentators and authors such as Ardagna and Cosselli clearly believe the agreements lack legitimacy on many levels and are sub-optimal. The next few sections focus on an analysis of the role that BATNA, ZOPA, Pareto-criterion, power, leverage and coercion played in the Greek debt crisis negotiations and whether any of the parties could have more effectively and efficiently resolved the crisis towards a solution that is mutually sustainable.

III. Analysis of Negotiation Principles and Tactics

A. Definitions

For the purposes of this article, negotiation means "the act of communicating formally or informally to reach agreements. . . [which] requires identifying and working out differences."[92] From this definition, one can clearly see that negotiation, especially effective bargaining, requires a great degree of flexibility and planning.[93] With respect to multilateral or multiparty negotiations, Professor Mnookin as well as Lax & Sebenius point out that such negotiations "often take place within institutions that have created procedural rules allowing less than all the parties to change the status

91 *Id.*

92 Robert S. Adler and Elliot M. Silverstein, *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 HARV. NEGOTIATION L. REV. 1, 4 (Spring 2000); See also, ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN xi (1981) ("[Negotiation] is back-and-forth communication designed to reach an agreement when you and the other side have some interests that are shared and others that are opposed."); G. RICHARD SHELL, BARGAINING FOR ADVANTAGE: NEGOTIATION STRATEGIES FOR REASONABLE PEOPLE 6 (1999) ("A negotiation is an interactive communication process that may take place whenever we want something from someone else or another person wants something from us."); DAVID A. LAX & JAMES K. SEBENIUS, THE MANAGER AS NEGOTIATOR: BARGAINING FOR COOPERATIVE AND COMPETITIVE GAINS 11 (1986) ("[Negotiation is] a process of potentially opportunistic interaction by which two or more parties, with some apparent conflict, seek to do better through jointly decided action than they could otherwise."); ROY LEWICKI ET AL., NEGOTIATION 6 (3d ed. 1999) ("[Negotiation is a] formal process that occurs when parties are trying to find a mutually acceptable solution to a complex conflict."); DEAN G. PRUITT, NEGOTIATION BEHAVIOR 1 (1981) ("Negotiation is a process by which a joint decision is made by two or more parties.").

93 Adler and Silverstein, *supra* note 92, at 64.

quo, notwithstanding the objections of some."[94] In addition, as early as 1994, Zartman[95] and then later Raiffa,[96] Lax & Sebenius[97] and Mnookin[98] point to a less than robust progress in understanding theory and complexity multilateral negotiations. However, the negotiation principles and theories created out of a deep and extensive understanding of bi-lateral negotiations can certainly serve as a launching pad for testing and building on the understanding of how to make multiparty negotiations more effective and mutually beneficial for all negotiating parties.

The case concerning the Greek debt crisis is certainly one of multilateral negotiations with a variety of parties, including 28 EU member nations (e.g., UK, Greece, France, Germany, Finland), non-EU nations (e.g. USA), and international institutions (e.g., International Monetary Fund, European Union, European Central Bank). In addition to these parties, there are countless investors and third parties with a strong vested interest in these negotiations. In the next few sections, this article analyses the effectiveness of the Greek debt crisis negotiations from the perspective of key negotiation

94 Mnookin, *supra* note 2, at 18 (citing Lax & Sebenius, *supra* note 2, at 153).

95 INTERNATIONAL MULTILATERAL NEGOTIATION APPROACHES TO THE MANAGEMENT OF COMPLEXITY xi (William Zartman ed., 1994) (". . . Implicitly or explicitly all negotiation theory addresses bi-lateral negotiations, but the complexity of multilateral negotiations remains untreated.")

96 RAIFFA, *supra* note 2, at 11 ("[t]here is a vast difference between conflicts involving two disputants and those involving more than two disputants.").

97 Lax & Sebenius, *supra* note 2, at 153 ("the clearest and most powerful advances in theory have been within or mainly inspired by the bi-lateral or two-party case."); *Cf* Anne G. Perkins, *Negotiations: Are Two Heads Better Than One?* 71 HARV. BUS. REV. 13 (1993) (reporting on research indicating that two-on-one negotiations often produce more valuable agreements for both sides than one-on-one negotiations); John L. Graham & Roy A. Herberger, Jr., *Negotiators Abroad: Don't Shoot From the Hip*, 61 HARV. BUS. REV. 160, 162 (1983) (advising that in international negotiations, business people bargain in teams because "[b]eing outnumbered or, worse, being alone is a terrible disadvantage in most negotiating situations. Both Perkins and Graham & Herberger understood multiparty negotiations in the field of international business).

98 Mnookin, *supra* note 2, at 2-3 (Spring 2003) (acknowledging the comments by Zartman, Raiffa and Lax & Sebenius with respect to extent of understanding of multilateral negotiations and also noting that much of his own work focused on bilateral negotiations); See, for example, ROBERT MNOOKIN ET AL, BEYOND WINNING: NEGOTIATING TO CREATE VALUE IN DEALS AND DISPUTES (2000) (about this book, Mnookin writes: "With the exception of one chapter dealing with multiparty legal disputes, this book primarily analyzes legal negotiations in which two individual clients each hire an attorney, thereby creating a four-person system with lawyers in the middle. This four-person structure allows the analysis to be "simple and clear," but the book acknowledges that "reality is rarely so kind" and that many legal disputes and deals involve not two parties, but several. . .").

principles and tactics.

B. MPP, BATNA, ZOPA, and the Pareto Criterion

Negotiation experts advise that a party should first establish its "target point",[99] "maximum plausible position" (MPP),[100] or "aspiration base".[101] Virtually each of these terms mean the same thing – the highest aspiration or "the most favourable outcome of a negotiation that is achievable."[102] Next, a party should establish specific points or terms that are realistically acceptable to the other party.[103] Finally, each party should have a bottom line or the "walkaway point", the "point at which rejecting a deal constitutes a superior alternative to taking the other side's best offer."[104] This is sometimes called the "BATNA" (Best Alternative to a Negotiated Agreement),[105] the "Minimum Settlement Point" (MSP), or "resistance point". Each party should also know the other side's BATNA. Each party's BATNA should be represented in the form of a reservation value, which is "the amount at which the bargainer is indifferent between reaching a deal and walking away to his BATNA."[106] For example, if Greece's BATNA is to negotiate a new bailout deal for €25 billion, the reservation value may also be €25 billion or less. The Troika's BATNA may be €15 billion and their reservation value may be €10 billion. There is usually also a "Zone

99 CHARLES B. CRAVER, EFFECTIVE LEGAL NEGOTIATION AND SETTLEMENT 63 (1993) (defining "target point" as the "best result you hope to achieve").

100 Roger Dawson, *Secrets of Power Negotiating*, 42 SUCCESS 57, 58 (1995) (defining "maximum plausible position," as "the most you can ask for and still appear credible").

101 WYNAND PIENAAR & MANIE SPOELSTRA, NEGOTIATION: THEORIES, STRATEGIES & SKILLS 26 (1991) (defining "aspiration base" as "the maximum [a negotiator] could possibly attain"); WILLIAM URY, GETTING PAST NO: NEGOTIATING YOUR WAY FROM CONFRONTATION TO COOPERATION 25 (1991) (stating "low aspirations tend to be self-fulfilling. Not surprisingly, those who begin with realistically high aspirations often end up with better agreements.").

102 Adler and Silverstein, *supra* note 92, at 64.

103 *Id.* at 64-65 (quoting URY, *supra* note 101, at 25 as stating that this is the "what would you be content with" proposal.

104 *Id.* at 65.

105 URY, *supra* note 101, at 21-22 ("[y]our BATNA is your walkaway alternative. It's your best course of action for satisfying your interests without the other's agreement."); Mnookin, *supra* note 2, at 5 ("The BATNA indicates what that negotiator can do away from the table if no deal is reached."); ROBERT MNOOKIN ET AL, *supra* note 98, 22-23 (noting that rational negotiators should identify their BATNAs and then define their "reservation points" based on their BATNA).

106 Mnookin, *supra* note 2, at 5.

of Possible Agreement" (ZOPA), which is defined as "the bargaining range created by the two reservation values."[107] In the hypothetical example above, the ZOPA is between €10 billion and €25 billion. Therefore, the solution to the dispute lies in resolving the €15 billion surplus and achieving a settlement that lies within the ZOPA. In the example above, if Greece and the Troika reach a deal that falls within the ZOPA (bargaining range), that deal would be considered 'Pareto superior' as compared with reaching no deal. An agreement between €10 billion and €25 billion would be Pareto-efficient.

According to Mnookin, in bilateral negotiations, creating value is determined in terms of Pareto-efficiency, meaning that "efficiency is improved whenever there is an alternative resolution that either makes both parties better off or makes one party better off when the other party is no worse off."[108] Thus, an agreement that serves the interests of each party is better than the status quo or no agreement at all. In the case of multilateral negotiations, creating and measuring value through the lens of Pareto criterion may not be efficient at all.[109] According to Mnookin, the Pareto criterion requires that "every party to a negotiation have veto power over the deal."[110] This means that unless there is unanimity of decision in a multiparty negotiation, the results of the negotiation will not be Pareto-efficient[111] even though the results may still be better off than no deal at all.

In the dispute between Greece and its international creditors over the post-July 2011 bail out programme (i.e., the July 2015 bailout negotiations), Prime Minister Tsipras's maximum plausible position (MPP) was to get a massive bailout loan with no further austerity measures, retain some of new legislation which appeared to remove the austerity measures from the previous two bailouts, obtain some kind of debt relief or debt restructuring, and stay in the EU and Eurozone.[112] According to Stevenson, Greece's BATNA seems to be a total economic meltdown.[113] According others, Greece's

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107 *Id.*

108 Mnookin, *supra* note 2, at 15.

109 *Id.*

110 *Id.*

111 *Id.* at 16.

112 *Cf* Seth Stevenson, *Are the Greeks Sound Negotiators?*, SLATE MONEYBOX (February 11, 2015). On file with the author. See also Walker, *supra* note 89 (discussing the 'incompatible aims between Greece, IMF and Germany, with Tsipras of Greece wanting "to keep Greece in the Eurozone if the price is right, win new financing, win relief on existing debt, and minimize austerity").

113 Stevenson, *supra* note 112. *Not All Greek To Us: Multi-level Multi-party EU*

negotiating room is limited "to demanding an end to austerity or defaulting unilaterally as a BATNA."[114] This is because Tsipras' Syriza party ran as an anti-austerity party with a mandate to end austerity but, at the same time, it pledged "not to leave the euro under any circumstances because Greek citizens still wan the euro and because leaving the euro would be a logistical and economic minefield."[115] The MPP of the Troika as well as their BATNA appears to be a third bailout programme on the condition that Greece implement severe austerity measures to bring it in line with the convergence criteria discussed above, especially the criteria related to excessive sovereign debt. These austerity reforms include, but are not limited to, "overhaul of sales tax, a broadening of the tax base, and a clampdown on pension costs."[116] For the Troika (EU-ECB-IMF), who perceive themselves as having the stronger negotiating power, the only item to negotiate further is simply the exact value of the bailout loan conditioned on the terms and conditions of austerity reforms with extensive oversight by the EU. The Troika, especially Germany, is willing to consider a 'Grexit' scenario if Greece does not adopt austerity measures for aid, so, for the Troika, the "walkaway point" is austerity for aid. [117] Given these facts, the Troika does seem to have the stronger negotiating power.[118] According to a former career diplomat and investment banker, the areas of possible agreement are only "back-loaded austerity and no debt write-down. . . only maturity extensions and interest rate reductions."[119] According to the same analyst, there are only two alternatives to a negotiated agreement: 1) default; and 2) Greece

Debt Crisis Negotiations, WATERSHED ASSOCIATES.COM (July 9, 2015) ("In this case, everyone's BATNA is a departure of Greece from the Eurozone common monetary system. This would reduce the obligation on the rest of Europe to save the Greek economy, while allowing Greece to pay off its debts with a national currency it alone controls. But the long-term ramifications of such an unprecedented event are impossible to predict with any certainty. So you should expect all parties to continue to try to avoid this dramatic step through more negotiation.").

