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## Making a Common Foreign Policy EU Coordination in the ILO

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## **Abstract**

This article contributes to the debate on how we can understand common EU foreign policy making. Through a core study of EU coordination towards the ILO Maritime Labour Convention (MLC), I attempt to explain that the EU reached agreement on common positions in all areas of the MLC despite the members' initially diverging preferences. To account for this, I draw on Habermas' theory of communicative action. The analysis suggests that common EU policies were the results not of exchanging threats and promises, but of different types of learning on the basis of reason-giving. Despite what we conventionally would assume, the EU members not only adjusted their preferences as part of the bargaining game, but also changed them on the basis of arguments perceived as legitimate.

## **Keywords**

CFSP - ILO - Legitimacy - National Interests



## Introduction

The European Union (EU) has reached an advanced level of integration, including in the area of foreign policy.<sup>1</sup> It has developed a wide range of common foreign policy instruments, an institutional framework is established in Brussels, and the EU members increasingly speak with one voice at the international arena. How can this be? EU foreign policy is formally run by intergovernmental procedures, and is the policy area where, given our conventional understandings of international relations (IR), one would expect the EU members to be least willing to agree to policies that depart from their national self-interests. So how can we explain that they nonetheless do?

This article aims at contributing towards answers to this question through a core study of EU foreign policy-making in one international arena, namely the United Nations (UN) agency, the International Labour Organization (ILO). More precisely, it analyses EU coordination in the process of consolidating and updating the maritime ILO conventions, resulting in the adoption of the International Maritime Labour Convention (MLC) in February 2006. Despite the EU members' initially diverging national positions on major parts of the convention draft, agreement on common positions was reached on all parts of the MLC.

The conventional, rational choice-based understanding of international agreements is that they are the results of *bargaining* between goal-seeking actors with given preferences. On this basis, one would expect agreements on common EU positions towards the MLC to be the result of package-deals in line with the actors' relative resources. However, common policies towards the MLC came with high costs to many of the member states, and agreements were achieved despite the fact that big EU shipping countries initially threatened to veto or even opposed *any* coordination in the field. What is more, during the process of coordinating EU positions towards the MLC, there was a clear change from 'a deep mistrust towards EU coordination when it all started' where powerful actors threatened to veto or leave the discussions, to a situation where the EU members reached agreement in all areas of the MLC through discussions that were characterised by 'a very good tone' (Interview 8/12-2008). How can we account for this? Drawing on Habermas' theory of communicative action, I explore the hypothesis that agreements on common positions were reached due to learning on the basis of reason-giving.

To account for EU agreements towards the MLC, this paper is organised in three parts. I first give a short description of the case. Second, the analytical framework and the methodology are presented. In particular, it is necessary to adumbrate the abstract term of communicative rationality inherent in Habermas' theory applicable for empirical analysis. Third, I present the analysis. Here I first substantiate the claim that rational choice-based perspectives cannot sufficiently account for common EU positions. Subsequently, I discuss the extent to which there is evidence to support the hypothesis that agreements were reached due to arguments. Instead of studying the

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<sup>1</sup> By 'European foreign policy' I mean 'the ensemble of the international activities of the European Union, including output from all three of the EU's pillars' (Hill 2004: 145).

applicability of alternative hypothesis, the focus is hence on further developing and operationalising communicative theory, with attention then paid to the relevance of this approach for better understanding a concrete case of EU foreign policy coordination.

