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## Interests or Principles? EU Foreign Policy in the ILO

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## **Abstract**

This paper seeks to contribute to the debate about the role of norms in EU foreign policy by looking at EU policies in the International Labour Organization (ILO) in the making of a Consolidated Maritime Labour Convention (ILOMLC). Given the economic importance of shipping for many EU members, one would expect the EU to promote its economic interests in the ILO. However, the EU is instead described as a human rights promoter and has had positions on the ILOMLC that following common EU implementation will increase costs for both ship-owners and national administrations. How can this be? I seek to answer by examining the reasons that have mobilized the EU actors to agree to the common EU policies conducted. A distinction is made between three ideal-types of reasons; pragmatic, ethical-political and moral reasons. By applying a framework that separates between different types of norms, I provide a more nuanced picture of the argument that norms influence EU policies. I conclude that moral reasons, supporting a thesis that a concern for establishing international law for the protection of human rights, have been particularly important in mobilizing the EU to promote a Convention of high standards despite of its costs.

## **Keywords**

Human Rights - ILO - Legitimacy - National Interest - Policy Coordination



## Introduction<sup>1</sup>

Today, scholars agree that, despite a number of setbacks, the EU has developed a common European foreign policy (EUFP).<sup>2</sup> This has been particularly evident in areas of external economic policy, but since the 1990s there has also been an “amazingly rapid”<sup>3</sup> development of the Common Foreign and Security Policy (CFSP) of the EU. The EU has a common security strategy and has developed a wide range of foreign policy tools, even including military capabilities. An institutional structure for foreign and security policy has been established in Brussels, and the EU increasingly speaks with one voice at the international arena.

What is disputed, however, is what characterizes this foreign policy, and in particular whether it has a so called “normative” dimension.<sup>4</sup> In this article I seek to contribute to this debate about the role and importance of norms in understanding EUFP by looking at EU policies for the International Labour Organization (ILO) Maritime sector in the making of a consolidated Maritime Labour Convention (ILOMLC).<sup>5</sup> Traditionally, the study of international politics (IP) has been dominated by perspectives focusing on the actors’ material interests for explaining policy-outcomes at the international level. This has been the case also in studies of European integration, where policy-outcomes in particular have been linked to the members’ economic interests.<sup>6</sup> Given the high level of global economic competition in the area of shipping and the strong economic shipping interests of many of the EU members, one would thus intuitively – following our conventional understandings of foreign policy – expect the EU to promote its economic interests in the ILO Maritime. However, this does not tell the full story. Instead, the EU is described as a human rights promoter and has been the main advocate of a Convention of high minimum-standards and strict control-measures, despite high, anticipated costs of such a policy for the EU itself. How can this be?

An increasing amount of empirical literature claims that the EU behaves “principled” in its foreign policy and hence is a novel type of foreign policy actor. A possible answer to the question raised could thus be that it is because the EU is a “normative” actor, pursuing norms and not material interests in its foreign policies.<sup>7</sup> However, there are also several studies that reject the assertion that the EU is “normatively different” in its foreign policy. Instead, it is argued that the EU uses norms instrumentally or rhetorically, and that any “normative” behaviour will be secondary to interests.<sup>8</sup> In other words, that the EU’s behaviour is based on utility-considerations, where any apparent rights-promoting behaviour in reality covers up

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<sup>2</sup> Following Hill (2004: 145) I employ a wide definition of “European foreign policy” (EUFP); “the ensemble of the international activities of the European Union, including output from all three of the EU’s pillars”.

<sup>3</sup> Ojanen, 2006: 57.

<sup>4</sup> Lucarelli and Manners, 2006.

<sup>5</sup> ILO 2006a.

<sup>6</sup> Moravscik, 1998, 2006.

<sup>7</sup> Lucarelli and Manners, 2006, K. Smith, 2006, Sjursen, 2007.

<sup>8</sup> Hyde-Price, 2006, Zimmermann, 2007.

material interests or at least will be sidestepped if conflicting with such interests. Given on the one hand the potential conflict between the goals of global European economic leadership and competitiveness in maritime activities, and on the other hand the often costly social and labour rights, the maritime ILO process is a critical case with regard to this debate on what characterizes EUFP. This is so since the ILOMLC will be implemented through EU-directives, implying that there will be a need for changes in all EU-countries' national legislative and administrative systems. In particular, due to the anticipated costs, some of the EU-members with strong economic interests in shipping therefore even opposed the development of *any* social- and labour rules in shipping as late as in 2004, three years after the consolidation-process started. Lastly, though one might argue that one from the outset could expect a "normative language" in a convention-making process dealing with social- and labour-issues, this has traditionally not been the case in the ILO maritime.<sup>9</sup> On the contrary, this is a case where powerful maritime have pushed their particular interests. Further, EU-coordination was dominated primarily by experts in trade and shipping who one would naturally expect to be mostly concerned with the economic dimension of this field. In line with the dominant view on EU integration that it has been justified primarily in terms of its material outcomes, one would hence not from the outset expect the actors to behave differently than what follows from the sum of their material interest.<sup>10</sup>

How can we then explain that the EU has been the main promoter of a Convention of high minimum-standards? In order to explain the EU's policies I examine the reasons that may have mobilized the EU actors to choose its particular policies on the ILOMLC.<sup>11</sup> After a short description of the case, I discuss the methodological approach of looking at actors' reason-giving when studying EU foreign policy (section 2). Three analytically alternative hypotheses of EU policies are then discussed. Given the conventional "truth" in the international politics (IP) literature claiming that policy-outcomes follow from the actors' material interests, I first examine whether there is evidence to support a hypothesis that the EU has conducted a policy of promoting high global minimum-standards in order to increase its economic competitiveness in shipping. This is done by examining whether the EU's policies were justified with reference to utility. After discussing whether economic interests in themselves can explain EU policies, I go on to examine the extent to which two analytically alternative hypotheses of EU policies can be substantiated (section 4). First, that the EU has conducted a policy of promoting a Convention of high global minimum-standards despite its direct costs due to solidarity with European seafarers. This is done by examining whether the EU's policies have been justified with reference to values. Second, that the EU has promoted its particular policies on the ILOMLC in order to secure the respect for individual human rights through establishing global law, is examined. This is done by analyzing the extent to which policies instead have been justified with reference to rights. The focus is thus on why the EU pursued the policies it did at the time, on the EU's positions on the ILOMLC, and not on its impact or what characterized the internal coordination-process.

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<sup>9</sup> Interview, 28/3-2008.

<sup>10</sup> Moravcsik, 1998.

<sup>11</sup> Sjursen, 2002.