114 Harrison, *supra* note 45.

115 *Id.*

116 See also Chrepa et al, *supra* note 84.

117 Stevenson, *supra* note 112 ("For the troika, walking away from the table with no deal will lead to a near-certain Greek default. Which means never recouping those hundreds of billions of owed euros. The troika can absorb those losses, even if it wouldn't be thrilled about them.).

118 Harrison, *supra* note 45.

119 *Id.*

exiting the Eurozone.[120]

According to Mnookin, the requirement of unanimity in order to achieve Pareto-efficiency in multiparty negotiations can create "the strategic risk of holdout problems."[121] This can lead to time consuming and difficult bargaining that results in increased transaction costs and a high probability that negotiations will break down.[122] This was certainly the case when Tsipras, after being elected Prime Minister of Greece, met with his European Union partners and creditors to seek a bailout programme without further austerity and possibly debt restructuring or debt relief. Initially, Tsipras avoided negotiations with the Troika and, instead, tried to engage in bilateral negotiations solely with Germany's Chancellor Angela Merkel, "believing that she would make a fundamentally political decision to keep Europe united, even at the expense of German economic orthodoxy."[123] This bilateral negotiation, or better yet Tsipras's negotiation strategy at this time, proved to be a major miscalculation,[124] especially after the surprise referendum. Merkel's BATNA now changed to the splintering of the Eurozone as a better option for Europe than a deal which allows Greece to get yet another bailout without tough economic reforms.[125] Clearly what Tsipras was proposing to Merkel would not have resulted in a Pareto-efficient negotiated agreement.

After nearly a "six month offensive against German-inspired austerity . . .[during which Tsipras]. . .succeeded only in deepening his country's economic crisis and antagonizing his European counterparts",[126] especially Germany, Tsipras was forced to accept a "face-saving compromise"[127] of an aid-for-more-austerity' bailout programme. In the end, even the multilateral negotiations between Greece and Germany yielded a Pareto-inefficient, yet necessary, outcome by Mnookin's standards and a 'socially inefficient' based on Ardagna and Caselli's analysis of Greece's May 2010 and July 2011 bailout program. Contrary to Mnookin's view of the unanimity requirement and it potential problems, here there was, at least as

120 *Id.*
121 Mnookin, *supra* note 2, at 15.
122 *Id.*
123 Walker, *supra* note 89.
124 *Id.*
125 *Id.*
126 See also Chrepa et al, *supra* note 84; Walker, *supra* note 89.
127 See also Chrepa et al, *supra* note 84.

reported by in the media, unanimity by all parties,[128] including Tsipras, to the multiparty negotiation in favor of the basic framework of the July 2015 bailout programme.[129]

However, if one digs deeper it seems clear that, in reality, there were 'hold-outs', including Tsipras, some EU members and perhaps even France's Hollande, with respect to whether the basic framework of the July 2015 aid-for-austerity reforms program was acceptable or even sustainable.[130] While ultimately the more mainstream, conservative, socialist, and liberal groups in the EU Parliament, led by Germany, eventually seem to have 'won' the day in forcing Greece to capitulate to an even more stringent aid-for-austerity bailout programme in exchange for averting a 'Grexit', one wonders whether applying the "sufficient consensus" criterion for decision-making in multiparty (political) negotiations could have produced a negotiated agreement that is more widely acceptable and sustainable.[131]

128 *Cf* Ardagna and Caselli, *supra* note 34, at 22-25 (discussing the bargaining frictions and communication frictions that arise because of the way in which EU summits and related pre-Summit media coverage impact the bargaining stance of each of the parties). The TEU generally requires unanimous agreement by EU member states and this, combined with the bargaining and communication frictions, may potentially may create a 'false-positive' in the assessment that there was a 'unanimous agreement' between the EU members with respect to agreeing to a third bailout programme for Greece, thus averting a 'Grexit'. To some extent, these negotiating postures are problematic and mask the true issues within the negotiations.

129 See also Chrepa et al, *supra* note 84; Don Melvin, *Between rock, hard place, Greece picks austerity: How did it get into this mess?, supra* note 83.

130 See for example, BBC News, *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70 (reporting that several European MEPs at the meeting of the European Parliament "displayed placards saying "No", praising the result of the Greek referendum."); See also, Felicity Capon, *Picketty: Germany could 'destroy Europe' with austerity demands*, NEWSWEEK.COM (July 6, 2015), http://europe.newsweek.com/piketty-germany-could-destroy-europe-austerity-demands. . . (last accessed 14 July 2015) (quoting Thomas Piketty, French academic and author of *Capital in the 21st Century* (2014) as criticizing Germany's hard-line position on austerity when, according to Piketty, ". . .Germany is really the single best example of a country that, throughout its history, has never repaid its external debt" and that "Currently, Germany is profiting from Greece as it extends loans at comparatively high interest rates. . ."). In addition, both France, the IMF's Christine Legarde, and the US have been sympathetic to Greece's position and its concerns about the impact of even more austerity to the Greek economy, not to mention the psychological costs of austerity to the mind-set of Greek youth and businesses.

131 Mnookin, *supra* note 2, at 18-19 (discussing and proposing the use of sufficient consensus criterion for multiparty negotiations as compared with the unanimity requirement in order to achieve Pareto-efficient outcomes). The concept

According to Mnookin, a "sufficient consensus" criterion for decision-making in multiparty political negotiations, as used in the disputes in South Africa and Northern Ireland to transform political institutions, "mitigated the holdout problem and encouraged the formulation of a broad coalition of moderate centrist parties that had previously been in deep conflict."[132] The use of sufficient consensus, in both the South Africa and Northern Ireland multiparty negotiations, allowed the negotiations to "maintain a spirit of inclusiveness while avoiding the strictures of unanimity."[133]

With respect to the Greek debt crisis negotiations, as confirmed by several media reports, there was no clear agreement on a final, detailed bailout agreement, though there seems to be an agreement that Greece will receive another bailout, conditioned on Greece implementing austerity reforms, both economic and structural reforms. In addition, Greece would not exit the European Union or Eurozone. Until the last minutes, one could argue that there was no agreement on 'Grexit', with Germany's Merkel and other EU finance ministers being open to the idea of 'Grexit' while other countries, such as France and Luxembourg, along with the US (not a member of the EU) as well as a variety of expert commentators, urged EU leaders to find a solution in which Greece stays within the Eurozone. In addition, there were, and still are, disagreements about other key items such as debt restructuring, what to do with the PSI component of the July 2011 bailout package, and debt relief in which Germany is still staunchly holding to its position against debt relief while France, the IMF and the US argue that, without debt relief, Greece's debt crisis is unsustainable[134] and will spiral out of control,

of "sustainable debt" was proposed by Greece and reinforced by the US as well as the IMF. However, at least at the time of the early-July 2015 framework decision, Germany and others were opposed to the idea of any debt relief or debt restructuring that would lead to sustainable debt. More recently, in late July 2015, there appears to be greater acceptance of the idea though this is not yet part of the third official bailout agreement for Greece.

132 *Id.* at 18-19, 21.

133 *Id.* at 18. As highlighted by Mnookin, in South Africa, the goal was "to create an interim constitution, dismantle apartheid, and prepare for the country's first open elections. In Northern Ireland, the goal was to create a framework for self-government.").

134 *See, eg.,* Capon, *supra* note 130 (quoting Picketty as arguing that debt relief must be incorporated on the basis of historical accounts where debt relief was necessary for countries, including Germany); *Cf.* Edmund F. Phelps, *Why Debt Relief Won't Solve Greece's Problems*, HUFFINGTON POST (July 13, 2015, 1:59 PM),, http://www.huffingtonpost.com/edmund-s-phelps/debt-relief-greece-problems_b_7781624.htm (Phelps, a 2006 Nobel Laureate in Economics, argues

eventually causing a prolonged recession and economic collapse.[135]

What the EU summit agreed to in July 2015 is a basic agreement towards helping Greece stay within the eurozone and avoiding a potentially catastrophic 'Grexit' and sending a message that might spread contagion across other EU member nations.[136] Whether the final negotiations will yield a debt-sustainable, growth-led negotiated bailout agreement is yet to be seen. It is precisely at this point in the Greek debt crisis negotiations that sufficient consensus may be most useful in bringing about a holistic, long-term, sustainable solution for all parties, EU and non-EU member nations as well as international institutions[137] affected by the current and, no doubt, continuing fall out of Greece's debt crisis, austerity reforms and long-term recession. It is precisely at this point in the debt crisis saga that cooler heads need to be involved and there needs to be more inclusiveness and expertise from outside the politically and emotionally, not to mention economically, charged EU. In addition, there needs to be a more effective and trustworthy process by which a long-term, viable, measurable and sustainable solution is formed. This can be one using a tailor-made sufficient consensus standard such as the one adopted during the Northern Ireland dispute,[138]

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that debt restructuring and even debt relief will not help Greece because it is a "textbook example of a flawed economic system" which "is *almost devoid of the dynamism needed for indigenous innovation" and one* that needs to "rid itself of its corporatist practices in the public and private sectors"); Jeffrey Sachs, *The achievable and correct path out of the Greek debt crisis*, TAIPEI TIMES (July 6, 2015),, http://www.taipeitimes.com/News/editorials/print/2015/07/06/2003622361 (supporting a package of economic reforms and debt relief, not one without the other or reforms first with vague promises of debt relief).

135 *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70.

136 Ardagna and Caselli, *supra* note 34, at 7-10, 12-17 (discussing the risk of contagion as one of the leading reasons underlying the individual rationality of the lenders to approve Greece's two prior bailouts.) The question is how many more times is this politically and economically feasible? In addition, the TEU does not contain provisions for any Member State to exit the European Union so, one could argue that this fear or threat of a 'Grexit' is illusory.

137 *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70 (citing data from Open Europe, BIS, IMF and ECB about the number of countries and institutions (15 leading lenders listed) that are exposed to, or own Greek debt to the tune of billons of dollars).