## **EU coordination towards the Maritime Labour Convention (MLC)**

### **What is the MLC?**

The ILO is a tripartite UN specialised agency whose main tasks are to formulate and control international social and labour standards. Due to the unique global features of the maritime sector, issues regarding working conditions in the maritime sector have been considered in distinct maritime ILO sessions (ILO Maritime). However, the level of ratification of the ILO maritime instruments has been low, and shipping has traditionally been an area in which the protection of labour and social rights has been weak. In particular, seafarers working on board ships flying so-called 'flags of convenience', where shipping companies have profited economically from low standards, have suffered from 'unacceptable working-conditions.'<sup>2</sup> The ILO in 2001 therefore started a process of consolidating and updating the existing maritime ILO standards. After several rounds of ILO meetings where the parties discussed the draft convention, the MLC was finally adopted in 2006. Such consolidation is a new phenomenon in international treaty making. Compared to other international standards, the MLC is characterised by high minimum-standards and strict enforcement and control mechanisms, even allowing port state inspectors to withhold ships flying flags of non-ratifying countries. It is based on basic labour and social human rights, and aims at being a global, uniformly enforceable instrument providing 'comprehensive rights and protection at work for the world's more than 1.2 million seafarers' (ILO 2006; MLC Article III).

### **EU coordination in the ILO Maritime**

The European Community is not a signatory to ILO conventions, and there were few established formal and informal norms for EU coordination in the ILO Maritime prior to the MLC process. Most of the EU members have traditionally met with other western states in the group of industrialised market economy countries (IMEC). The Commission initiated separate EU coordination meetings towards the MLC in the autumn of 2003.<sup>3</sup> Thereafter, the EU members met in closed coordination meetings, primarily during, but also sporadically in between, the different rounds of ILO meetings discussing the draft MLC. The EU members agreed on the need for a new consolidated maritime convention and to participate in coordination in order to avoid conflicts with existing EU regulation.<sup>4</sup> However, many of the EU members have

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<sup>2</sup> ILO (2006) 'Maritime Labour Convention', assessed August 2009, available at: [http://www.ilo.org/global/What\\_we\\_do/InternationalLabourStandards/MaritimeLabourConvention/lang-en/index.htm](http://www.ilo.org/global/What_we_do/InternationalLabourStandards/MaritimeLabourConvention/lang-en/index.htm).

<sup>3</sup> On EU policies towards the MLC see Tortell et al. 2009, on coordination in the ILO see Hoffmeister 2007; Johnson 2009; Novitz 2009, on the EU and the UN, see Jørgensen 2009; Laatikainen and Smith 2006.

<sup>4</sup> Interviews 13-24/9-2004. Also see Tortell et al 2009. By EU-regulation/EU-legislation/EU-law I mean any common regulation that is binding on the member-states.

opposed EU coordination in international organisations dealing with maritime issues (Hoffmeister 2007). Actually, 'controlling the Commission was one of the main reasons for meeting' (Interview 8/12-2008). In the first round of EU coordination meetings, and the EU members met the evening before the first meeting organised by the Commission in Brussels in 2003 (Interviews 23/5-2005, 11/2-2008). The obligation to coordinate and the role of the Commission was formally settled in a negotiating mandate adopted by the Council in April 2005 (Tortell et al. 2009: 118).

National delegations mainly comprised of maritime and social security specialists with relatively flexible mandates, EU officials from the EU delegation and the EU's Liaison Office in Geneva, as well as Commission specialists, were present at the various EU coordination meetings.<sup>5</sup> As EU coordination in the ILO is run by intergovernmental procedures, the country holding the Presidency led the meetings. The Commission's roles were mainly to help facilitate coordination and in particular to inform the EU members of relevant EU regulation, since the MLC covers a very broad number of issues. By 'coordinated EU position' I hence understand what at the international level (i.e. at the ILO meetings) appeared as an agreement amongst the EU members towards the MLC, both when presented by the Presidency or by other member-states on behalf of the EU members present, and when individual member-states expressed support for (or did not object to) the same draft proposal or wording. Despite the members' initially diverging interests, coordinated positions were reached on all parts of the MLC during the process. How can this be?