## About the case: The making of a consolidated Maritime ILO Convention

The International Labour Organization (ILO) is a UN specialized agency whose official task is to formulate international labour standards for the promotion of labour rights and social justice. The ILO has a unique tripartite structure, where the idea is that workers and employers participate as equal partners with governments in the work of its governing organs. Due to the special features of the sector, questions regarding working-conditions in the maritime sector have been considered in distinct Maritime sessions of the International Labour Conference. Shipping is by its very nature probably the most globalized of all economic sectors, implying that seafarers often work on ships flying other flags than their country of residence and that they spend much of their working lives outside their home countries. At the same time, the industry has a history of bad working-conditions, and the level of ratification of many of the international social- and labour-standards has been low. In particular, it has been a problem that seafarers working on ships flying the flags of countries that “do not exercise effective jurisdiction and control over them .... often have to work under unacceptable conditions”.<sup>12</sup> Both these so called “flags of convenience” and their shipping-industries have however profited economically from such loose control-regimes. Since many of the existing Conventions also were outdated, the ILO in 2001 therefore started a process of consolidating and updating the existing Conventions and Recommendations adopted for the maritime sector since 1920. Following a five-year process of discussions between governments and the social partners (seafarers and ship-owners) on its content, this resulted in the Maritime Labour Convention 2006 (ILOMLC) being adopted almost unanimously at the 94<sup>th</sup> International Labour Conference Maritime Session in February 2006. By putting together and revising 68 maritime labour Conventions and Recommendations, the ILOMLC is a new phenomenon in international treaty-making. Compared to many other international standards, the ILOMLC is further characterized by high minimum-standards and is expected to be widely ratified. It is also special due to its particular structure of regulations and codes, and due to the relatively strict enforcement- and control-mechanisms, even allowing port-state inspectors to withhold ships in cases of serious breaches of the ILOMLC – including ships flying flags of countries that have not ratified it.

This article looks at EU positions and policies on the ILOMLC adopted in 2006, a policy characterized by being the main advancer of an ILOMLC of high standards and strict control-measures.<sup>13</sup> Given that only states are members of the ILO, the EU decided on common EU policies by meeting in coordination-meetings during and in between ILO-meetings, where concrete positions on different areas of the ILOMLC-draft were discussed. Though the process started in 2001, EU coordination-meetings did not start until December 2003, when the Commission organized a meeting in Brussels to prepare for the international High-level Tripartite Working Group that was held in Nantes in January 2004. The main part of the empirical material covers

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<sup>12</sup> ILO 2006c.

<sup>13</sup> By the EU's policies, I here mean the EU-members coordinated policies towards the ILOMLC. In ILO-meetings, the EU member-states spoke for themselves or were spoken for by the Presidency, representing some or all of the MS and the associated countries. The Commission has observatory status in the ILO. The countries that became members in May 2004 were included in EU-coordination from its beginning, and Norway was allowed to take part in the coordination-meetings until 2005.

the period 2003-2005, with a focus on the Preparatory Technical Maritime Conference (PTMC) that was held in Geneva in 13-24 September 2004.<sup>14</sup>

Due to the tripartite ILO structure, the EU actors act on three arenas during ILO-meetings; in separate, closed EU-coordination-meetings; in closed global Government-group meetings; and lastly in recorded tripartite meetings.<sup>15</sup> Delegations from 21 EU-countries were represented at the PTMC, and to a various degree took part in the coordination-meetings.<sup>16</sup> Here, the discussions mainly focused on areas where the EU-members had divergent positions, where national delegations expressed that they had special interests, or where the proposed text conflicted with existing EU regulations.<sup>17</sup> Though the EU is not a signatory to ILO-conventions and there of course have been disagreement on what should be the EU's coordinated positions during the process, the EU-members reached agreement on all areas of the Convention before the final adoption in 2006. Hence, even if coordinated positions at times were due more to some EU-delegates refraining from protesting than by giving actual consent to the specific common policy, for the question raised in this paper on how to explain EUFP on the ILOMLC, the EU can be treated as one actor.

In the EU, the adoption of the ILOMLC has later been followed up by an EU Council recommendation on ratification, and will be implemented mainly through a framework directive. This common ratification and implementation reflect the ongoing process of developing a common maritime policy in the EU, where successful implementation of the ILOMLC are among the main goals listed in the 2006 Green paper on "A Future maritime policy for the EU"<sup>18</sup> and the following Communication from the Commission of 2007 on "An integrated maritime policy for the European Union".<sup>19</sup> However, the maritime sector is not only becoming increasingly important as a European policy-area in general but also as a part of the EU's common foreign policy. Shipping is significant in terms of external trade and economic performance, but it also relates to a wide range of other global issues such as for instance security and anti-terrorism measures or questions of climate-change and environmental protection. These are all "issues with an important global dimension and cannot be addressed without action at the international level"<sup>20</sup>, and the EU is increasingly playing a bigger role in international forums dealing with maritime issues, in particular in the ILO and in the International Maritime Organization, IMO. Underlining the importance attached to the ILOMLC, the EU upon request from the ILO gave substantial economic support needed for organizing the global meetings.<sup>21</sup> However, there are few studies of EUFP in the UN's specialized

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<sup>14</sup> The meeting in Nantes prepared for the PTMC. There was further a Tripartite Intersessional Meeting on the Follow-up to the PTMC in Geneva in April 2005 before the Maritime Labour Conference adopted the ILOMLC in 2006.

<sup>15</sup> All records can be found at ILO's web-pages (ILO2006a).

<sup>16</sup> Not present: Czech Republic, Hungary, Austria and Slovakia.

<sup>17</sup> Coordination-meetings 2004, Questionnaire November 2004, working-documents. The level of coordination increased and the meetings also got more efficient during the period, reflecting that the delegates learned "how to coordinate".

<sup>18</sup> Commission, 2006a.

<sup>19</sup> Commission 2007. Following a request from the Council, the Commission published the green paper in June 2006, which was followed by a one-year consultation period, resulting in the Commission adopting a Communication to the European Parliament and the Council in October 2007.

<sup>20</sup> Commission, 2007: 21.

<sup>21</sup> Interview, 28/2-2008.



agencies, and in particular on the EU's global role in dealing with maritime issues.<sup>22</sup> Hence, studying EU policies in the ILOMLC-process is important not only for better understanding EUFP, but also for learning more about EUFP in international organizations.

## Studying EU foreign policy. The approach<sup>23</sup>

The approach applied for analyzing EUFP in the ILO builds on an analytical framework developed by Sjursen (2002), originally used for explaining the EU's priorities in its enlargement policies. Three main points lay the ground for applying this methodological approach. First; that a fruitful "route to explanation goes through the interpretation of meaning" in the Weberian sense, where social science is seen as "...a science concerning itself with the interpretative understanding of social action and thereby with a causal explanation of its course and consequences".<sup>24</sup> Hence, I do not claim to establish causal links in the conventional sense but rather to explain EU policies by studying the reasons given for it by the actors. Second, I assume that outcomes of policy-processes are related to the actors' assessments of the policies' legitimacy, where this legitimacy can be linked to other considerations than interests. Lastly, the third main pillar in the methodological approach is based on some of the aspects of Habermas' theory of communicative action, increasingly applied in studies of foreign policy.<sup>25</sup> The basic assumptions are that actors coordinate their behaviour through communication and that they have the ability to justify and explain their actions. Instead of linking rationality to the maximizing of self-interest, actors are defined as rational when they are able to justify and explain their actions.<sup>26</sup> By this definition, I open up to the putative importance of norms but not by implying altruistic behaviour or by aiming to discover the 'true' motives of the actors involved. Since we can never discover the actors' true beliefs or thoughts, motives as reasons for behaviour are impossible to discover. When wanting to explain policy-outcomes at the international level, rational choice perspectives simply presuppose that actors' motives are material and consider these interests as exogenous to the analysis. By contrast, the focus here is on how the actors coordinate their actions with other peoples' actions through speech-acts in specific contexts.