138 Mnookin, *supra* note 2, at 19-21 ("In Northern Ireland, sufficient consensus was said to exist for an issue where there was agreement that was supported by: (1) parties representing a majority of the Catholic community; (2) parties representing a majority of the Protestant community; (3) a numerical majority of all the parties present at the talks; and (4) the governments of the Republic of Ireland and the United Kingdom."). In the case of South Africa, "[a]ccording to the Standing Rules of the Multi-Party Negotiating Process, sufficient consensus worked as

where the sufficient consensus standard consisted of a clear, detailed decision-making process[139] and "enjoyed a much broader application"[140] in resolving various substantial, administrative and procedural issues.[141]

While one might argue that the sufficient consensus criterion cannot apply to the Greek debt crisis negotiations because the case is not one of political negotiations, similar to that of South Africa or Northern Ireland, an equally strong counter-argument can be made that the Greek debt crisis negotiations are political at heart in as much as they involve economic matters of sovereign debt. At the heart of the arguments made by Tsipras and Greece's supporters, and in light of the way in which the debt crisis negotiations have gone so far, is a fundamental political issue of the costs and implications of being an EU member nation and a Eurozone country. The current debt crisis has now shed light on many political issues, leading to economic issues, as well as issues in the dispute resolution mechanisms for resolving serious issues among EU member nations.[142] For example, an associate professor of economics at the University of Warwick states:

> It's a difficult situation for the European Union. If you have a very hard-core left-wing government that is seen as very successful by people, and if it gets its way, then what

follows: When the chair of any of the numerous specialized committees charged with particular issues determined that unanimity, or "general consensus," could not be initially achieved on an issue, the committee was instructed to use a variety of mechanisms in order to reach the widest possible consensus. In particular such mechanism [sic] shall include adjournments to enable informal discussions between participants, setting up technical committees composed as the meeting deems appropriate for the particular matter under consideration, as well as allowing participants to consult their principals. If unanimity still could not be reached, the chair could then decide 'at his/her discretion' whether sufficient consensus existed. Parties still objecting might dispute the decision, but the intention was that "in the spirit of cooperation [they would] not hinder the process from going forward." (Mnookin, *supra* note 2, at 19-20 (quoting Gov't of the Self-Governing Territory of KwaZulu v. Mahlangu, 1994 (1) SA 626, 629-630 (TPD).

139 *Id.* at 20-21.

140 *Id*. at 21.

141 *Id*.

142 *See, eg.,* Michael Shedlock, *Debt of Six Eurozone Countries Exceeds 100% of GDP, Two More Coming in 2015 (France and Spain)*, MISH'S GLOBAL ECONOMIC TREND ANALYSIS (February 2, 2015 12:48 PM), http://globaleconomicanalysis.blogspot.hk/2015/02/six-Eurozone-countries-debt-exceeds-100.html (citing data as of the second quarter of 2014 which shows eight EU countries, including Spain and France in 2015 with expected debt-to-GDP ratios of over 100% in 2015.).

> kind of message is this going to send out to similar parties?. . .This could trigger even more instability, and at the end of the day, this is about the Eurozone more broadly and of course, it's very damaging.[143]

Other commentators also acknowledge that the current Greek debt crisis negotiations and the way it is being handled by all parties and especially the Troika and Germany is really about the death of a "Europe of the People that would serve the interests of ordinary citizens, protecting their human rights through transparent democratic processes."[144] Still other analysts and reporters see the current Greek debt crisis negotiations as a flashpoint for the viability of 'the European project', exposing "[Europe's deepening fissures] between north and south, between advanced economies and developing ones, between large countries and smaller ones, between lenders and debtors, and just as important, between those 19 countries within the Eurozone and the nine European Nations outside it."[145] Though Erlanger does not specifically mention it, one must not forget the conflict this debt crisis is creating between the leading lenders (EU nations, non-EU nations and international institutions) who own Greek debt.[146] According to Rem Korteweg of London's

143 Rhonda Shaffer, *Greek Debt Crisis Negotiations are Really About the Next Debt Crisis*, THE STREET, (June 8, 2015, 1:39 PM), ,http://www.thestreet.com/story/13178648/1/greek-debt-crisis-negotiations-are-really-about-the-next-debt-crisis.html (last accessed 14 July 2015) (quoting Dr Dr. Dennis Novy, an associate professor of economics at the University of Warwick in Coventry, England. This kind of political posturing for the sake of political reasons affects not only the negotiating stance of the parties but prevents obtaining a negotiated solution that has long-term legitimacy and sustainability.).

144 Christos Terzides, *Politics on Terrorizing Citizens*, HUFFINGTON POST (July 13, 2015, 3:59 PM), http://www.huffingtonpost.com/christos-terzides/politics-on-terrorizing-c_b_7774564.html (arguing that remaining in the Eurozone under a new bailout agreement will only enslave Greek children to a pre-determined life of poverty and enslave Greek adults to being second-class citizenship within the wider Europe, thus "creating a humanitarian crisis in a country that symbolizes the ideals of modern Western civilization. . ."); *See also* Stevis and Kantchev, *supra* note 75 (quoting a 61-year old saying "I don't recognise this kind of Europe that only talks about money and doesn't talk about solidarity and values, or European ideals." Later he states that after the referendum results, he and others fear they were not told the whole truth given the final results, saying "We're not confused because we are ignorant. We're confused because this doesn't make sense."). Clearly there is significant confusion and misinformation about many governance matters between the Greek government of many years and its citizens, most notably its civil society.

145 Erlanger, *supra* note 49 (also highlighting the issue of a potential 'Brexit'-Britain leaving the EU).

146 *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70.

Center for European Reform, these issues form part of what he calls the 'the four horsemen' circling Europe's future, stating:

> The four horsemen threaten the E.U. precisely because they raise issues that can only be solved if governments prioritize a European solution over narrow national agendas. If a European answer cannot be found, the horsemen will continue to promote chaos, instability, and mutual recrimination.[147]

As one can clearly see, while many may look to Greece and its current left-wing government with disdain and be "offended by Syriza's moralizing and, even more, by its gamesmanship",[148] the Greek debt crisis negotiations has now shown the world that this was and is about more than sovereign debt negotiations.[149] There are serious socio-political issues with international institutions integrated into a political negotiations scenario which can benefit from the use of a sufficient consensus standard into order to regain trust, establish authority, produce broad coalitions that agree on solutions, mitigate the risk of hold-out problems and transfer both political and non-political issues into solutions which have a real chance of being accepted as legitimate.[150]

C. The Use of Power

The Greek debt crisis negotiations also involved many 'power plays,' some successful and others not so successful. This section analyses the role of power in negotiations and its impact on the Greek debt crisis negotiations.

Power, as distinguished from charisma[151] or influence,[152] can be

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147 *Id.* (quoting Rem Korteweg of the Center for European Reform, who cites the four horsemen as: 1) Greek debt crisis; 2) migration crisis; 3) Russia and its challenge to the post-Cold War order as seen by the recent Ukraine crisis; and 4) a possible, so called 'Brexit'- Britain's potential exit from the European Union)

148 *Id.*

149 *Id.;* Shaffer, *supra* note 143; Capon, *supra* note 130..

150 Mnookin, *supra* note 2, at 19-26 (discussing and defining the successful use of the sufficient consensus criteria to solve the issues in the South Africa and Northern Ireland multiparty negotiations).

151 Adler and Silverstein, *supra* note 92, at 24 (using charisma in the article to mean "extraordinary charm that inspires others to like a person or to want to follow the person's leadership"); See also Merriam Webster's Collegiate Dictionary 193 (10th ed. 1993); PIENAAR & SPOELSTRA, *supra* note 101, at 115 ("[T]ruly charismatic people-those who have a unique blend of physical characteristics, speech, mannerisms and self-confidence-are able to influence very large groups of people by their actions.").

defined as "the ability to have one's way, either by influencing others to do one's bidding or by gaining their acquiescence to one's actions. . .even in the face of opposition."[153] In addition, as articulated by Adler and Silverstein, the true "test of power is whether one's goals can be met even when charm and persuasiveness [or even influence] prove inadequate to the task."[154]

Power can be effective or ineffective depending on the perception[155] one party has about another party's power. If a party can genuinely convince the opposing party that they have the power to do something and will use that power, that party reinforces the perception that he/she has effective power, rather than an ineffective bluff.[156] However, the caveat here is that the above understanding of power and its success in negotiations assumes there is power symmetry[157] rather than a disproportionate power scenario between

152 Adler and Silverstein, *supra* note 92, at 24 (thinking of 'influence' as relying on persuasion versus power where coercion may be involved); David Willer et al., *Power and Influence: A Theoretical Bridge*, 76 SOC. FORCES 571, 573 (1997) (discussing various theories and definitions of power versus influence: "For Parsons, power derives from "positive and negative sanctions" through which "ego may attempt to change [another's] intentions" whereas "influence is a way of having an effect on the attitudes and opinions of others." This distinction is like that drawn . . . by Bierstedt, for whom "influence and power can occur in relative isolation from each other." Zelditch draws the distinction more sharply, "What distinguishes power is that it involves external sanctions False Influence, on the other hand, persuades B that X is right according to B's own interests.")

153 Adler and Silverstein, *supra* note 92, at 22.

154 *Id.* at 8-9 24 ("Charismatic figures can exert great power at times, but the appeal is primarily through persuasion, not force.").

155 *Id.* at 13 (citing WILLIAM L. URY ET AL., GETTING DISPUTES RESOLVED: DESIGNING SYSTEMS TO CUT THE COSTS OF CONFLICT 8 (1988): "Determining who is the more powerful party without a decisive and potentially destructive power contest is difficult because power is ultimately a matter of perceptions."); ROY J. LEWICKI ET AL., THINK BEFORE YOU SPEAK: A COMPLETE GUIDE TO STRATEGIC NEGOTIATION 48 (1996) ("[p]ower . . . has a lot to do with perception. The other party may see you as having more power than you do. Further, they may believe you have the ability to use it. So, just the image of power can be effective in accomplishing your goals. Many will argue, in fact, that the image of power is more important than real power.").

156 Adler and Silverstein, *supra* note 92, at 13-16.

157 *Id.* at 18-19; *See also* JEFFREY Z. RUBIN & BERT R. BROWN, THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION 199 (1975) (basing observations on a review of 27 studies on power symmetry, the authors conclude that "equal power among bargainers tends to result in more effective bargaining than unequal power"); Nimet Beriker & Daniel Druckman*, Simulating the Lausanne Peace Negotiations, 1922-1923: Power Asymmetries in Bargaining*, 27 SIMULATION AND GAMING 162 (1996) (relying on a simulation of the historic Lausanne Peace Treaty, the authors concluded that negotiators in symmetric power positions "were more satisfied with the outcome, achieved faster resolutions, disagreed less, and

the parties, which can affect the ability to reach positive negotiation outcomes.[158] According to Professor William Ury, if one party in negotiation has disproportionately greater power than the other party, there is less likelihood of a favourable result for the powerful party.[159] Professor Ury calls this the "power paradox"- "the harder you make it for them to say no, the harder you make it for them to say yes."[160] Several reasons lead to a power paradox. First, negotiating parties with greater power usually know they have the 'upper hand' and are more likely to exploit it, or use the power coercively, whether intentionally or unintentionally.[161] Second, the party with less power and one who is forced to give in to an agreement "will scuttle agreements perceived to be demeaning – even to the point of rejecting deals that give them more benefits than no agreement."[162] A third reason for the power paradox is that the less powerful party 'may act out' in response to actual or perceived power plays by the party with more power.[163] For example, the weaker party may try "to shore up their positions by making threats, adopting stubborn positions, or using punitive tactics."[164] Finally, the

made fewer competitive statements during [negotiations than those with power asymmetries]"); LEWICKI ET AL., *supra* note 92, at 176 (observing that "negotiators who . . . have matched power-equally high or low-will find that their deliberations proceed with greater ease and simplicity toward a mutually satisfying and acceptable outcome").