## **Theoretical framework: how can we account for agreement?**

### **The conventional understanding: bargaining**

Following conventional understandings of IR, international agreements are the results of bargaining between instrumentally rational, goal-seeking actors with given preferences (Keohane et al. 2009; Krasner 1999; Mingst 2004; Moravcsik 1998; Snidal 2001; Tallberg 2008; Ward 2002). However, different rational choice-based perspectives vary in terms of the role that common rules and institutions are given in the process of aggregating these preferences at the international level. Realist accounts mainly see international outcomes as a reflection of existing power-structures amongst sovereign states (Mearsheimer and Walt 2006; Zakaria 1998). Neo-liberal accounts in addition focus on how common institutions and rules increase the actors' information of each others' preferences, reduce transaction-costs and the fear of sharing information, thereby facilitating common policy-making and further institutionalisation (Keohane et al. 2009; Krasner 1999; Mingst 2004; Moravcsik 1998). However, both approaches assume that when entering into EU discussions, the member states' preferences are given, and that the outcomes are decided upon through processes of bargaining: 'Whenever the EU decides, it is after a process of bargaining' (Peterson and Bomberg 2003: 333).

On this basis, one would expect that EU agreements towards the MLC were reached

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<sup>5</sup> See list of meetings and participants at ILO 2006. The countries that became members in May 2004 took part in EU-coordination from 2003.

through the exchange of promises and threats, where national positions were justified by pragmatic arguments referring to national interests and costs (Sjursen 2002; Riddervold 2010), leading to package-deals in line with the actors' relative resources and their relative interests in the different issues. Moreover, in order to increase their ability to maneuver effectively in favour of their interests, one would expect that the EU-members wanted to retain their national veto in sensitive areas and to be more reluctant to share information in areas outside already existing common regulation (Keohane et al 2009: 24; Kissack 2009: 109). One would also expect that bargaining would become tougher as the negotiations proceed towards a final decision, in particular when the outcome is binding on the member states as with the MLC.<sup>6</sup>

Looking at EU-coordination towards the MLC, there were, however, many developments that from the outset seem difficult to understand in the light of these assumptions of goal-seeking actors with given preferences. When the process of EU coordination started, there was much disagreement amongst the EU members on what should be the final content of the convention, and many expressed clear positions on issues seen as nationally sensitive, both internally in the EU and externally in the common ILO meetings. For instance, both Germany and Denmark threatened not to ratify the convention or to leave the EU discussions unless their views on particular provisions were reflected in the coordinated EU positions, flagging these positions as non-negotiable (on regulations 1.4 and 2.3 respectively). Still they later agreed to outcomes different from their initial preferences. Agreements on coordinated positions were also reached in the many areas outside community competence like social security (regulation 4.5), despite Denmark and United Kingdom (UK) initially opposing coordination in such areas. Due to its anticipated costs, the large shipping countries Greece, Malta and Cyprus in the beginning of the process even opposed *any* EU coordination towards the MLC (Riddervold 2010). These countries have traditionally had little labour and social regulation in shipping, and were initially closer to the positions of countries like Liberia and Panama than many of the EU countries with an already relatively high level of protection, like the Nordic countries or the UK. Still, EU agreements on coordinated positions were reached, overall resulting in a policy of promoting high standards in the convention despite the known costs of such a policy for these countries in particular. How can we account for this development?

### **Communicative action: deliberation**

The main problem with rationalist perspectives when seeking to account for common EU foreign policy positions is that they do not allow for the policy-making process to influence the actors' preferences (Eriksen 2005, 2009; Landwehr 2009; Sjursen 2006). A growing number of studies are therefore finding elements of Habermas' theory of communicative action helpful in order to better account for international agreements, including at the European level (Habermas 1993; 1996).<sup>7</sup> Following this perspective,

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<sup>6</sup> Eriksen 2009. One directive will cover provisions on enforcement and compliance and the other will directly implement all other parts of the MLC. Also see Tortell et al. 2009.

<sup>7</sup> Deitelhoff and Müller 2005; Deitelhoff 2009; Diez and Steans 2005; Eriksen 2005, 2009; Jacobsson and Vifell 2005; Janssen and Kies 2005; Lerch and Schwellnus 2006; Riddervold 2010; Risse 2004; Sjursen 2006; Thomson 2008.



an alternative explanation of common EU positions would suggest that they were agreed on not through bargaining but through *deliberation*, on the basis of mutually acceptable arguments. However, communicative theory has rarely been applied in studies of EU foreign policy making.<sup>8</sup> Could it help account for common EU positions towards the MLC?