## Studying reason-giving

A way of interpreting policy-outcomes "from the actors' point of view" is hence to look at the meanings expressed by the actors through language, i.e. to analyze the reasons the actors give for their actions and positions in order to identify the reasons that mobilized the actors to agree to and conduct a certain common policy. Applying such an analytical framework seems particularly relevant for this case-study.

<sup>22</sup> See however for instance Wouters et. al (2006), Kissack (2008) and Laatikainen and Smith (2006).

<sup>23</sup> The approach is based on Habermas, 1996, Eriksen and Weigård, 2003, Eriksen and Fossum, 2000, Riddervold and Sjursen, 2006, Sjursen, 2002.

<sup>24</sup> Eliaeson, 2002: 52.

<sup>25</sup> For the application of this perspective in studies of international relations, see among others Diez and Steans, 2005, Müller, 2001, Lerch and Schwellnus, 2006, Lose, 2001, Risse, 2004, Risse and Ulbert, 2005, Sjursen, 2002 and 2006.

<sup>26</sup> Communicative rationality pertains that an actor is rational only when he/she "is able to put forward an assertion and, when criticized, is capable of justifying her actions by explicating the given situation in light of legitimate expectations" (Eriksen and Weigård 1997: 228).

Assuming, on the basis of my material, that support for or agreement on coordinated EU policies and positions were obtained through processes of reason-giving, where arguments and reasons for different policy-positions were presented and discussed, seems fairly unproblematic.

This being said, there may of course be several reasons given for any particular policy, and there is clearly a need for further specification if we want to know what characterizes EUFP. There are numerous rule-sets, norms and identities<sup>27</sup> and “Which of several legitimate forms are appealed to and evoked has significant implications”<sup>28</sup> for decision-making outcomes. Though it has proven helpful to open to more than interests when wanting to explain EUFP, one of the problems with much of the empirical literature on a “normative” EUFP is precisely that it doesn’t separate between different types of norms.<sup>29</sup> As suggested in the introduction, for establishing indicators in order to better capture EU policies in the ILO, this article therefore separates between two analytically distinct categories of normative arguments that might have led the EU to conduct its particular policies in the ILO maritime; ethical-political and moral arguments.<sup>30</sup> First, ethical-political arguments are identified by reference to values. Ideal-typically, values are norms that are constitutive of a particular community, indicating what is considered appropriate or valuable for this community and the persons belonging to it. This type of arguments is hence identified by reasons that refer to what is considered good for “us” as a group, i.e. for those belonging to the community the actor is a part of or represents, where there are clear criteria for who belongs to this group or not.<sup>31</sup> Applied to the ILOMLC-process, such value-based justifications of EU policies are hence identified by arguments and reasons for policy-positions that explicitly refer to what is considered appropriate or good for those who are “one of us”, as opposed to what is considered efficient in order to reach material goals or what is considered good or right for all, independent of belonging. For an argument to be identified as ethical-political, one would thus expect EU actors to argue for certain policy-positions on the ILOMLC by showing to its effect on “our” seafarers, i.e. the group of seafarers working onboard ships flying EU-flags. Second, the criteria identifying moral arguments are rights. Such justifications have a broader address, where policies instead are justified with reference to universal principles that are independent of material interests or community-belonging, i.e. to human rights. Instead of justifying policies by reference to material interests or the wellbeing of a particular group of individuals, policies are justified with individual rights. Thus, if rights-based justifications have been important for mobilizing EU policies, one would expect arguments and reasons that refer to the need to establish international law in order to protect individual rights, where one does not separate between European and non-European seafarers. Lastly, EU policies may instead have been justified by pragmatic arguments, which are characterized by reference to utility. Such arguments would refer to a policy’s expected material output, and are here operationalized in strict economic cost-benefit terms, as arguments referring to the EU’s economic interests in shipping and to what

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<sup>27</sup> Olsen, cited in Eriksen, 1999: 215.

<sup>28</sup> Olsen, 2007: 109.

<sup>29</sup> Sjursen, 2006.

<sup>30</sup> Sjursen, 2002, Habermas, 1993.

<sup>31</sup> Fossum, 2000: 119.

were seen as the most efficient ways of reaching these economic goals.<sup>32</sup> Given the relatively strict regulations in many EU-countries, one would thus expect actors to justify policies by referring to the need to raise global standards in order to increase the competitiveness of the European fleet. Though the three types of arguments are treated as analytically distinct in order to conduct the empirical analysis, the “real-life” arguments will of course often be a mix of different types of reason-giving.

In practical terms, I apply this approach by interpreting the reasons for policies given by the actors during coordination-meetings, interviews and on the different ILO-arenas.<sup>33</sup> Besides observing the ILO-meetings, I observed the closed EU coordination-meetings held during the meetings in Nantes in January 2004 and observed all EU coordination-meetings held at least once daily during the PTMC in Geneva in 13-24 September 2004. In addition to these observations, which form the main part of the empirical material, I conducted anonymous interviews with delegates from 11 EU countries during the PTMC, representing both old and new EU-members and members both with and without strong economic interests in shipping. In addition, I had daily, informal talks with different delegates, EU-officials and parties’ representatives during the 2004 meetings. Informal interviews were also conducted with representatives of the Commission, seafarers’ and ship-owners’ representatives as well as with ILO-officials during the PTMC. To follow up, I conducted interviews in 2005 and 2008 with a key-informant specialist in Norway.<sup>34</sup> Lastly, I have had access to official and unofficial working-documents related to coordination in and between the ILO-meetings in the period, both from the Commission and from different delegations. Though not regularly, both national delegations and the Commission presented policy-positions, comments and suggestions in writing, for circulation amongst the other delegates and EU-officials. On a few occasions the Commission also gathered opinions on proposed EU positions from the social partners.

By being able to observe the internal EU policy-making process directly and having access to a wide specter of data-sources, I expect to be able to give a plausible explanation of the EU’s policies. In addition, the possibility of hidden agendas is controlled for by looking at developments in the argumentation over time and by looking at consistency; between the reasons given for a particular policy by different actors; between the reasons presented by the EU actors in different forums; and not

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<sup>32</sup> From a realist perspective, there is of course intuitively the possibility that security considerations might explain EU policies. Two possibilities were therefore considered: First; that EU policies have been justified by anti-terrorism considerations. And second; that the process was linked to concerns of how to reduce the risk of ship-pollution. I have however not found support for any of these hypotheses. Rather, the EU has been among the supporters of not including ILO-Conventions dealing with seafarers’ identity-documents, being explicitly linked to anti-terrorism measures, in the ILOMLC, arguing that it should not conflict with other international instruments under the IMO. And though very evident in the EU’s maritime policies in general, wider questions of security linked to ship-pollution was not an important theme during the ILOMLC-process.

<sup>33</sup> Though not intending to count the different types of arguments, I sorted all arguments/quotations from the coordination-meetings in 2004 and the interviews in accordance with the operationalization into the three categories of arguments. The same was done with notes from observations of the ILO government-group meetings observed at the PTMC in 2004.