158 Adler and Silverstein, *supra* note 92, at 18 (discussing the benefits of symmetrical power in negotiations and negotiation outcomes); *Cf.* Kathleen Kelley Reardon & Robert E. Spekman, *Starting Out Right: Negotiation Lessons for Domestic and Cross-Cultural Business Alliances*, 37 BUS. HORIZONS 71, 75 (1994) ("[power] asymmetry breeds instability"); Edward J. Lawler, *Power Processes in Bargaining*, 33 Soc. Q. 17, 24 (1992) (noting that disparities in power tent to produce fewer agreements).

159 Adler and Silverstein, *supra* note 92, at 16-17.

160 *Id.* at 17 (quoting URY, *supra* note 101, at 131-142). Ury also states using greater power is self-defeating: "Even if you win the battle, you may lose the war. In the process you may destroy your relationship with the other side. And they will often find a way to renege or retaliate the next time they are in a position of power."

161 *Id.* (citing JEFFREY Z. RUBIN & BERT R. BROWN, THE SOCIAL PSYCHOLOGY OF BARGAINING AND NEGOTIATION 221 (1975) (based on a review of several studies, the authors conclude that where the is unequal relative power, "the party with high power tends to behave manipulatively and exploitatively"); Lawler, *supra* note 158, 30 (observing that unequal power in negotiations "tends to decrease conciliatory tactics and increase hostile tactics"); PRUITT, *supra* note 92, at 84 (reviewing research and stating that "the bargainer with the greater capacity to penalize the other (greater threat capacity) will issue more threats").

162 Adler and Silverstein, *supra* note 92, at 17.

163 *Id.* at 18.

164 *Id.*

disproportionate dynamics may cause the less powerful party to be suspicious or unintentionally create a less than trusting environment to the point where the less powerful party will forgo a negotiated agreement that a reasonable person would find acceptable.[165] In essence, the less powerful party will thwart the negotiations or self-sabotage and reject the deal solely on the basis of feeling inferior or on the basis of suspicious intent by the more powerful party. This can result in delays, greater transaction costs for both parties and, if an agreement is eventually reached, a more unstable agreement.[166]

Given the strong influence of power on negotiations, when a party determines its and the other party's BATNA, it is equally important to conduct a full assessment of the party's power portfolio. According to Adler and Silverstein, there are four major sources of negotiation power, which may overlap in some instances: (i) personal power; (ii) organizational power; (iii) informational power; and (iv) moral power.[167] Each one is discussed briefly below followed by an analysis of the power dynamics in the Greek debt crisis negotiations.

According to Greenberg, *personal power* is "power derived from an individual's own unique qualities or characteristics."[168] Greenberg defines four sources of personal power: "(i) rational persuasion; (ii) referent power (i.e., power derived from the fact that one is liked and respected); (iii) expert power; and (iv) charisma."[169] According to Adler and Silverstein, these individual qualities and characteristics can include, but is not limited to, a "person's intelligence, persistence, courage, physical strength, appearance, celebrity, memory, confidence, awareness, education, interpersonal skills, emotional control, intuition, friendliness, and willingness to take risks."[170]

The Greek debt crisis negotiations, while still ongoing, have shown a varied display of personal power, which has affected the course of the negotiations. For example, the personal power of Greek Prime Minister Alexis Tsipras is noteworthy. In the process of being elected under Syriza's left-wing party, Tsipras has shown charisma, confidence, persistence, and even courage in the face of a daunting Greek situation and won the overwhelming support of the Greek

165 *Id.*

166 *Id.* (stating that while there is no guarantee, "power equality. . .does tend to produce optimal conditions for . . . [favorable]. . . agreements.").

167 *Id.*at 22.

168 JERALD GREENBERG, MANAGING BEHAVIOUR IN ORGANIZATIONS 168 (1996).

169 *Id.*

170 Adler and Silverstein, *supra* note 92, at 23.

people. Tsipras won this support with a strong message that he and his Syriza party would take a tough negotiating stance with the Troika and fight against any further austerity measures, a sentiment that echoed the public's frustration with the impact of austerity measures and failed bailout terms, for which they blamed Germany and the EU. For nearly six months, the people of Greece saw Tsipras face off against the EU and international creditors, seeking to convey to the Troika the voices of the Greek people,[171] the negative impact of austerity on the Greek economy and social well-being of its people and demanding a better solution. On the positive side, Tsipras has used his position to highlight and open the debate about the impact of the prior bailout terms and harsh austerity measures on the Greek economy, effectively arguing that a significant majority of the bailout loan money from the May 2010 and July 2011 bailout programmes did not fully go to support the Greek economy but was to pay back prior loans or interests. In addition, Tsipras was successful in arguing that the austerity measures have failed to grow the Greek economy and created many socio-economic crises. Through both public statements and internal reports, Tsipras has used his personal power by way of his position to re-open the debate about whether austerity measures are the right approach as well as brought into question the way in which the Troika handled and still handles bailout programmes for EU debt-ridden nations,[172] thus attacking the organizational power of the Troika and the EU.

At the same time, Tsipras, through his handling of the negotiations, created division, 'bad blood' and a sense of betrayal among stakeholders.[173] While the overall message seemed consistent

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[171] *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70 (Tsipras telling that European Parliament that the Greek people had spoken, been counted, and that EU must listen to them).

[172] *See eg., Parliament slams Troika, calls for a 'European Monetary Fund', supra* note 19 (discussing the many ways in which the European Parliament criticised the workings of the Troika, put forth two bills to call for reforms and demanded greater 'democratic accountability of decisions and democratic legitimacy' of the decisions regarding bailout of debt-riddled EU nations, including the implementation of a "proper impact assessment" on the social consequences of a debt bailout programme to be implemented).

[173] *See eg.,* Chrepa et al, *supra* note 84 (quoting Yanis Balafas, a Syriza lawmaker close to Tsipras as saying "There's a vista of division within the party, part of Syriza officials and lawmakers do not accept the tactics followed by our prime minister. What matters now is that the worst-case scenario of a default has been averted."); Stevis and Kantchev, *supra* note 75 (discussing the uncertainty in Greek politics created by the referendum and more importantly, by Tsipras turning around and capitulating to creditors' demands on the bailout terms); Evans-

with his election mandate – that Greece would be tough with the Troika on future bailout negotiations and Greece would not leave the euro – some of the tactics Tsipras used seemed to undermine both his own positive personal power and his ability to lead effectively. In fact, the negotiation tactics took away from his positive personal traits and turned them into ineffective personal power that undermined the perception of Greece as a nation and the ability of the Tsipras' government to effectively manage Greece's debt crisis. Tsipras lost credibility on a broad scale. Some of these tactics included personal attacks and inflammatory remarks directed at Germany and its leaders, Greek's largest lender/creditor, such as threatening to sue Germany if it did not make war reparations[174] and accusing its creditors of turning Greece into an 'austerity laboratory' and humiliating Greece.[175] In addition, according to the European Commission president, Tsipras and his government, through stubborn attacks and accusations unrelated to the debt crisis negotiations have destroyed the spirit of goodwill between EU members by using "egotism, and tactical and populist views."[176] Merkel accused Tsipras and his government of destroying "the most important currency – trust and reliability."[177] It could be argued that Tsipras was using some of these heavy tactics, as a political move, precisely to though out any perceptions by the EU that the Syriza government would simply and easily capitulate to further austerity measures and accept what was given as previous governments had done. The more consistent understanding would be that Tsipras intended to be a tough negotiator on behalf of Greece and used

Pritchard, *supra* note 71 (quoting the European Commission President Jean-Claude Juncker as saying "Goodwill has evaporated", that Tsipras is not telling his own people "the whole truth" about the terms of the bailout offer and "Playing off one democracy against 18 others is not an attitude worthy of the great Greek nation."). Arguably some of these comments by EU officials could be seen as counter-negotiation tactics aimed at making Tsipras look bad or lose face).

174 Stevenson, *supra* note 112. *See also* Walker, *supra* note 89; Helena Smith, *Athens insists 'open wound' of German war reparations must be closed*, THE GUARDIAN (April 8, 2015, 7:31 PM), http://www.theguardian.com/world/2015/apr/08/greece-germany-war-reparations-demands , (discussing how Tsipras "has accused Berlin of deliberately employing "legal tricks and delay" to avoid what he described as a moral obligation to compensate war crimes" for over €278.7 and quoting the response from Eckhardt Rehberg, Merkel's conservative party budget expert, as saying "The issue of reparations has, for us, been dealt with both from a political and a legal perspective.").

175 *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70.

176 Evans-Pritchard, *supra* note 71.

177 Erlanger, *supra* note 49.

sometimes provocatory language and tactics to bring attention to the enormity of the debt crisis challenge, to point out serious flaws of the previous bailout programmes,[178] highlight the dire straits of the Greek economy and lack of growth. In so doing, Tsipras was trying to stress the need for a different, more pragmatic bailout programme that was consistent with debt sustainability and ensuring prospects for growth.

In attempting to fulfill his overall agenda, Tsipras did side with the views of his former finance minister, Yanis Varoufakis, who own personal power has been described as 'like a rock star',[179] 'outspoken',[180] 'flamboyant',[181] 'colourful',[182] 'fiery',[183] and 'confrontational'.[184] Whatever persona power Varoufakis has, he used it to try and throw the EU finance ministers 'off their game' through what some might call 'shock tactics' and force the Troika and the other EU finance ministers to look at the reality of Greece's situation and the social consequences of imposing harsh austerity measures. In addition, Varoufakis used his personal power and Greece's anti-austerity sentiments to rally the Greek people around the Syriza party towards election victory by creating an "us versus them" scenario between Greece and its largest creditor, Germany.[185] Furthermore, he frequently made moral arguments for a better and fairer deal with Greece, seemingly playing 'bad cop' to Tsipras' 'good cop' in the eyes of EU negotiators and their representatives.[186] Unfortunately for Varoufakis, he did not know how or when to 'turn off' the inflammatory remarks, especially to the media, in order to promote positive steps in the negotiations. An alternate perspective is that Varoufakis underestimated the Troika and EU's resolve[187] just as Tsipras completely miscalculated Merkel's response when he

178 *See eg., Parliament slams Troika, calls for a 'European Monetary Fund', supra* note 19.

179 Deane, *supra* note 71 .

180 *Id.*

181 *Id.*

182 *Id.*

183 *Id.*

184 Steinhauser et al, *supra* note 77.

185 Deane, *supra* note 71 ("Varoufakis won over an austerity-drained country by accusing the eurozone of terrorism against his country, once saying that the zone's other members were trying to "get milk out of a sick cow by whipping it.")

186 Adler and Silverstein, *supra* note 92, at 94 (describing the "good guy/bad guy" technique, also known as 'good cop/bad cop').

187 Steinhauser et al, *supra* note 77 (noting that Varoufakis had been ousted for his 'confrontational style' that alienated the representatives of the EU finance ministers during negotiations).

initially bypassed negotiations with the Troika in favour of one-on-one negotiations with Greece's largest creditor, Germany.[188] Tsipras and Varoufakis did achieve some of their seemingly noble goals by forcing the need for creditors to consider debt relief, debt restructuring, 'hair cut', and bridge financing as options and part of the third bailout programme. However, in the end, the personal power of other more moderate and conservative players in the debt crisis negotiations appear to have prevailed and 'out played' and 'out negotiated' Tsipras and the Syriza-led government.