Building on communicative theory, this article explores the hypothesis that coordinated EU positions towards the MLC were reached due to learning on the basis of reason-giving, i.e. because the EU actors involved accepted the arguments presented for these common positions as legitimate (Eriksen 2005, 2009). This would for instance give the following empirical hypotheses: EU agreement was reached on regulation 1.4 since Germany accepted the arguments that the draft provision was a good way of organizing employment agencies and in line with existing EU-regulation, and therefore changed its preferences. Likewise, Greece, Malta and Cyprus agreed to an EU policy of advancing high standards since, during the coordination meetings, they accepted the validity of arguments referring to the need to protect the seafarers through global law.

This approach builds on four basic assumptions. First, I assume that actors are discursively competent, meaning that they are defined as rational when they are able to justify and explain their actions and to evaluate the validity of arguments presented by others (Eriksen 2009; Sjursen 2006). Second, explaining outcomes on the basis of reason-giving presupposes that there are some arguments that can be perceived as legitimate by all the actors involved: 'Rationality in this sense not only refers to the actors' ability to justify a position or proposal but also to the ability to justify a course of action with commonly accepted reasons' (Deitelhoff 2009: 35). Deliberation hence 'always involves reference to a mutually accepted external authority to validate empirical assertions' (Risse 2004: 298), to what might be called 'desire-independent reasons' (Eriksen, 2009). In a heterogeneous setting such as the EU, 'desire-independent' arguments may refer to common law, expertise knowledge or universally acceptable norms (i.e. individual human rights), since these are arguments that are more likely to be accepted as valid by all in situations where the actors' material interests or socio-cultural norms diverge (Eriksen 2009; Eriksen and Fossum 2000; Risse 2004). Thirdly, defining actors as communicatively rational implies that, when faced with a common problem, they not only focus on how to maximize their interests, but rather 'try to reach an agreement on how it should be understood and solved' (Eriksen 2009: 27). Reaching agreement on the nature of the situation and the norms that apply – and hence on which arguments are relevant and legitimate in a given situation – is an integral part of a deliberative process (Deitelhoff 2009; Eriksen 2005; Risse 2004). This seems particularly relevant for understanding how agreements are reached in a heterogeneous setting such as the EU despite the members' diverging interests.

Lastly, I apply a Weberian take on social science in that I assume that explanations of social phenomena must be sought in the actions of intentional, rational actors, and the meaning they attach to their own actions (Eliaeson 2002). This is not to say that

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<sup>8</sup> See however Deitelhoff 2008; Mitzen 2006; Sjursen 2003 and Stie 2008.

explanation requires the identification of changes in the actors' motives, as we can never determine the actors' 'true' behavioural motivations. When seeking to account for international agreements, rationalist perspectives only presuppose that actors are strategically rational. Instead of starting from such assumptions, explanation is here linked to how arguments when accepted as legitimate by co-actors can mobilise common behaviour (Eriksen 2009: 20; Sjursen 2002). It is not the actors' private motivations but the arguments they present and whether these are accepted as legitimate that explain a particular outcome (Eriksen 2009: 18).

### Learning through reason-giving: empirical expectations

On this basis, if the hypothesis that EU agreements can be explained by learning through reason-giving is substantiated, one would expect to: firstly, find evidence of desire-independent arguments; and secondly, to be able to trace the concrete agreements back to these arguments. More precisely, one would have the following empirical expectations of the EU MLC process: firstly, the MLC covers social and labour law based on basic rights in the area of shipping. Thus, we would expect to observe three types of 'desire-independent' arguments during the internal EU coordination-meetings: law-based arguments, i.e. arguments referring to relevant common EU regulation; epistemic arguments, i.e. arguments referring to scientific or specialist knowledge on specific provisions in the convention, and lastly norm-based arguments, i.e. arguments referring to universally acceptable norms, to the individual rights of the seafarers.