<sup>34</sup> The key-informant has been an advisor to the Norwegian delegate during the entire process and has close contacts with several EU-delegations, including access to internal EU working-documents. The interviews (13-24/9-2004) confirmed that the key-informant is considered an expert by party-representatives and other countries’ delegates

least between what was said and what was done, i.e. between words and actual behaviour. The possibility that the actors give meaningful reasons for their policy-positions is also heightened by the delegates being very strict on anonymity. Several delegates for instance stopped talking about their countries' policies if someone approached during the interviews in Geneva. Further, I expect that - in particular in a process as long as the ILOMLC process - what is said will at least to some extent bind behaviour and that it will be difficult to lie about the reasons for a particular policy over such a long period. Lastly, since almost all of the Convention will be implemented through common EU legislation - in practice binding the EU actors to what was agreed to and conducted - it is difficult for EU-members to try to look good by using a "pretty language" at the international arena without having to follow up nationally.

## Justification through utility

In line with the dominant perspectives in IP-studies, the first hypothesis of EUFP in the ILO is hence that the EU has promoted an ILOMLC with high minimum-standards despite of its direct costs since establishing common global standards was considered economically beneficial in terms of increased economic competitiveness. The question is thus if there is evidence to support that EU policies have been justified with reference to economic gain.

## Economic gains

Following much of the literature on European integration, it would seem self-evident that EU policies in the ILO maritime follow from economic considerations.<sup>35</sup> According to the Commission, almost 90 % of EU external trade and more than 40% of its internal trade is seaborne.<sup>36</sup> The European shipping-industry is the largest in the world, with 25% of the world fleet flying under the flags of EU-members, and 40% being controlled by EU-owned companies.<sup>37</sup> At the same time, many EU-countries have relatively high social and labour standards on ships flying EU-members' flags if compared to other regions, implying higher costs. Thus, all the interviewed delegates pointed to the need for common international rules in order to secure equal conditions as one of the main reasons for why there was a need to consolidate the maritime ILO Conventions.<sup>38</sup> According to the Commission, "The European fleet has always been confronted by strong international competition, mainly from countries that benefit from very low costs but which do not always respect minimum safety standards and working conditions".<sup>39</sup> Therefore, "Our common objective and our intention in the short run is to use all means in order to guarantee a level playing field for our ship-owners in the world market".<sup>40</sup> Further, though some MS fought against it, there was early on an understanding amongst the EU delegates that the new Convention will be implemented largely through common

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<sup>35</sup> See for instance Moravcsik, 1998

<sup>36</sup> Commission, 2006b: 6.

<sup>37</sup> Commission, 2007: 3.

<sup>38</sup> Interviews, 13/9-24/9-2004.

<sup>39</sup> Questionnaire, November 2004.

<sup>40</sup> Questionnaire, November 2004.

EU-directives.<sup>41</sup> Several delegates therefore referred to an economic incentive in getting the global ILO standards as close to existing regulation as possible in order to avoid costs of changing national administrative systems as an important reason for their positions on the ILOMLC.<sup>42</sup> For instance “Since we have strict rules in the EU... we must secure a higher level internationally”.<sup>43</sup>

Hence, the economic arguments of equal terms of competition and promoting an ILOMLC in line with existing regulation are widespread reasons given for EU policies. At a first glance it thus seems as if economic considerations can explain EUFP. The main problem with this explanation, however, is the expressed anticipated costs of EU policies. Even if some countries like for instance the Netherlands was very clear on limiting administrative burdens<sup>44</sup>, the previous lack of common regulation of social-and labour issues in the maritime sector in the EU implies national administrative and legislative changes in all EU-countries following common implementation.<sup>45</sup> In particular, shipping-countries like Malta and Cyprus had little regulation of social- and labour issues in shipping before joining the EU, but also for instance Greece have had a low level of regulation in the area. By conducting a EU-policy of advancing an ILOMLC of high minimum-standards, knowing that these rules mainly will be implemented through EU-directives, these countries thus take on huge costs for their shipping-industries and for their national administrations. The high level of anticipated costs by the EU’s policies is also evident from the ship-owners view on EU policies. Though one should not confuse a member-states’ interests with that of its’ industry, the in many countries influential shipping-industry has been sceptical to European integration in the area, precisely because a common EU policy was anticipated to lead to stricter rules and higher standards – i.e. higher costs – in at least some of the members. Hence, as one would expect from a rationalist perspective, at the beginning of the process Malta, Greece and Cyprus therefore opposed any tightening of labour- and social rules in the area of shipping. Greece and Cyprus even opposed coordinating EU-policies in the ILO during an ILO government-group meeting as late as in 2004, precisely due to the expected costs following from coordinated policies. As a reaction, they had to explain their behaviour in a closed Council-meeting.<sup>46</sup> Hence, the known costs of the EU’s policies to some of the EU-members were evidently very high, but still the EU’s policy has been to actively advance a Convention of high minimum-standards.

From a rationalist perspective, the natural claims to raise would then be that either; this was due to the interests of other, stronger EU countries with already relatively strict rules; or, that the countries initially opposing high standards changed position since they by being EU-members anyway had to agree to stricter rules and hence wanted to reduce the relative disadvantages as much as possible by also raising costs amongst its competitors outside of Europe. However, though how EU-policies were made is not the focus of this article, there are no indications that any of the EU-members were forced by more powerful countries to agree to a certain policy or that

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<sup>41</sup> Interviews, 13-24/9-2004, 23/5-2005.

<sup>42</sup> Interviews, 15/9, 16/9, 18/9, 22/9-2004, 23/5-2005.

<sup>43</sup> Interview, 20/9-2004.

<sup>44</sup> Observations 2004, interview 18/9-2004

<sup>45</sup> Interviews, 18/9-2004 and 23/5-2005.

<sup>46</sup> Interviews, 23/5-2005 and 11/2-2008.

the process was made part of a wider EU package-deal.<sup>47</sup> On the other hand, one might argue that a plausible explanation for EU policies is that the EU has advanced a policy of high standards in order to increase its own competitiveness since it in parallel can make other countries fulfil EU-demands through strict port-state control in EU ports. However, though one of the reasons given for why the EU supports strong enforcement-rules is to reduce the negative competition-effect of comparably high EU standards, overall the actors seldom referred to such a strategy during coordination-meetings and interviews.<sup>48</sup> And at the time, some of the EU-members expressed concerns that high standards in the Convention might instead lead to fewer ratifications, and as such reduce the competitiveness of EU ship-owners.<sup>49</sup> As one delegate put it: "The ILOMLC will inevitably become common regulation, but other regions will not ratify and this will reduce our competition-ability, and this will be a disadvantage to the EU".<sup>50</sup> So - how come that the EU still conducted this policy?