For example, Hollande, despite making initial statements that Greece had to decide on whether to stay in the Eurozone, eventually acted as a quasi-mediator between Greece, Germany, and other EU member countries, reminding all parties and the media of the need to ensure stability, solidarity, and cohesiveness of the European Union over and above the disputes concerning the debt crisis. In addition, Merkel's personal power in the form of confidence, intelligence, patience and resilience in the face of numerous unwarranted attacks by Greek government officials and the Greek people is to be commended. Having said this, Merkel's hard line on no aid without economic and structural reforms, no debt relief, no 'hair cut' (reduce the current debt) on the existing debt and going so far as to consider and recommend a 'Grexit', though politically motivated, did little to rally support from her colleagues. This steadfast, politically and economically motivated hard line, though it id did eventually cause Tsipras to agree to creditors' demands, caused a rift between Merkel and Holland, the IMF, the US, various EU member nations and the Greek people, especially on the issues of solidarity with the Greek people, further austerity measures and the need for debt relief.[189]

Finally, the personal power and influences of non-Eurozone nations (e.g., UK and US), as well as other EU-Eurozone member nations (e.g., Lithuania and Belgium) and international institutions (e.g., IMF) must also be considered. Whereas Germany was willing to consider, recommend and even allow a 'Grexit'[190] other political leaders and leaders in key institutions held steadfast to the idea that the EU, Greece and its creditors must find a solution that ensures Greece stays in the Eurozone under a package of sustainable bailout

188 Walker, *supra* note 89.

189 Waterfield, *supra* note 1.

190 Walker, *supra* note 89 ("Long convinced that Greek politicians simply aren't up to running their country well enough to be a Eurozone member Mr. Schäuble stunned Greece on Saturday by proposing that the country take a five-year "timeout" from the common currency.").

loans, debt relief, and reforms.[191]

In summary, the personal power used by a variety of political and institutional leaders played and continues to play a key role in resolving the Greek debt crisis negotiations. In many respects, since the crisis involves unsustainable sovereign debt, the organizational power played a major role in the Greek debt crisis negotiations. These political and institutional leaders will continue to play a key role in the foreseeable future in order to help Greece to come out of the debt crisis towards sustainable debt management and sustainable growth.

Organizational power comes from the ability to take advantage of the myriad of tools and resources offered by an organization. A deep understanding of an organization's policies and procedures can allow an individual to navigate through these policies and procedures more quickly as well as take advantage of them for one's benefit. As compared with an individual, organizations can provide a greater quantity of financial and human resources.[192] In addition, organizations can give people perceived power or actual control by virtue of position within the organisation.[193]

In the case of the Greek debt crisis, the major international organisations involved in attempting to resolve the crisis are the International Monetary Fund (IMF) and the European Central Bank (ECB). These institutions have the power to provide financial assistance. Therefore, the leaders of these institutions such as Christine Legarde and Mario Draghi have power by virtue of their positions in the organization to marshal both financial and human resources to assist in Greece's third bailout. In addition, each of the currently 15 largest lenders[194] have organizational power in terms of committing more resources, whether financial, humanitarian, or otherwise, in order to help solve the Greek debt crisis. Given the vested interest that many nations and international institutions have

191 Waterfield, *supra* note 1 (quoting various leaders including Finnish Finance Minister Alexander Stubb, Lithuanian Finance Minister Rimantas Sadzius, France's Prime Minister Manuel Valls, European Commission head Jean-Claude Juncker, White House spokesman Josh Earnest, and US President Barack Obama in conversations with France's President Francoise Hollande). IMF's Christine Legarde has also expressed similar views.

192 Adler and Silverstein, *supra* note 92, at 24-25.

193 *Id.*

194 *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70 (citing data from Open Europe, BIS, IMF and ECB about Greek's 15 leading lenders, in order of the billions of euros in Greek debt owned: Germany, France, Italy, Spain, IMF, ECB, Netherlands, US, UK, Belgium, Austria, and Finland)

in holding Greek debt, it is little wonder why political leaders such as Merkel, Hollande, Obama, Cameron, the respective finance ministers and chancellors, and many others, not to mention the entire EU Parliament, have been actively involved in trying to resolve the Greek debt crisis negotiation issues. At the same time, the massive amount of international organisations involved in the negotiations process can create rifts, unreasonable emotional reactions, miscommunications, and additional power plays,[195] resulting in delay, higher transaction costs, and continued uncertainty for Greece. These potential issues are further exacerbated by the integrity of information that the various parties are using to bolster their respective positions, whether for the genuine purpose of helping to solve the crisis or for political posturing. One could argue that information power, or lack of true information power has hurt negotiations so far.

Informational power is power that can be most easily obtained and increased in terms of negotiations. According to Adler and Silverstein, informational power "can so often tip the scales in favour of one party".[196] Furthermore, negotiators "can often obtain information that dramatically changes the negotiation dynamic in a relatively short time",[197] allowing a negotiator time to see "the context of a given situation clearly and respond accordingly."[198] A special form of information power is expertise. Expert power is power "that comes from information can be used by anyone who has

195 *See eg.,*Ardagna and Caselli, *supra* note 34, at 15 (referring to bargaining frictions leading to suboptimal EU agreements for Greece's first two bailouts bailout (and the third one also) including the EU dynamics of bargaining within time limits such as ECOFIN and EU meetings that are "infrequent and time-limited affairs", creating 'take it or leave it' decisions that are inherently Pareto-inefficient); Walker, *supra* note 89 ("Europe's ultimatum to Greece, demanding full capitulation as the price of any new bailout, marks the failure of a rebellion by a small, debt-ridden country against its lenders' austerity policies, after Germany flexed its muscles and offered Athens a choice between obeisance or destruction."); Walker, *supra* note 89 (providing another example of organizational power of the Eurozone finance ministers, who, by virtue of their role in the EU "demonstrated "brutal diplomatic démarches". . .a blok built to foster peace and harmony that is now threatening one of its own with ruination unless it surrenders.").

196 Adler and Silverstein, *supra* note 92, at 26; *See also* LEWICKI ET AL., *supra* note 92, at 179 ("[w]ithin the context of negotiation, information is perhaps the most common source of power"); CRAVER, *supra* note 99, at 47 (noting that preparing for negotiations is critical "based upon the simple fact that knowledge constitutes power in the bargaining context").

197 Adler and Silverstein, *supra* note 92, at 26.

198 *Id.*

assembled facts and figures to support arguments, but expert power is accorded to those who are seen as having achieved some level of command and mastery of a body of information."[199] Because experts are generally given respect, deference and credibility within their field of expertise, either party to a negotiation is more likely to give an expert's argument on an issue more credibility than a non-expert's view.[200] However, one must be careful to put the 'expert' judgment into the context of the situation instead of blindly following an expert's judgment since some experts may have command of a body of knowledge yet not be able to situate that expert knowledge within the context of a given situation.

In the Greek debt crisis negotiations, it is clear that there have been information missteps as well as the strategic and political use of information power to try and control the negotiations process. This section focuses on three main examples of information power and its impact on the Greek debt crisis. First, and perhaps one of the most damaging aspects of information power, are events and documentation leading to Greece's entry into the EU and Eurozone. According to a CNN News timeline, even in 2001, when Greece officially joined the Eurozone,[201] there were warning bells about the nature of Greece's finances in relation to its membership in the Eurozone, with then president of the ECB warning that "Greece had much to do in terms of improving its economy and controlling inflation," and, by 2002, CNN News stating that "[e]veryone now agrees that Greece cooked its books."[202] According to a BBC News timeline, in 2004, the European Commission issued a formal warning to Greece for allegedly submitting "falsified budget deficit data in run-up to joining Eurozone."[203] In the same year, Greece was hosting the Olympics, so instead of actually disclosing the extent of the budget deficit and perhaps ruining the spirit of the Olympics while Greece was on the world stage, the Greek government continued to cover up the true budget deficit.[204] By 2007, Greece continued to run a budget deficit and then harshly felt the impact of the 2007-2009 financial collapse, which started in the United States, but hit Greece particularly hard because it already had "a yawning gap between

199 LEWICKI ET AL., *supra* note 92, at 181.
200 *Id.*
201 Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24.
202 *Id.*
203 See also BBC News, *Greek profile – Timeline*, *supra* note 28.
204 Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24.

revenues and expenditures".[205] In 2008, Greece's tax collection virtually collapsed, leaving an even bigger hole in its budget. By 2009, with the EU fearing contagion among other EU members, Greece began a vicious cycle of EU bailout funds in exchange for severe austerity measures, causing mass protests and strikes, which continues to this day.[206] Even while undergoing the effects of austerity, in January 2010, an EU Report cited "severe irregularities" in Greek accounting procedures.[207] Greece held on to its information power without using the information coming from multiple EU sources in multiple years to correct the impending debt crisis. In addition, the EU is arguably complicit for knowing there were serious irregularities in Greece's budget reporting and not taking extra measures for fixing this before it got worse,[208] consistent with Article 104c of the TEU. At this point, one can only imagine what might have happened had Greece's sovereign debt issues been addressed more aggressively as early as 2002.

Second, the information about the true nature of Greece's first two bailouts revealed that a significant portion of the bailout money never made it into the Greek economy or to the Greek people because it was front-loaded to pay old debts. According to BBC News, in May 2011, the Troika approved a bailout rescue package for Greece "in the amount of a $145bn (110bn euros; £91bn). . .in return for a round of even more stringent austerity measures."[209] Yet bailout after bailout and austerity measures after austerity measures, nearly 7 years later, Greece is in no better position than it was several years ago. According to some analysts and economics experts, the current string of bailout packages actually helps countries like Germany and that is the reason for the Troika to push bailout loans in

205 *Id.*

206 Don Melvin, *Greece debt crisis: How did we get here*, *supra* note 24; BBC News, *Greek profile – Timeline*, *supra* note 28.

207 BBC News, *Timeline: The unfolding Eurozone crisis*, *supra* note 23.

208 See, for example, Wikipedia, *Greek debt crisis timeline*, WIKIPEDIA.COM (July 9, 2015), https://en.wikipedia.org/wiki/Greek_debt_crisis_timeline (last accessed 14 July 2015) (stating that, in the run-up to the 2004 Olympics, the 'European Commission, European Central Bank, private banking institutions and the Greek business community encouraged the Greek government to take out loans' to pay for infrastructure projects related to delivering the 2004 Olympics).

209 BBC News, *Greek profile – Timeline*, *supra* note 28; BBC News, *Greece unveils austerity programme to cut deficit*, BBC.CO.UK (February 3, 2010), http://news.bbc.co.uk/2/hi/europe/8494849.stm (last accessed 14 July 2015); BBC News, *Greece backs new round of tax rises and spending cuts*, BBC.CO.UK (March 3, 2010), http://news.bbc.co.uk/2/hi/8546589.stm (last accessed 14 July 2015).

exchange for austerity and without the prospect of debt relief.[210] Clearly, the interest on the bailout loans provides revenue to those countries that own Greek debt.[211] With Germany and France being the largest holders of Greek debt, one can see the financial advantages to Greece, France, and other nations of continuing this dizzying game of aid-for-austerity.