Secondly, if EU agreements on particular provisions and policies were reached on the basis of learning through reason-giving, one would expect to find a link between agreements/outcomes and the desire-independent arguments observed. This means first, that the outcomes must be more than package-deals reflecting the power relations among the actors involved. In this context, the most powerful actors are in general 'the big three': Germany, UK and France. In addition, Greece, Malta, Cyprus, Denmark and Italy are considered to be powerful in economic terms in the area of shipping also.<sup>9</sup> Second, provided that the arguments outlined above are deemed to be valid, one would expect that three corresponding types of learning will lead to agreement on common policies: i) law-based learning, meaning that arguments referring to the existence of common EU law are accepted as valid; ii) epistemic learning, meaning that arguments referring to expertise knowledge in the field are accepted as valid; iii) norm-based learning, meaning that arguments referring to the individual rights of the seafarers are accepted as valid by the actors involved.

Lastly, in cases like this where the EU actors initially disagreed both on the main policies to advance in the ILO maritime as well as on the preferred level of EU coordination, reaching agreement on the standards that should guide common positions in the MLC process is expected to be a part of the coordination process. In empirical terms, one would consequently expect that an ongoing exchange of arguments amongst the EU actors might lead to the activation of common norms of

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<sup>9</sup> Report by UNCTAD secretariat 2007, 'Review of maritime transport 2007', available at: [http://www.unctad.org/en/docs/rmt2007\\_en.pdf](http://www.unctad.org/en/docs/rmt2007_en.pdf).

behaviour, which again is important for understanding argument-based agreements on concrete policies and positions.

## **Methodology and data**

Given the high number of issues covered by the MLC, I mainly focus on accounting for the development towards agreement on specific provisions and policies where there was much initial disagreement, or where one of the powerful countries expressed that they had strong interests. These issues were selected on the basis of interviews and participant observations.

To conduct the analysis, the different arguments were interpreted and sorted in accordance with the operationalisation before being systematically analysed, triangulating between the different sources. In addition, I counted and sorted the delegation members' interventions regarding the content of the MLC during the EU coordination meetings at the PTMC, independent of the length of the interventions. This, however, only gives a rough estimate of the different types of arguments presented at these meetings, as one intervention might contain different arguments but only the one I interpreted as the speaker's main argument regarding the provision was used in the analysis. It however gives an rough indication of the types of arguments presented, which when seen together with the interpretation of the other data is helpful for accounting for EU agreements. Learning on the basis of arguments was further studied by tracing and qualitatively interpreting the development of the actors' argumentation during the observed EU meetings, triangulating with other data, first and foremost from the interviews conducted with different actors, and over time.

Data was collected from multiple sources. Most importantly, I observed the closed EU coordination meetings held during the ILO working group meeting in Nantes in January 2004 and the closed coordination meetings held at least once daily at the Preparatory Technical Maritime Conference (PTMC) in Geneva 13-24 September 2004. I here also observed the closed ILO government group meetings and the different open tripartite ILO sessions (ILO 2006). Second, 11 semi-structured interviews with delegation members from different EU countries and several rounds of open interviews with a central Commission official were conducted during the PTMC. Since the main part of the material is from the PTMC, a follow-up interview was conducted via e-mail with the Commission key-informant later in 2004, and I conducted several in-depth interviews and had regular contact with a specialist key-informant with close contacts to different EU delegations (in particular the Nordic, Dutch and German delegations) in 2005, 2008 and 2009. Lastly, the material consists of official ILO reports from the MLC meetings (ILO 2006).

So, what do these data tell us about how the EU reached common positions towards the MLC? In the following, I study the extent to which the hypothesis that agreements were reached on the basis of learning through reason-giving is substantiated. First, however, it is necessary to substantiate the claim that rational choice-based approaches cannot sufficiently account for common EU positions towards the MLC.