When systematically looking at reason-giving, it is evident that when referring to common rules as a reason for specific EU policies, the actors did not only refer to economic interests but also to the rights of the seafarers. "[We need a]level playing field and equal terms. We cannot accept any longer that seafarers are treated badly on other flags"<sup>51</sup> and "We must secure the rights of the seafarers and have common rules to allow equal competition"<sup>52</sup> are examples of the reasons given in interviews for an ILOMLC with high standards. But were such references to rights hypocritical?<sup>53</sup> As one would expect if EU references to rights were hypocritical only, economic arguments were common in interviews and in internal coordination-meetings, but were seldom used in the ILO-meetings. This might indicate that the EU covers up "true" economic motives by using normative arguments in order to get support for their preferred policy-positions in the ILO.<sup>54</sup> Supporting such a hypothesis, some delegates claimed in interviews for instance that "The EU attaches importance to the process in order to secure a level playing field"<sup>55</sup> and that the reason for EU policies was that "...we must preserve a level field by not having too high EU standards compared to the rest of the world".<sup>56</sup> However, contrary to what one would expect, reference to costs was not used by delegates during internal EU-coordination-meetings as an argument for a different EU policy in cases where high standards implied costs, even if such concerns were widely known amongst the other EU-countries.<sup>57</sup> Does this then instead indicate that the EU actors with strong economic interests used norms strategically in the internal EU decision-making process, to get support for own positions? I.e. can economic considerations explain EU policies anyway?

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<sup>47</sup> Interviews, 23/5-2005, 28/2-2008. Observation of coordination-meetings 2004. Also, when it comes to maritime issues, the three countries initially most explicitly opposing a coordinated policy, in particular Greece but also Malta and Cyprus, are among the big countries.

<sup>48</sup> Interviews 13-24/9-2004, in particular with the Commission 22/9-2004, and 28/3-2004.

<sup>49</sup> Interviews, 17/9 and 20/9-2004.

<sup>50</sup> Interview, 20/9-2004.

<sup>51</sup> Interview, 21/9-2004.

<sup>52</sup> Interview, 16/9-2004.

<sup>53</sup> On hypocrisy, see Elster, 1998.

<sup>54</sup> On the concept of rhetorical action, see Schimmelfennig (2003).

<sup>55</sup> Interview, 15/9-2004, 23/5-2005.

<sup>56</sup> Interview, 20/9-2004.

<sup>57</sup> Observation of meetings 12/9-24/9-2004

There are several indications why this is not a plausible explanation. First of all, the possible increase in costs of EU policies was already noted known to the EU-actors, and concerns about increased costs both for ship-owners and for national administrations were expressed also by delegates from the EU-countries most actively advancing a policy of high standards.<sup>58</sup> Still, known costs were not used during coordination as an argument for a less costly policy. Instead, the countries originally opposing common EU-policies at least from the outset changed positions and stopped opposing a coordinated policy of high minimum-standards. What is striking is thus not that many EU-members have preferred EU policies in line with their already existing national law and practices, but that the policy-making outcomes, i.e. EUFP, knowingly will lead to precisely such costs – one example being provisions concerning social protection. Though the EU-standards are already high in many EU-members, and it therefore as mentioned by the delegates from these countries was not very problematic to agree to the proposed Convention, it is still the fact that for many EU-countries, the ILOMLC will imply costs. As said in an interview, “...many EU-countries are terrified of taking on higher commitments than they already have”.<sup>59</sup> If some countries tried to use norms instrumentally in order to advance their own predefined material interests, they have apparently not been very successful in influencing the outcome.

Thus, though the analysis so far shows that references to gain are widespread in the material and are factors that must be taken into account in order to understand EU policies, there is apparently as said by one of the interviewed “... more to this than economic interests”.<sup>60</sup> Though to a very varied degree, EU policies implied known costs to all the actors, and still they were agreed to and advanced in the ILO. How can this be?

## Norms and EU foreign policy

On the basis of the developments of EU foreign policy since the late 1990s, an increasing amount of literature argues that norms are important for understanding EUFP. Following these studies, there is an indication that the EU in its foreign policy differs from what we would expect on the basis of the traditional assumptions of interest-maximizing actors, and further that this particularity is linked to the promotion of norms.<sup>61</sup> Such an emphasis on norms is also evident when looking at how the EU itself presents the objectives of its common foreign policy. Among the main objectives are “to develop and consolidate democracy and the rule of law, and respect for human rights and fundamental freedoms”.<sup>62</sup> Further, the EU aims to establish “a stronger international society, well functioning international institutions and a rule-based international order” with the UN at the centre of a global system.<sup>63</sup> Despite the different material and security-related interests among the member-states and the fact that the institutional procedures and intervening actors vary across

<sup>58</sup> Interviews, 18/9, 21/9-2004, 23/5-2005

<sup>59</sup> Interview, 23/5-2005

<sup>60</sup> 23/9-2004.

<sup>61</sup> Lucarelli and Manners, 2006, K. Smith, 2006.

<sup>62</sup> Maastricht treaty, article J.1.2

<sup>63</sup> European Security Strategy, 2003.

policy-fields, human rights are claimed to be at the core of all the Union's external policy. This thus strengthens the idea that normative justification may have been important for EU policies and positions in the ILO. But if so - what norms and in what way?

A possibility already discussed is that actors' have used norms instrumentally. This is however not supported by the analysis. So far, the analysis instead shows that though important, economic interests cannot by themselves explain EU policies. EU actors could in principle therefore have justified policies with reference to values; arguing for positions on the Convention that is appropriate or good for European seafarers, *or*; by reference to rights; for an ILOMLC that appears 'right' or just according to standards that are not dependent on belonging to a particular community, i.e. to the rights of individuals and the importance of securing these through international law. This distinction between collective values and individual rights has been helpful in the study of EU enlargement.<sup>64</sup> It also seems relevant when wanting to increase our knowledge of foreign policy, in order to understand not only if but also what norms play a role in EUFP.<sup>65</sup> When wanting to study the putative role of norms in EUFP, this is not least so since the EU is sometimes accused of imperialism, hypocrisy and double standards. Though the EU is often described as a human rights-promoter, others instead claim that the EU is imperialistic, pushing its own norms onto others.<sup>66</sup> Such claims of imperialism were also raised in the ILOMLC-process. One of the interviewed ILO-officials for instance argued that "the EU is increasingly trying to say that we know best, we should rule the world".<sup>67</sup> Hence, there is a need for analytical tools that are better able to differentiate between a policy that is linked to what is perceived of as good for the EU community vs. what can be universally applied. Applying an analytical distinction between values and rights thus seems helpful when wanting to understand EUFP and in particular whether it is linked to the promotion of norms. This being said, it is important to underline that this article does *not* aim at any substantive, normative assessment of EU policies in the ILO. Here, the different types or categories of arguments - characterized by reference to interests, values and rights respectively - are treated as analytically distinct categories, as tools used to better understand EU policies, testifying to different justifications and hence analytically distinct explanations of EU policies.

### Justification through values

First, to what extent is the hypothesis that EU policies were based on solidarity with European seafarers, i.e. that the EU conducted its policies in order to secure the needs of seafarers working on European ships, substantiated? There are several value-based references, for instance to "Europe's maritime heritage" and to how to create "a sense of common purpose and identity" in the 2007 Communication on maritime policy.<sup>68</sup>

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<sup>64</sup> Riddervold and Sjursen, 2006, Sjursen, 2002.