Third, the allegedly egotistical, tactical and populist statements made by former Greek finance minister Varoufakis, who is a trained economist and professor, did have some merit to them with respect to criticism about the way in which the Troika used or misused information in crafting Greece's bailout programmes, which seem to have been like a drug to which Greece has become addicted or crafted in such a way as to unleash accusations of debt-bondage against the Troika.[212] The Troika has significant information power, both in the form of expert power in banking and finance as well as power in the knowledge of how to construct bailout programmes and leveraging EU member nation and non-member nation information to distribute Greek debt. One criticism hailed against the way the bailout programmes have been structure is the accounting method used. According to Pappas, there is a significant difference between the EU/German accounting standard used under the Maastricht Treaty (TEU) and International Public Sector Accounting Standards (IPSAS). According to Pappas, Executive Director of the International Center for Legal Studies:

> Under International Public Sector Accounting Standards (IPSAS) at year-end 2013 Greece's net debt was 18% of GDP. In terms of cash interest expense, year-end 2013, Greece was one-third of other EU countries. Compare the above figures with the EU/German accounting standard

210 See, for example, George Pappas, *The Greek Debt 'Confidence Trick'*, CRITICALLEGALTHINKING.COM (February 23, 2015), http://criticallegalthinking.com/2015/02/23/greek-debt-confidence-trick/ (last accessed 14 July 2015) (calling the debt crisis an illusion and saying "We have a Greek debt crisis built on a mirage of numbers, numbers that have enslaved Greeks and enriched Germany", noting the large export boom that Germany has experienced from 2010 to 2014 since the start of Greece debt crisis and bailouts).

211 Capon, *supra* note 130 (quoting Thomas Piketty as saying "Currently, Germany is profiting from Greece as it extends loans at comparatively high interest rates." Piketty also slams Germany for rejecting debt relief for Europe when Germany itself received debt forgiveness after World War II).

212 Pappas, *supra* note 210 (former Greek Finance Minister Yanis Varoufakis dismissed the 240 billion euro ($270 billion) bailout packages crafted by Greece's lenders as a "toxic fantasy" that had always been doomed to fail.").

> used under Maastricht where Greek debt to GDP is 175%. The key differential can be explained by the 275 billion Euros of Greece's 318 billion debt (86%) which comprises zero cash interest for 10 years; subsidized interest rates significantly below market; generous extended maturities up to 40 years; debt with interest and principle rebates and you begin to realize that what Germany and the ECB classify as 'loans' to Greece is de facto nothing more than an illusion of financial assets. Seen in this light, Greece does not have a debt problem but an accounting illusion by a distorted Maastricht accounting standard. Under Maastricht accounting standards, it is clear that as long as Germany and the EU can classify its loans through the troika as debt that is still owed, it will not be reflected as losses to German and French banks. This helps to pacify German voters and allows the focus on debt crisis to be obscured by 'forgiveness' of the 'irresponsible Greeks.'213

According to Pappas's argument, the illusion of a major debt crisis is created by the accounting standards adopted by the EU/Germany under the Maastricht Treaty, which Pappas argues are inconsistent with the international standards (IPSAS). Interestingly enough, the Maastricht Treaty does not refer to a specific accounting method. The only reference to an accounting standard is indicated in Article 26.4, in reference to the financial provisions of the ESCB (European System of Central Banks), which states that the Governing Council "shall establish necessary rules for standardizing the accounting and reporting of operations undertaken by the national central banks." Therefore, the ECB, IMF and EC appear to have tremendous information power and, in the case of the ECB, broad statutory powers under the TEU in terms of the how the bailout programmes are structured as well as the accounting methods for calculating payments, interest rates and related items. Under Article 9.1 of the Protocol to the TEU, the ECB is "independent legal personality" and "may be a party to legal proceedings."[214] In

[213] *Id.* (adding "The Maastricht standard completely ignores the time value of money and instead calculates so-called loans at full value instead of the discounted present value; hence, the *debt measured based on the Maastricht Treaty (face value) is a political decision in direct conflict with the debt valuation principles of international accounting statistics*."). (emphasis added)

[214] Treaty on European Union, *supra* note 24, Protocol on the Statute of the European System of Central Banks and the European Central Bank, Article 9.1.

addition, under Article 35.2 of the Protocol to the TEU, "disputes between the ECB. . .and its creditors, debtors or any other person. . . shall be decided by the competent national courts save where jurisdiction is conferred upon the Court of Justice."[215] To date, however, neither Greece nor any other party seems to have commenced legal action against the ECB or EMI in relation to a creditor-debtor contract.

However, despite the positive contributions of the Troika in the early years of the EU, the workings of the Troika have recently come under heavy scrutiny by the European Parliament in two separate resolutions in which the EP criticized the Troika (composed of the three independent institutions consisting of the ECB, IMF, and EC) of "an uneven distribution of responsibility between them, coupled with differing mandates, as well as negotiation and decision-making structures with different levels of accountability, all resulting in a lack of appropriate scrutiny and democratic accountability as a whole,"[216] The MEPs also found that the Troika made overly optimistic assumptions in their calculations and failed to produce results from the programmes it had implemented with respect to debt-laden EU countries.[217] Furthermore, the MEPS concluded that the "conditions imposed on bailed-out countries have negative social consequences due to a lack of a "proper impact assessment" on citizens such as cuts in healthcare, increased unemployment, youth migration and rising poverty."[218] Overall, the MEPs recommended establishing a separate European Monetary Fund that would take over the European Commission's role as well as minimise the roles of the IMF ('optional' participation) and ECB ('silent observer' status).[219] Whether these changes will take place or not, the current crisis calls for stringent accountability on the part of all parties to the negotiation, including democratic accountability by the Troika for any negotiations leading to a future bailout package for Greece.

A final area where information power has played an important role in the Greek debt crisis negotiations is the media. There has

215 Treaty on European Union, *supra* note 24, Protocol on the Statute of the European System of Central Banks and the European Central Bank, Article 35.2; See also Treaty on European Union, *supra* note 24, Protocol on the Statute of the European Monetary Institute, Article 19.2 (providing for similar dispute resolution recourse for the EMI (European Monetary Institute).

216 *Parliament slams Troika, calls for a 'European Monetary Fund', supra* note 19.

217 *Id.*

218 *Id.*

219 *Id.*

been an intense focus on this crisis and the media has been at the forefront of recording and sharing the views and political leanings of major political leaders, international institutions, and everyday citizens of Greece. In addition, the major players in the Greek debt crisis drama, such as Tsipras, Varoufakis, Merkel, and Hollande, have used the media (including social media) to inflame the negotiations, demonstrate their own negotiation tactics, and, particularly in the case of Tsipras and Varoufakis, as means to force the hand of Greece's international creditors into looking for solutions that might 'expand the pie' towards a more sustainable solution rather than solely focus on an 'aid-for-more-austerity' bailout programme which has clearly not worked so far. The media has also allowed the world to see the social consequences of severe austerity measures, questioned the validity of the EU's future, and published opinions and editorials as well as informed essays that allowed the world to see the crisis for a variety of perspectives. All this information and knowledge is power to those *in* power as well as those who can have a direct influence on political and institutional leaders charged with finding a solution to Greece's debt crisis. One can only hope that this information will not go to waste but will be used strategically during future negotiations to shape a negotiated settlement that is durable, mutually beneficial and sustainable. One of the ways that information power can continue to play an important role in the Greek debt crisis negotiations is through the integration of information power and moral power.

Moral power appears in "those instances where negotiators achieve gain through appeals to fairness or morality."[220] A negotiator who exercises moral power generally has the greatest impact when the negotiator uses empathy as a means to "to persuade opponents to place themselves in one's shoes. . . [and] contemplate how one would like to be treated if the situation were reversed."[221] This use of empathy "constitutes the heart of ethical appeals."[222] Contrary to skeptics, the use of morality as a negotiation strategy can be extremely compelling and create a revolution and evolution in the way an issue is resolved.[223]

220 Adler and Silverstein, *supra* note 92, at 28.

221 *Id.*

222 *Id.*; See also C. Daniel Batson, *Empathy, Altruism, and Justice: Another Perspective on Partiality*, in CURRENT SOCIETAL CONCERNS ABOUT JUSTICE 49-66 (Leo Montada & Melvin J. Lerner eds., 1996) (discussing the role of empathy as central to ethical thought and conduct).

223 Note: Consider the use of moral power by Mahatma Ghandi, Martin Luther

There have been several attempts at using moral power during the 2015 Greek debt crisis negotiations. For example, Tsipras's left-wing, anti-austerity Syriza party rose to power on mass public sentiment that Greece was not being treated fairly by the EU and especially Germany, as its largest creditor, and that this lack of fair treatment was evident in the severe austerity measures that were crippling the country. Tsipras, in many of his media statements as well as statements to the Troika and the European Parliament used arguments based on morality, fairness and justice when he demanded "a fair and viable solution".[224] The potentially inflammatory remarks by Tsipras and Varoufakis of accusing the Troika and others of treating Greece as an 'austerity laboratory', of 'humiliating' Greece, and of subjecting Greece to 'debt bondage' appear to be honest sentiments of the Greek people and designed to 'shock' the Troika into remembering the initial reasons for the formation of the European Union and to elicit sympathy towards a solution to the crisis that is sustainable rather than one that creates further economic and social turmoil. While Tsipras may be a novice at politics on the big stage and he was certainly a 'David' to the 'Goliath' of the Troika and other international parties, his passion, confidence, and desire for a fair and credible solution are rooted in a moral imperative and moral arguments, notwithstanding the legal solutions that Greece could certainly pursue.[225] In addition to Tsipras, other commentators have suggested that Greece's claim for war reparations is "moral blackmail."[226] Furthermore, Hollande's statements about maintaining 'solidarity' with Greece and

King, Jr., Nelson Mandela, Mother Theresa and, with respect to the recent Greek debt crisis negotiation, the language of morality, fairness, and justice used by Greek Prime Minister Tsipras, former Greek Foreign Minister Yanis Varoufakis, and French President Francoise Hollande.

224 BBC News, *Greece debt crisis: Tsipras promises 'credible reforms', supra* note 70.

225 See for example, Pappas, *supra* note 210 (discussing the legal precedent in the 1939 International Court of Justice case of *Belgium v. Greece*) where the ICJ held "with respect to a Greek government's default on a Belgium construction company loan and the arbitration resulting pursuant to that loan agreement, that any financial debt settlement between Greece and Belgium at the time had to incorporate the 'capacity' of Greece to repay the loan."); Smith, *supra* note 174 (discussing Greece's legal options for claiming war reparations); Evans-Pritchard, *supra* note 71.

226 Kate Connolly and Helena Smith, *German anger over Greek demand for war reparations*, THE GUARDIAN.COM (March 12, 2015), http://www.theguardian.com/world/2015/mar/12/german-anger-over-greek-demand-for. . . (last accessed 14 July 2015).

remembering that Europe is about 'a set of principles and values' beyond just economics and politics are statements designed to invoke a greater, moral assessment and responsibility than simply debt payments and a debt crisis. Whether these statements of moral power will yield a long term pragmatic and sustainable solution is yet to be seen; they have, however, forced the Troika, the EU Parliament, Greece's international creditors and the world to view the crisis as a crisis of conscience just as much as it is a crisis of unsustainable sovereign debt.