## Why did they agree?

### The importance of 'the better argument' in EU coordination

#### Package-deals?

A first general finding is that EU coordination was characterised by extensive reason-giving. Except when discussing the role of the Commission in the process, the discussions in these meetings mainly focused on the provisions being discussed at the ILO level that some or all EU members saw in some way as problematic, and the delegation members always gave reasons for and explained their positions and proposals during these meetings (Coordination-meetings 13-24/9-2004). However, also package-deals are made through reason-giving, and approximately one third of the delegation members' interventions regarding specific MLC provisions mainly referred to their national interests or to the draft provision's expected economic consequences (ibid). Moreover, during the PTMC, threats were used seven times by two different national delegations on two specific issues at four different coordination meetings (Germany and Denmark) when discussing regulations on recruitment and placement (regulation 1.4) and whether to exempt the master from regulations on hours of rest and work (regulation 3.2) respectively (Coordination-meetings 13/9, 16/9, 17/9 and 18/9-2004). Both countries threatened not to ratify unless their particular national positions were reflected in the final MLC. For instance: 'Germany can not ratify the convention' unless the proposed reg. 1.4.3. was deleted, since it would be 'impossible in Germany' due to the implied costs of changing existing German law and administrative procedures (Coordination-meeting 13/9-2004).

However, I found no examples where references to national interests or costs, or of threats of exit, led the other EU members to accept a certain policy in cases where there was initial disagreement. Though presented by delegation members, also from powerful countries, when discussing issues referred to as sensitive and even non-negotiable, such references did not translate into package-deals. This was also the case when Germany threatened not to ratify. Instead, when the German delegate put forward the threat of not ratifying he also explained the problem, and the EU discussion then focused on 'finding a solution to the German problem' (Coordination-meeting 13/9-2004). Neither did I observe any examples of actors opening up to package-deals. In particular, though the delegation members in interviews said they expected support from the other EU members on issues seen as important, in the meetings observed they did not trade support in one area for support on another, or relate the discussion to other issues as part of package-deals (Interviews and coordination-meetings 13/9-24/9-2004). Neither is there evidence that the EU MLC process was part of a wider EU package deal. Lastly, I observed no discussions ending in voting in the internal EU meetings observed, as one would expect in typical bargaining sequences.

It might however still be that the actors' relative power and resources explain the EU agreements, either directly by the relatively more powerful actors dominating the coordination meetings, or by the actual decisions being made by these countries outside the common meetings. Is there evidence to support such a link between relative power and influence on the outcomes?

## **Influence linked to resources?**

During the interviews, all the 11 EU delegation members referred to the importance of EU coordination for determining national positions, like 'flexibility is needed in order to anticipate the discussions and be able to change positions' (Interview 15/9-2004). Only one delegation member argued that 'strong countries are more influential' (Interview 15/9-2004). When asked, all the interviewees instead said that 'those who talk and raise the right topics' (Interview 15/9-2004), who have 'competence and experience' (Interview 15/9-2004) were the most influential actors in the discussions.

To have convincing arguments was in other words seen by the EU delegation members involved as the most important resource for influencing the discussions, and not asymmetrical power as one would conventionally expect. However, in practice this meant that in particular 'the old 15 are more influential together with Malta and Cyprus. They have resources and do better preparation, have more experts [...] are always prepared, informed' (Interview 15/9-2004). Actually, during all the EU meetings (and the ILO meetings) observed at the PTMC, it was mainly Denmark, Germany, Greece, France, Ireland, the Netherlands (also in terms of holding the Presidency) and the UK that in addition to the Commission clearly were the most active. Belgium, Cyprus, Finland, Malta, Portugal and Spain, and Norway, contributed to a lesser extent to the discussions. It was in other words foremost old members, big countries and countries with big shipping industries that were active during EU discussions (Observations and interviews 13-24/9-2004). This identified difference in participation was however also due to language problems. All coordination meetings were in English, and the delegation members with little competence in English participated much less in the discussions. This affected the participation of the Central-European delegation members in particular, but also the delegation members from France and Spain sometimes misunderstood the discussions (Interview 23/5-2005; observations 13-24/9-2004). Due to language problems, some 'do not get the points of others and important nuances are lost' (Interview 18/9-2004), but there were also 'misunderstandings and different perceptions' (Interview 23/9-2004).