<sup>65</sup> Sjursen, 2006.

<sup>66</sup> On the EU as a human rights-promoter, see for instance Lerch and Schweltnus (2006), Lucarelli and Manners, (2006) Smith, 2004. See Diez (2004) for more on the argument that the EU instead is pushing its' own values onto the rest of the world.

<sup>67</sup> Interview, 21/9-2004.

<sup>68</sup> Commission, 2007: 15.



However, such references were mainly related to why the EU-members coordinate policies in the ILO and were seldom used as justifications of specific EU policies.<sup>69</sup>

This being said, hindering social dumping in the EU through higher international standards, in order to protect European seafarers, was a reason sometimes given for the EU's positions on the ILOMLC.<sup>70</sup> One of the delegates listed concerns for social dumping as one of the main reasons why there was a need for a consolidated Convention<sup>71</sup>, and another even claimed that "... the Commission is more concerned with securing that European seafarers are not out-competed by cheap labour than by the ability of the fleet to compete".<sup>72</sup> This thus not only underlines the above conclusion that there is more to EU policies than material interests, but also points to securing the needs of European seafarers as a possible reason for the policy conducted. In line with such reasoning, the Commission has according to some delegates further linked the ILO process to a wider agenda of reassessing the maritime exemptions in EC labour-law, i.e. linking changes in global standards to issues of European integration.<sup>73</sup> However, though the Commission sometimes referred to "the European fleet" and "European interests"<sup>74</sup>, there were few other references to the needs of European seafarers in particular, in coordination-meetings, in global meetings or in interviews.<sup>75</sup> Rather, when used by the delegates in interviews, arguments referring to protect or help European seafarers were referred to as illegitimate Commission "hidden agendas" of increasing own competences and standardize regulation in the inner market, and not as the reason behind particular common foreign policies. One of the delegates for instance criticised the Commission during an interview, saying she was "...surprised how little focus there is [in the Commission] on the people in the industry though the Commission is aware that they have a low level of social protection compared to other workers. The goal of the Commission is to set common social standards in the inner market."<sup>76</sup> Justifying EU policies by reference to the protection of European workers in particular was thus not common amongst the decision-makers, and though such concerns may influence policy-implementation through the role of the Commission, they have not functioned as mobilizing arguments for EU-policies on the ILOMLC. Instead, the above quoted arguments again indicate that policies have been justified with reference to the needs of the individuals working onboard ships regardless of the nationality of the ship, despite the known costs linked to the EU's policies. If neither value-based nor interest-based justifications can fully explain EU policies, can the "missing link" be found in rights-based justifications – is there evidence to support a hypothesis of a rights-based policy?

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<sup>69</sup> Interviews, 13/9-24/9-2004.

<sup>70</sup> Questionnaire, November 2004, interviews 18/9-2004 and 23/5-2005.

<sup>71</sup> Interview, 15/9-2004.

<sup>72</sup> Interview, 18/9-2004.

<sup>73</sup> Interviews 18/9-2004 and 23/5-2005.

<sup>74</sup> Questionnaire, November, 2004, working-documents.

<sup>75</sup> It seems, however, that such considerations might have been developed during the same period, since there is a much clearer identity-related focus on Europe and European seafarers in the mentioned proposed Integrated Maritime policy of 2007 (Commission, 2007).

<sup>76</sup> Interview, 18/9-2004.

## Justifications through rights

References to the importance of securing human rights are widespread in internal coordination-meetings, in ILO-meetings and during interviews.<sup>77</sup> The ILOMLC was for instance described as the best way to ensure that seafarers' rights are respected and enforced also under jurisdictions with traditionally poor conditions and little protection.<sup>78</sup> Though not said openly in the tripartite meetings, the argument from an interview that "the seafarers working on ships flying flags of convenience cannot be treated like this any longer"<sup>79</sup> is an example of this expressed concern by many EU-delegates. Justifying positions with reference to "fair treatment"<sup>80</sup> and arguing that we "must be careful not to end up with less protection of the seafarers"<sup>81</sup> are further examples from the different meetings underlining how rights have been used to justify EU policies of promoting high minimum-standards.

Again, the question is if these references to rights are only empty words. As shown, the material does not support a hypothesis that normative arguments have been used strategically only. But does the material support a hypothesis that a concern for universal rights has influenced behaviour? On the one hand, the widespread use of rights-based arguments in different fora and by different actors is a first indicator that rights are important for explaining the EU policies conducted. On the other hand, a few of the actors argued against such an understanding of EUFP by claiming in interviews for instance that "we want to look good, but it is just to give a nice impression of promoting human rights".<sup>82</sup> However, instead of contradicting a rights-based approach, the arguments by these delegates that also referred to the costs of high standards rather strengthen than undermine the hypothesis that rights are important for understanding EUFP in the ILO: "The driving forces [in the EU] don't care about big business but are saying we care about human rights and we are the best in the world"<sup>83</sup> and "the EU is more focused on reputation and promoting human rights than big business"<sup>84</sup> are examples of reasons for EU policies given during interviews by these EU-actors. Interestingly, one of the delegates originally opposing common EU policies due to its expected costs even said that a priority of his country was not only to advance material interests but also "...to better its reputation on human rights protection in shipping", further indicating that rights are important for understanding the EU-policy agreed to and conducted.<sup>85</sup>

That the EU has been a human rights promoter in the ILOMLC-process is also supported by the reaction of other actors towards EU's behaviour. Though not expressed very often in the global meetings due to the scepticism among many countries towards "blocks" of countries (a scepticism that had a clear reference to the

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<sup>77</sup> Interviews 13/9-24/9-2004, 23/5-2005, Coordination-meetings 2004, Questionnaire November 2004.

<sup>78</sup> Interviews 15/9, 16/9, 18/9, 21/9, 22/9, 23/9.

<sup>79</sup> Interview, 21/9-2004.

<sup>80</sup> ILO Committee-one meeting, 17/9-2004.

<sup>81</sup> EU-coordination-meeting 20/9-2004.

<sup>82</sup> Interview, 17/9-2004.

<sup>83</sup> Interview, 20/9-2004.

<sup>84</sup> Interview, 20/9-2004.

<sup>85</sup> Interview, 17/9-2004.

EU countries) the seafarers' representatives were clearly positive to the EU.<sup>86</sup> For instance, a seafarers' representative said during an informal interview that the "EU is a locomotive internationally" when it comes to the promotion of rights.<sup>87</sup> This impression of an active rights-based EUFP was also confirmed by ILO-officials in interviews: "The EU-countries are good countries"<sup>88</sup> and "the bad countries must agree to some of the minimum-standards in order not to look bad"<sup>89</sup> are examples of characteristics given of the EU's policies. The EU actors were also aware of this possibility of influencing other countries' behaviour. For instance, reasons used during coordination-meetings for a policy of advancing high minimum-standards were that others "will respect the EU view"<sup>90</sup> and that the EU must "push others that behave badly into better behaviour".<sup>91</sup> However, the EU's human rights promoting policy was not only seen as positive. As one of the delegates from one of the newer EU flag-states said during an interview, "the EU is seen as arrogant - they think they are better and know everything".<sup>92</sup> According to him "the EU should try to raise the global standards, but through persuasion - not dictation. Human rights are a good thing but if we dictate them upon the world they will rebel".<sup>93</sup> Both some internal and external actors saw EU policies as inward-looking and imperialistic or as endangering wide-spread ratification. For instance, one of the interviewed ILO-officials said it is a "problem that the EU is increasingly trying to say that "we know best, we should rule the world. The EU wants other countries to have the same high level of protection, even if they are much less developed".<sup>94</sup> Or as one of the delegates said, "A clique doesn't look good when it is a clique of rich countries".<sup>95</sup> There was thus awareness by some delegates that EU policies might not be efficient - and even a claim by some EU actors and ILO-officials that the EU member-states can pursue a human rights based policy more efficiently nationally than through coordinated action. For the questions raised in this article, however, the main point is that these arguments again confirm rather than undermine that rights-based justifications are important for understanding the EU-policies actually conducted, even if some argued that it is questionable whether the EU is choosing the best way of reaching such goals.