In summary, the Greek debt crisis negotiations demonstrate that power is an essential aspect of negotiations. The power portfolio of each party to the negotiation, especially where the negotiation is multiparty, must be taken into consideration when formulating one's BATNA, the ZOPA, or any negotiation tactics. In as much as personal power, organizational power, information power, and moral power have their strengths and weaknesses, these power elements of the power calculus will have little chance of succeeding if the negotiating party is not able to use leverage to extract the best outcome. Therefore, in assessing the negotiating power of the other party, one must also assess the other party's ability to leverage its alternatives.

D. The Use of Leverage

According to Professor Shell, leverage is about "situational advantage, not objective power [and]. . . [p]arties with very little conventional power can have a lot of leverage under the right circumstances."[227] In relation to negotiations, power in negotiations "stems from what each side can do *for* each other (positive leverage) and *to* each other (negative leverage), not from what each side can do

[227] SHELL, *supra* note 92, at 90, 107 (describing leverage as having the "power not just to reach agreement, but to obtain an agreement *on your own terms.")*; H. Lee Hetherington, *Negotiating Lessons from Iran: Synthesizing Langdell & MacCrate,* 44 CATH. U. L. REV. 675, 680 (1995) (describing leverage as "negotiation's prime mover"). It should also be noted that while nearly all leverage is acceptable, there are instances of unacceptable leverage that may lead to unlawful coercion, duress, and unconscionable conduct. These are not within the scope of this article. For a comprehensive discussion and analysis of 'unlawful leverage', see generally Paul F. Kirgis, *Bargaining with Consequences: Leverage and Coercion in Negotiation,* 19(69) HARV. NEGOTIATION L. REV. 69 (Spring 2014).

compared to one another."[228] According to Kirgis, leverage "encompasses all forms of power based on a party's ability to confer material benefits or impose material costs on a counterparty."[229] Positive leverage is "needs based" and "arises when one party can satisfy the other's desires, especially if one has the unique ability to do so."[230] In contrast, negative leverage is "threat based" and "arises when one can inflict damage on another or reduce his or her alternatives."[231] According to Kirgis, the difference between positive leverage and negative leverage is "the distinction between the ability to satisfy the other party's interests and the ability to impose costs on the other party in retaliation for the other party pursuing its BATNA."[232] Shell also describes the concept of "normative leverage",[233] which "derives from the invocation of norms or criteria that the other party feels con- strained to accept."[234] According to Kirgis, normative leverage:

> arises out of social norms and utilizes principled argument. A negotiator uses normative leverage, for example, when she makes a reasoned argument for why her position is fair under accepted social norms. The pressure her counterparty feels in that situation is rooted in the counterparty's own sense of moral obligation, backed by social expectations.[235]

There are several negotiation strategies that can be considered positive leverage. One example is labour strikes where a party's leverage is derived "from its ability to satisfy the employer's need

228 Adler and Silverstein, *supra* note 92, at 21 (emphasis added) (equating the categories of leverage to the use of power in negotiations); SHELL, *supra* note 92, at 102-103; See also URY, *supra* note 101, at 22 ("BATNA is the key to negotiating power. Your power depends less on whether you are bigger, stronger, more senior, or richer than the other person than on how good your BATNA is. If you have a viable alternative, then you have leverage in the negotiation. The better your BATNA, the more power you have."); Adler and Silverstein, *supra* note 92, at 88-89 ("One can substantially enhance negotiation leverage by determining that the other side must comply with specific statutory provisions before entering into a contract.").

229 Kirgis, *supra* note 227, at 69, 73 (Spring 2014).

230 Adler and Silverstein, *supra* note 92, at 20; Kirgis, *supra* note 227, at 90 (describing positive leverage as "consequences rooted in interests") .

231 Adler and Silverstein, *supra* note 92, at 21; Kirgis, *supra* note 227, at 94 (describing negative leverage as "consequences rooted in costs").

232 Kirgis, *supra* note 227, at 90.

233 SHELL, *supra* note 92, at 90, 44.

234 *Id.*

235 Kirgis, *supra* note 227, at 85 fn 64

for its labor",[236] something the other side values. A second way to exercise positive leverage is using commitment tactics, such as "emphasizing the reputational cost of agreeing to a deal that concedes a significant portion of the bargaining zone."[237] Commitment tactics, such as having limited authority or shortening the ZOPA, are used in labour strikes, by insurance companies to avoid pay-outs and reasonable settlements, and by agents on behalf of their principals.[238] A third type of positive leverage is irrationality. According to Kirgis, irrationality "represents an attempt to truncate the bargaining zone at a point superior to the negotiator's RP. A negotiator may convince a counterparty that he is willing to walk away and accept an inferior alternative by demonstrating strong emotions, such as anger."[239] Irrationality means the negotiator may use strong emotions to act outside fair or objective standards. Despite the ability of positive leverage to change the bargaining zone, a distinct feature of positive leverage is "that they cannot compel a party to enter into a deal that is worse than the party's RP [reservation point or reservation value]. They may change a party's perception of the value of its BATNA – thereby changing its calculation of its RP – and they may lead a party to accept a deal that concedes most or all of the cooperative surplus to the other, but they cannot force a party to accept a deal worse than its RP."[240]

In the context of negative leverage,[241] picketing during labour negotiations, is an example of negative leverage. Picketing effectively puts community pressure on the employer "to impose an exogenous cost on the employer if the employer resorts to its alternative, which is typically either to stop work entirely or to employ replacement workers."[242] A key feature of negative leverage is that it is disconnected from satisfying a negotiating party's interests. For example, according to Kirgis, at most, picketing will allow people to release their frustration but in and of itself does not provide a material benefit to union members; rather, it actually

236 *Id.* at 91.
237 *Id.* at 92.
238 *Id.* at 92; See also Russell Korobkin, *A Positive Theory of Legal Negotiation,* 88 GEO. L.J. 1789, 1808 (2000) (describing commitment tactics as affecting the bargaining zone).
239 *Id.* at 93 (citing Russell Korobkin, *A Positive Theory of Legal Negotiation,* 88 GEO. L.J. 1789, 1809 (2000).
240 *Id.*
241 *Id.* at 94 ("Negative leverage arises out of the ability to impose retributive costs on a counterparty if the counterparty pursues its BATNA.")
242 *Id.* at 96

imposes a cost on them in the form of lost wages, delays, and other transaction costs.[243] In essence, negative leverage strategies "compel the other side to agree on terms that are not dictated either by the available alternatives or by other factors, such as charisma, fairness or objective criteria",[244] increase the cost of not reaching agreement and, to the extent that they benefit the party using negative leverage, "the benefits are psychological and/or indirect, in the form of deterrence."[245] Psychological benefits of negative leverage, however, are not inconsequential to a negotiating party and may serve important social interests. According to studies involving game theory, people will not accept material benefits unless they feel they have been treated fairly.[246] In addition, negative leverage in the form of retribution or revenge allows a person to achieve a sense of psychological benefit from punishing someone who they feel has harmed them,[247] whether harm is actually real or not. Finally, under the concept of 'altruistic punishment',[248] "the willingness of individuals to punish others, even at a cost to themselves, for uncooperative behaviour helps to promote cooperation generally."[249] However, it is worth noting that negative leverage, even if it has social benefits such as in the case of altruistic punishment, will not produce long-term sustainable solutions or create an environment for sustained innovation or compliance. In the cases of multilateral negotiations involving international issues, leading thought indicates that positive diplomacy and engagement is much more conducive to changing behaviour or at least creating an environment for changing behaviour and building cooperation in the long term than using

243 *Id.*

244 *Id.* at 97

245 *Id.*

246 See, for example, Paul Pecorino & Mark van Boening, *Fairness in an Embedded Ultimatum Game,* 53 J. LAW & ECON. 263, 263 (2010) (finding that if parties feel a division of material benefits is unfairly one-sided, they will decline to accept the proposed division of benefits, thus denying the other party of the benefits also).

247 Noreen Stuckless & Richard Goranson, *The Vengeance Scale: Development of a Measure of Attitudes Towards Revenge,* 7 J. Soc. Behav. & Personality 25, 26 (1992) (distinguishing between retribution and revenge); JEREMY BENTHAM, THE THEORY OF LEGISLATION 309 (1831) ("Every kind of satisfaction, as it is a punishment to the offender, naturally produces a pleasure of vengeance to the injured party.").

248 Ernst Fehr and Simon Gachter, *Altruistic Punishment in Humans,* 415 NATURE 137, 138-39 (2002).

249 Kirgis, *supra* note 227, at 98 (citing Ernst Fehr and Simon Gachter, *Altruistic Punishment in Humans,* 415 NATURE 137, 138 (2002).

negative leverage such as military options or sanctions.

In the case of the Greek debt crisis negotiations, all stakeholders have used both positive and negative leverage. In addition, to the extent that the moral power arguments described above have influenced the course of negotiations and its outcomes, parties have also used normative leverage. With respect to positive leverage strategies, for example, according to a BBC News timeline on the unfolding Greek debt crisis, since 1981 when Greece joined the EU and January 2002, when Greece adopted the euro currency and replaced the drachma, Greek public sector workers have engaged in major labour strikes to protest austerity measures approximately nine (9) times, yet each time, the Greek government approved further austerity measures in exchange for bailout loans.[250] In addition, both the Greek government and the Troika have used commitment tactics to try and persuade the other side to agree to a particular bargaining zone. Most notably, Tsipras's reaction to the EU bailout programme that both he and his former finance minister disproved of and the surprise call for a referendum on the issue is a commitment tactic. Tsipras could not commit to the bailout programme that EU offered because it went against the very promises that he and the Syriza party made during the elections, even if the deal was the best he could get or was reasonable. By holding the referendum, which caught the Troika and the world by surprise, Tsipras's goal was to try and secure a mandate from the people on a severe aid-for-austerity bailout programme that went against the very promises he and the Syriza party made during the elections. Unfortunately, the referendum did not appear to give Tsipras the leverage he needed because, first, the original deal was no longer on the table, and second, as soon as Tsipras gave away the bottom line that Greece must stay in the EU and Eurozone, he also gave away all the leverage and thus the power he had both from the referendum and from underlying arguments his party was making against more austerity, arguments which were beginning to sway public opinion and, thus, political opinion. In addition, by agreeing to oust Varoufakis as finance minister on the basis of EU creditors being 'uncomfortable' with Varoufakis's 'confrontational style', Tsipras lost the most vocal supporter and strategic agitator on behalf of the Greek people. Once these strategic leverage items were delivered up to the opposing party, the only thing Tsipras could do, being on the 'home turf of the enemy' was to capitulate. In hindsight, it would be interesting to see

250 BBC News, *Greek profile – Timeline*, *supra* note 28.

what would have happened if Tsipras had kept to his hard line in as much as the Troika was keeping to its hard line. This is especially important since the biggest fear that Tsipras, the Greek government and the Greek people had, that of leaving the Eurozone or being kicked out of the Eurozone and EU, was, by all reasonable accounts, never going to materialise. There is insufficient political will, the TEU makes not explicit provisions for any EU Member State leaving the Eurozone or ever being 'kicked out',[251] and the economic and geo-political implications of a 'Grexit' were and are still unpredictable and dire,[252] leading to a potential existential crisis within the EU that no political leader much less investors and economists want to face. Finally, both Tsipras and Varoufakis, in particular, expressed strong emotions during the negotiations, emotions that at times were, arguably, irrational. It is no surprise to anyone that there was and is a power differential between Greece and the Troika and those that are similarly situated. With Greece via Tsipras consciously knowing that it is the 'weaker party', the emotional outbursts, unexpected accusations, the alleged 'irrational decisions' by the Greek voters during the referendum,[253] contradictory decisions by government officials, protests, and strikes, when seen through the lens of the 'power paradox' discussed in prior sections, are consistent with the actions a weaker party might take in

251 Deane, *supra* note 71 (quoting former Greek finance minister Yanis Varoufakis who compared membership in the Eurozone to the ominous and haunting message one of the most well-known pop songs, saying it was "just like the Eagles' song 'Hotel California' — you can check out any time you like, but you can never leave."); Walker, *supra* note 89 (citing German finance chief, Mr. Schäuble, who echoed a similar sentiment as Varoufakis when he recommend that perhaps Greece should take a five-year "timeout" from the common currency, a move that shocked Greece).