Hence, though in principle open to all, participation was in practice linked to resources and there were language problems and misunderstandings, all of which opened up to some countries being more active than others. Moreover, the informal contacts between countries traditionally seen as close were evident, and it might be that package-deals were reached informally inside these groups, prior to the common meetings. For instance, besides the informal contacts on a more personal level amongst the delegation members, the Benelux-countries had a separate coordination meeting in Brussels (3/9-2004) when preparing for the PTMC, and there was close cooperation between Malta, Cyprus and Greece, as well as several Nordic meetings during the process (Observations 2004; interviews 21/9-2004, 23/5-2005).

Resources translated into power can however not explain EU agreements on the difficult areas of disagreement. First, the fact that traditionally close groups of countries (openly) worked together and supported each other during the MLC-process does not explain the overall agreement amongst all the EU countries present. Second, there was no clear link between having a lot of resources and being active in

the discussion on the one hand and influencing on the outcomes on the other. If relative resources explain outcomes, it is particularly puzzling that we find among the group of countries with many resources the EU countries that most clearly changed positions in areas initially flagged as sensitive or even non-negotiable, like Germany, Greece and Denmark. This is neither something we would not expect if EU agreements reflected informal package-deals amongst the most powerful countries decided on prior to the coordination meetings. Moreover, small countries also influenced the process. For instance, according to one interviewee, 'Luxembourg have come up with many good suggestions' (Interview 21/9-2004) that solved internal EU-disagreements, despite being a country with few resources both in terms of power, delegation size and national preparations.

Finally, as opposed to what one expects of bargaining processes, where all seek to maximize their interests and resources decide, the data indicate that 'some countries are seen as positive, trying to find good solutions' (Interview 23/5-2005). Furthermore, these were seen as more influential than 'the negative countries who block good solutions' and might 'win battles but not the war [...] Others are irritated because this is not a constructive way of working' (Ibid). Hence, though influencing outcomes clearly was linked to the level of preparation and expertise and thereby indirectly to resources, the analysis suggests that there was more to agreement than the actors' use of their asymmetrical powers. As one of the interviewed delegation-members stated, 'you need rational arguments, good arguments. We have therefore worked hard with preparations' (Interview 23/9-2004). So if relative power and reference to national interest or possible package-deals can not sufficiently explain agreement, what can? Is there evidence to suggest that law-based, epistemic or norm-based learning led to agreement on common policies towards the MLC?

## **Convinced by desire-independent reasons?**

### **Rule-based learning**

The importance attached to avoiding contradiction between international and existing EU regulation has been underlined in previous studies of the EU's behaviour in international organisations, including in the ILO Maritime (Tortell et al. 2009). It was also a main objective of the negotiating mandate from 2005, which 'obliged member states to co-operate with the European Commission to ensure consistency with EU legislation' (Tortell et al. 2009: 118). Is such a focus reflected in the data; can arguments referring to common legislation explain agreements amongst the EU members?

When asked in 2004 whether they might change their national positions on the MLC and if so why, all 11 interviewed delegation members pointed to how 'the EU meetings limit national behavior' (Interview 21/9-2004) since one acquires information and learns of existing, relevant common legislation. This was viewed as an important reason not only for engaging in EU coordination from the outset, as 'it is impossible to know of all relevant EU legislation since the Convention is so broad' (Interview 6/9-2004), but also for determining common EU positions. One 'must accept that there are common standards' (Interviews 20/9-2004, 22/9-2004) and must

change national positions 'when EU legislation makes it necessary' (Interview 22/9-2004).