### Words and deeds?

Another indication of whether a rights-based thesis can be substantiated is to look at EU policy-positions on concrete areas of the ILOMLC where costs clearly conflicted with the promotion of high minimum-standards. There were several cases where different delegates during coordination-meetings used rights as an argument for why the EU should promote high standards despite its costs. For instance, the need to secure rights was used as an argument against the Commission in cases where it referred to European interests, but also the Commission used arguments of the type;

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<sup>86</sup> Normally, ILO Conventions are adapted when ratified by 25 countries, but due to the EU group consisting of 15/25 countries, this was set to 30.

<sup>87</sup> Interview, 21/9-2004

<sup>88</sup> Interview, 21/9-2004.

<sup>89</sup> Interview, 21/9-2004.

<sup>90</sup> EU-coordination-meeting 21/9-2004

<sup>91</sup> Second EU-coordination-meeting 13/9-2004

<sup>92</sup> Interview, 20/9-2004.

<sup>93</sup> Interview, 20/9-2004.

<sup>94</sup> Interview, 21/9-2004.

<sup>95</sup> Interview, 23/9-2004.

“how can you secure the seafarers with this proposal?” during internal coordination-meetings.<sup>96</sup> Likewise, “we want to secure the working-and living conditions of seafarers”<sup>97</sup> and “this is a matter of principle”<sup>98</sup> are arguments used for policy-positions in cases where some actors referred to national interests as reasons for a preferred different policy. This is not to say that the actors did not argue with reference to material interests. However, in all the discussions observed, rights-based arguments were in such cases not met with counter-arguments referring to costs. After the initial attempt of some EU-members of opposing coordination of policies, there was never a question of promoting a policy at the expense of rights or to use costs as an argument for a policy opposing high standards in cases of conflict between interests and rights, even if some delegates without saying so in the coordination-meetings still found EU positions too costly.

That the EU’s human rights focus is more than empty words is also evident when comparing both the EU’s argumentation and its behaviour to that of other countries and regions. This is particularly so when compared to some of the Asian shipping-countries or to countries like Liberia, who might sometimes argue with reference to norms, but seldom followed up in its actual policy-positions. For instance “Seafarers look to those countries that respect seafarers’ rights to come forward” and explicitly referred to EU law and the difference between Europe and Asia in terms of social-and labour rights protection during tripartite discussions.<sup>99</sup> More interestingly, there are also clear differences when comparing the EU to the USA. That is not to say that the EU never showed to its material interests or behaved strategically in the global meetings. Rather, in parallel with the focus on the ILOMLC’s substantial content, the discussions in the coordination-meetings often focused on how to most efficiently get EU positions through globally, i.e. on how the EU should act towards the other countries and the social partners. This could for instance be a question of what to say, of timing or the expectation of others, an example being that “we are bound by the directives, no matter what results in the Convention. We must get the Convention as close to these rules as possible for securing a level playing field”.<sup>100</sup> However, even when discussing concrete areas of the Convention in the closed government-group meetings there was a difference between the EU and the USA in that the USA, though in general keeping a low profile, much more often threatened with veto or showed to its already existing legislative system or interests when arguing for certain positions.<sup>101</sup> For instance, the EU was the only block of countries that from the beginning of the process had no objections to including the basic ILO human rights in the ILOMLC, and it was much due to the active support of the EU that these were finally taken into article III.<sup>102</sup> The USA, on the other hand, for a long time argued against such a reference in article III, saying it would be “a severe obstacle” to American ratification.<sup>103</sup> This was linked to the fact that the USA has ratified very few

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<sup>96</sup> EU-coordination-meeting 17/9-2004.

<sup>97</sup> Interview 16/9-2004.

<sup>98</sup> EU coordination-meeting, 17/9-2004.

<sup>99</sup> ILO Committee one meeting, 15/9-2004

<sup>100</sup> EU-coordination-meeting 17/9-2004.

<sup>101</sup> Observations, 13-24/9-2004, interviews 23/5-2005, 28/3-2008.

<sup>102</sup> Interviews, 23/5-2005, 12/2-2008. These are freedom of association the right to collective bargaining; the elimination of forced compulsory labour; the abolition of child labour; and the elimination of discrimination

<sup>103</sup> Government-group meeting, 13/9-2004.

ILO conventions, something all the interviewed delegates and social partner-representatives found difficult to explain when asked during interviews. However, the probable reason most often referred to was to avoid that American workers in American courts could use these references as positive rights.<sup>104</sup>

### International law

Underlining the rights-basis of EU-policies, another interesting observation supported by interviews is the widespread EU argumentation that it is the seafarers that are the focus of the ILOMLC.<sup>105</sup> This might seem self-evident when the topic is consolidation of the maritime ILO-Conventions, but following conventional perspectives on international law-making one would rather expect the actors' focus to be on the interests and rights (and perhaps values) of states or alliances of states. In the EU-actors' argumentation, the reference was however mainly to individuals, even though the discussions were focused on very concrete issues. For example, when internally discussing EU positions on the definition of shipowner – having consequences both for costs and the scope of ratifications – an argument used by a delegate was that this “should apply to seafarers, not to the size of ships” when he was opposing an EU position argued for with reference to European interests.<sup>106</sup> This argumentation was also used towards other countries in the closed ILO government-group-meetings. That “seafarers are the entities”<sup>107</sup> and “the seafarers must know who to address if they have complaints”<sup>108</sup> are examples of arguments used by different EU-delegates when discussing the scope of the ILOMLC. Further examples from different meetings are how, when discussing the rights of young seafarers during a coordination-meeting, it was easily agreed to the argument that “young persons must be protected”<sup>109</sup> as a reason for promoting particular rules for this group. Or when in ILO-meetings discussing whether the definition of ship should be linked to tonnage, a position preferred by many shipping-countries due to economic reasons, several EU-delegate argued for instance that “these are fundamental elements in the Convention that should have no lower level”, that “this is a fundamental principle”<sup>110</sup> or internally that “We must make sure that no-one falls out of the general rights”.<sup>111</sup>

An important tendency linked to this is that both during internal and external meetings and during interviews, EU-actors often referred to the importance of getting a widely ratified instrument and to avoid duplication with other international instruments.<sup>112</sup> This is in line with the ILO goal that the ILOMLC should become “the labour rights pillar of international law on the maritime industries”, on a par with the

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<sup>104</sup> Interviews, 13-24/9-2004, 28/2-2008. It is per April 2008 unclear whether USA will ratify the ILOMLC.