252 Evans-Pritchard, *supra* note 71 (Evans-Pritchard cites various sources in highlighting the fact that there would be a dire fallout from a 'Grexit'. The iTraxx Crossover index measuring risk on European corporate bonds nearly 290 points, signalling, "one of the most violent one-day moves since the Lehman crisis in 2008, an ominous sign that any fall-out from 'Grexit' may be harder to contain that supposed." While EU officials dismissed high risk, neither the US Treasury nor the US Federal Reserve was convinced. Quoting Britain's Chancellor, George Osborne, "I don't think anyone should underestimate the impact a Greek exit from the euro.").

253 Stevis and Kantchev, *supra* note 75 (quoting John Dimakis, director at Athens-based communications consultancy STR, which conducts public-opinion research: "An alarming proportion of the Greek public is showing deeply irrational behaviour, and over the past few weeks we are seeing striking contradictions between what people say they want and how they vote or who they support," he said. "How can we decipher their preferences when they have no rational basis?").

such a situation to its own detriment. In the end, the positive leverage that Tsipras and the Greek negotiators attempted to exercise did not result in a significant shift in the bailout programme proposed by the Troika and, in particular, Germany, which held fast and steady to its position.

With respect to negative leverage, while there was no picketing, there were mass protests, which, at times, turned violent.[254] According to a BBC News timeline, since 2002 when Greece adopted the euro currency, there have been approximately eight (8) major protests related to government reforms and austerity measures.[255] However, as Kirgis points out, this use of negative leverage, while it allows the protesters to have some psychological satisfaction for standing up and expressing their frustrations[256] with the government, its leaders and its creditors, serves no real purpose in terms of achieving the long term outcomes and meeting the underlying interests of Greece or its creditors. In addition, while there were 'strong accusations' and 'threat-like' words with respect to Greece threatening to take legal action against Germany for war reparations, nothing concrete happened. One might argue, that by not following up on such 'threats', Tsipras and his government lost credibility. Finally, the use of 'altruistic punishment' may be seen in the hard line taken by Germany, France, other EU member nations and the Troika with respect to creating a situation, whether intentionally or unintentionally, and framing the negotiations in such a way that Greece could no longer avoid implementing both economic and structural reforms and austerity measures in exchange for another bailout package. While the media, commentators, and economists may regard the steps taken by Greece's creditors as severe, those same analysts recognise that the purpose of the international creditors' hard line, especially that of the Troika and EU, was to send a clear message that Greece, and every other EU member state that may face a similar sovereign debt crisis, will have to cooperate, even at the expense of the EU incurring costs and some losses as a whole. The desire to keep the EU stable and cohesive as well as to ensure that the success of 'the European project' is alive and well,[257] even at a cost, appears to be non-negotiable. At the same

254 BBC News, *Greek profile – Timeline*, *supra* note 28.

255 BBC News, *Greek profile – Timeline*, *supra* note 28.

256 Kirgis, *supra* note 227, at 96.

257 See, for example, Waterfield, *supra* note 1 (quoting French Prime Minister Manuel Valls as saying "The Eurozone must stay coherent, reliable. Europe is not just a currency. It is a conception of the world.").

time, the 'punishment' towards Greece in the current debt crisis is also a strong incentive to other EU states that non-cooperation is also non-negotiable and has a high price should those nations find themselves in a similar situation as Greece.[258]

IV. Conclusion

Multiparty negotiations are an increasingly frequent method of solving international disputes between nations. The recent Greek debt crisis negotiations provided a vivid look into the negotiation styles, strategies and tactics of international leaders and institutions. In addition, the multiparty negotiations also exposed some cracks as well as the complexity in the institutional process of resolving sovereign debt crisis negotiations in particular.

This article adds to the understanding of multiparty negotiations and diplomacy in the 21st century. In particular, this article focused on the events surrounding the Greek debt crisis negotiations, how parties established their MPP, BATNA, reservation points as well as whether the bailout agreements are Pareto-efficient. In addition, this article analyzed the use of four kinds of power and two categories of leverage employed by the parties to the negotiations. From this analysis, several concluding observations can be made regarding three primary and reasonable areas of improvement with respect to treaty-based multilateral negotiations.

First, the underlying treaty that is the basis of the negotiations must contain a clear, unambiguous dispute resolution mechanism that is transparent and has democratic legitimacy, especially in the case of the Treaty of the European Union (TEU), where multiple nations and international institutions are subject to the treaty provisions. While the TEU contains some short provisions for legal

258 Shaffer, *supra* note 143; David McNally, *Greek Debt Crisis: Democracy versus Debt Bondage*, GLOBAL RESEARCH.COM (February 28, 2012), http://www.globalresearch.ca/greek-lessons-democracy-versus-debt-bondage/29532 (last accessed 14 July 2015) ("Nowhere has the assault on democracy been more brazen than in the negotiations leading to the most recent 'bailout' of Greece – which, of course, is really just another bailout of Europe's banks. As the price of paying back the banks while impoverishing its people, the Greek government has been forced to accept nothing less than outright colonization by the European Central Bank and the International Monetary Fund."); *Cf* BBC News, *Greek debt crisis: Eurozone summit strikes deal, supra* note 64 (quoting European Commission chief Jean-Claude Juncker in reference to the eurozone summit deal: "There will not be a 'Grexit'. In this compromise, there are no winners and no losers. "I don't think the Greek people have been humiliated, nor that the other Europeans have lost face. It is a typical European arrangement.").

recourse, the process is not detailed or transparent nor does it explicitly recognize other, non-legal means of dispute resolution, such as arbitration, mediation or early neutral evaluation.[259] Parties to the Greek debt crisis negotiations would have benefitted from the use of other dispute resolution processes such as mediation[260] for some early non-debt issues as well as early neutral evaluation by an independent party.

Second, the EU should revisit the use of the unanimity requirement for decision-making. It seems clear that this standard may not be the most effective standard for resolving complex disputes within the EU as well as between EU and its partners and international institutions. While the EU touted the ability to reach 'unanimous agreement' at the Eurozone Summit with respect to offering Greece a third bailout and avoiding a 'Grexit', this agreement was still not unanimous with respect to the final details of the bailout programme and those negotiations, as observed by both Germany's Merkel and UK's Cameron, will involve long and difficult days ahead.[261] As the EU and Eurozone expand, as desired by some within the EU, it is imperative the EU and the Eurozone adapt its decision-making frameworks to reflect the growing need for democratic accountability and legitimacy.

259 NOTE: Treaty on European Union, *supra* note 24, Articles 189b and other related provisions refers to the *Conciliation Committee*, which seems to be for the express purpose of gaining agreement on a joint text to adopt an act but there is no reference to conciliation being used for other disputes. Article 35.4 of Protocol on the Statute of the European System of Central Banks and the European Central Bank does confer jurisdiction in the Court of Justice "to give judgment pursuant to any *arbitration clause* contained in a contract concluded by or on behalf of the ECB, whether that contract be governed by public or private law." Finally, Article 19.4 of the Protocol on the Statute of the European Monetary Institute confers jurisdiction in the Court of Justice "to give judgment pursuant to any *arbitration clause* contained in a contract concluded by or on behalf of the EMI, whether that contract be governed by public or private law.").

260 See, for example, Ken Parks, *Argentina Sues U.S. in International Court of Justice Over Debt Dispute*, THE WALL STREET JOURNAL.COM (August 7, 2014), http://www.wsj.com/articles/argentina-sues-u-s-in-international-court-of-justice-over-debt-dispute-1407431003 (last accessed 14 July 2015) (highlighting the appointment of a mediator by a US District Court Judge to assist in resolving "a high-stakes legal battle between the South American nation [Argentina] and some of its creditors over unpaid debts.") Argentina ultimately rejected the mediator on the grounds of incompetence and filed a claim against the US in the ICJ, in which US rejected ICJ's jurisdiction over the matter. However, the use of mediation, especially diplomatic level mediation is a viable option. See *US refuses to recognize UN court jurisdiction on Argentina's debt*, RT.COM (August 9, 2014), http://rt.com/news/179228-argentina-us-un-debt/ (last accessed 14 July 2015).

261 BBC News, *Greek debt crisis: Eurozone summit strikes deal, supra* note 64

Finally, as observed by the two resolutions adopted at a recent EU Parliament meeting regarding the work of the Troika, the EU should take this opportunity to undertake an independent inquiry into the three independent institutions comprising the Troika. As EU Parliament MEPs observed from two committee reports, the Troika has been instrumental to economic stability for debt-ridden nations and "helped avoid further deterioration of the economic situation"[262] and economic collapse. However, the Troika is seen as a 'gap-filler' "which must now be organised in a better way to make solidarity within the EU function better in the future."[263] The text of the two resolutions approved by the European Parliament noted that the Troika had "an uneven distribution of responsibility between them, coupled with differing mandates, as well as negotiation and decision-making structures with different levels of accountability, all resulting in a lack of appropriate scrutiny and democratic accountability as a whole." An additional criticism of the Troika is its lack of coordination and alternative means of resolving disputes outside of its own contradictory negotiation and internal decision-making frameworks as well a lack of democratic accountability for programmes, decisions and results.[264] Each of these issues, independently, are potentially major roadblocks to the Troika's ability to manage complex financial and debt negotiations in the future and create workable, sustainable solutions. Each one of these issues is also an opportunity for the Troika to correct the mistakes of the past, silence its critics and build a 21st century mechanism for assisting EU countries in the future.

In a literal sense, we are far away from the days of David and Goliath, three thousand years ago in the valley of Elah, where David, a shepherd boy, had to negotiate his way to victory against Goliath, a giant, seasoned warrior. Yet the lessons about power over and above physical strength as well as the importance of positive and negative leverage transcend time. While we may not have to face fully armed warriors every day, each of us, as individuals and nations, does engage in a variety of negotiations every day. The successful outcome of those negotiations depends on the ability to not underestimate the 'weak' in as much as the ability to prepare for the

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262 See *Parliament slams Troika, calls for a 'European Monetary Fund', supra* note 19

263 *Id.* (quoting Othmar Karas (European Peoples' Party, Austria), rapporteur). Note that others seem to want less involvement by the Troika in EU affairs).

264 *Id.*

‘not so weak’ in order to overcome seemingly unfathomable odds to find solutions that make all of us ‘strong’ together.