<sup>105</sup> Interviews 15/9, 16/9, 18/9, 21/9, 22/9, 23/9.

<sup>106</sup> EU-coordination-meeting 14/9-2004.

<sup>107</sup> Government-group meeting, 13/9-2004. The USA finally agreed after getting support for its preferred definition of “substantially equivalent”. However, though adopting the ILOMLC in 2006, it is still unclear whether the USA will ratify.

<sup>108</sup> Government-group meeting, 13/9-2004.

<sup>109</sup> ILO Committee three meeting, 13/9-2004

<sup>110</sup> ILO Committee three meeting, 13/9-2004

<sup>111</sup> EU-coordination-meeting 14/9-2004

<sup>112</sup> Interviews, 13/9-24/9-2004, coordination-meetings 2004, ILO 2006.

more technical IMO instruments SOLAS, MARPOL and STCW.<sup>113</sup> On the one hand, this focus on international law was justified with reference to efficiency in the sense that it is more practical to have single comprehensive and well-known instruments, like in the IMO.<sup>114</sup> However, not only is it clear that the EU actively contributed to a Convention of high standards. By knowing that the ILOMLC will be implemented largely through directives and as such will be made binding, one can even argue that the EU-members by their common policies bind themselves to such international law. What is more, the material also shows that the EU attached importance to controlling the fulfilment of these regulations. As already discussed, wide-spread ratification of rules closer to own standards is advantageous from a perspective of competitiveness, and is one of the reasons why the EU focus on strict port-state control of ships coming to its port. However, there is also what was described as a more “idealist element” to this control of implementation, in that “the EU clearly sees itself as a guardian of international law”.<sup>115</sup> There were different positions amongst the EU-members on the level of EU-intergration on maritime issues including port state-control, but even in the interviews as early as in 2004, several delegates pointed to the importance of not only raising the level of international standards but also linked this concern to the importance of securing its implementation, including thorough strict port state control.<sup>116</sup> As argued by the Commission, common EU implementation of the ILOMLC “will not change the status of the convention but will give more weight to it because EU law provides more integrated jurisdictions and means of control than ILO procedures”.<sup>117</sup> Interestingly, some, including ILO-officials and seafarers’ representatives even saw the importance increasingly attached to international law as a general tendency in EUFP; pointing to the EU’s role as an international forerunner, or arguing that this tendency was particularly evident in this case in the EU’s focus on strict control.<sup>118</sup>

## Concluding remarks:

In this article, I have discussed three distinct hypotheses of why the EU has advanced an ILOMLC of high minimum-standards and strict control-measures. The material shows that the hypothesis that a concern for establishing international law for the protection of human rights has been particularly important in mobilizing the EU to promote a Convention of high standards despite of its costs. This does not mean that economic concerns have been unimportant or that the EU has not been strategic in its behaviour. However, though also advancing material interests, justifications through rights have not only influenced behaviour. In fact, in several cases of conflict, rights trumped material interests. It is clear that at least to many of the EU actors, “what we are dealing with is the fundamental rights of seafarers”.<sup>119</sup>

By applying an analytical approach of studying actors’ reason-giving, I have thus been able to say more not only about what types of norms have influenced EU-

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<sup>113</sup> EU-coordination-meeting18/9-2004.

<sup>114</sup> Ibid.

<sup>115</sup> Interview, 28/2-2008.

<sup>116</sup> Interviews, 13/9-24/9-2004.

<sup>117</sup> Questionnaire, November 2004

<sup>118</sup> Interviews 21/9-2004 and 28/2-2008.

<sup>119</sup> ILO Committee 1 meeting, 15/9-2004.

policies, but also to indicate more about how this was so. Instead of supporting a hypothesis of a strategic use of norms, the material indicates that, after the initial opposition by some to coordinated EU-policies, it was clearly not seen as legitimate to use economic concerns as a reason for preferred policy-positions when this conflicted with rights. When an argument referring to rights was put on the table it was not questioned and by this it influenced the policy conducted – also in cases where not all actors perceived the policy to be the best policy-option available. Hence, this finding also indicates that there might be something about the EU that contributes to a rights-based foreign policy. Even if the EU-members are obliged by the treaties to try to coordinate behaviour internationally, it is still a “rationalist puzzle” why countries originally opposing a policy of high minimum-standards did not try to block costly policy-positions or at least continued to try to convince the other members to advance a less costly policy. This indicates that there are rules for legitimate behaviour if you are an EU-member and that these may be important also for understanding EU foreign policy outcomes. And at least in this case, the norms for legitimate behaviour were linked to universal principles and not ethic-political values or internalized habits. Clearly, if and how EU-coordination affects policy-outcomes should be the topic of further studies.

What the analysis also indicates is hence that the rational choice approaches for studying international relations cannot fully capture EUFP. In order to explain EU-policies in the ILO, the importance of norms for foreign policy behaviour must be taken into account. As regards the theoretical discussion on the role of norms in EUFP, this article thereby confirms the argument that there is something particular about EUFP if compared to foreign policy as we traditionally conceive of it and that this particularity is linked to norms. What it takes to be a “normative power” has however been underspecified in the literature discussing EUFP. Advancing human rights is often argued to be a characteristic of EUFP, but as was the case in the ILOMLC-process, the EU is sometimes also accused of imperialism. Most liberal democracies would claim that securing human rights is a main goal for their foreign policies. However, as for instance reactions to American policies following 9/11 have shown, we need to further specify the empirical indicators identifying different types of “normative” foreign policy actors. An important implication of this study for taking the conceptual apparatus a step further is that it might be helpful to look at the role of international law in the actors’ foreign policy-behaviour. This study indicates how the EU is contributing in changing international law away from the Westphalian system of regulating inter-state relations towards an explicit focus on the individuals, and not states, being the addressees or the right-bearers of such law. As such, the analysis supports Lerch and Schweltnus’ (2006) claim that a particular characteristic of EU foreign policy behaviour is that it promotes a stronger human rights protection than what is found in international law today. However, it takes the argument a bit further by indicating that the EU in its foreign policy not only is contributing to a change in the focus of international law, but also that it is submitting itself to such law and is seeking to ensure its actual implementation. In particular, the finding that the EU increasingly sees itself as a guardian of international law is something that should be studied further.

In a broader perspective, these findings point to how the nature of foreign policy is changing and how the EU is contributing to this transformation. It illustrates how the boundaries between domestic and international affairs are shifting, and how both maritime and even social issues are becoming increasingly important areas of EUFP.

One might even argue that the EU's role as a "guardian of international law" has already had effects in that the structure and strict enforcement-mechanisms of the Convention is expected to lead to a high level of ratification, already indicated by Liberia and Bahamas being the first countries to ratify. Though it is of course difficult to measure the effect of EU-policies, it seems plausible that the EU will increasingly play an important role not only in the development of labour- and social rights in the maritime sector but also in the development of international law more broadly.



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