The notion that getting knowledge of existing EU regulation during EU discussion was important for reaching EU agreement on coordinated positions is also supported by the data collected during observations. Analysing the internal EU discussions observed at the PTMC roughly 1/6 of the delegation members' interventions regarding specific MLC provisions foremost referred to existing EU legislation (Observations 13-24/9-2004). In line with its task of 'safeguarding the community acquis and to avoid taking contradictory positions between the European level and the international level' (E-mail November 2004), the Commission always referred to the level of compatibility between the draft convention and existing EU legislation when it took the floor on particular provisions (Observations 2004; interview 8/12-2008). The delegation members sometimes disagreed on how to interpret existing EU law and on whether the relevant provision of the MLC was compatible with EU law. In these cases, the Commission often interfered or was asked to give an answer, returning with a comment or suggestion at a later meeting. Moreover, different delegation members referred to existing EU-regulation when arguing for or against different positions, primarily in discussions on health and safety-related regulations (Observations 13-23/9-2004). Examples are 'we want to strengthen the principles [...] in accordance with the framework directive on health and safety' (Coordination-meeting 22/9-2004) or 'we believe that this is not in accordance with the working-time directive' (Coordination-meeting 13/9-2008). Most importantly, however, with only one exception,<sup>10</sup> in all the observed cases of disagreement on what should be the coordinated EU position, when relevant EU regulation existed and was referred to, this ended the dispute and thereby settled the outcome: 'If something is said in an EU directive, it is accepted at once' (Interview 8/12-2008).

However, until the MLC is fully implemented, there is little common social and labour regulation in the area of shipping. Many areas of the MLC are hence not covered by EU regulation, like regulations on pay, social security and enforcement and compliance. Still, many of the longer and more intense discussions eventually leading to agreement were precisely on such issues (Interview 8/12-2008). One example is social protection (regulation 4.5)<sup>11</sup> where the EU members extensively discussed both the technical and legal aspects of the provisions in order to reach coordinated positions, despite the initial opposition amongst some EU members like the UK to coordinate on this (Coordination-meeting 18/9-2004). This finding diverges from earlier findings that the 'EU member-states coordinate more intensely in issue areas where a high level of integration already takes place, especially in occupational health and safety' (Moravcsik 1998 in Kissack 2009: 109; Keohane et al. 2009). Hence, though clearly important for understanding coordinated positions, seeking to avoid contradiction with existing EU regulation cannot account for all EU-agreements towards the MLC in the areas identified as controversial.

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<sup>10</sup> On reg. 2.3 settled by the Council.

<sup>11</sup> Also see Tortell et al. 2009: 122.

## Epistemic learning?

Second, we turn to whether there is evidence to support the hypothesis that agreements were reached based on epistemic arguments. Looking at the arguments presented, the data generally suggest that the EU discussions often were of a specialised nature, which is not surprising given that the participants were mainly experts in the field. However, there is also evidence to suggest that epistemic learning is important for understanding agreement on some of the areas where there was initial disagreement. As argued by one delegate, the EU meetings are helpful since one 'understands the issues better when hearing different views, (it) gives you a better picture' (Interview 16/9-2004).

Most importantly, the data suggest that this type of argument also influenced the preferences of the most powerful countries. A German delegation member for instance said that German preferences changed as a result of listening to the discussions during the internal meetings (Interview 15/9-2004), which was also the impression of other delegates later in the process: 'Germany has given in on a lot due to learning during the process. They have learned what is really in the convention' (Interview 23/5-2005). One of the most obvious examples is the question of employment agreements (regulation 1.4). As shown, this was flagged as a threat to German ratification during the PTMC, but Germany later changed its view and accepted this same provision, as a result of listening to the arguments of the other EU actors. Through the discussions in and between the ILO-meetings, the German delegation changed position on the issue since they 'understood that it had to be different' (Interview 11/2-2008) after being convinced that not only was the draft provision in line with EU legislation, it was also a good way of organising employment agencies (Interviews 11/2-2008, 28/3-2008). Another clear example is the change in the UK's positions on complaint procedures. On the basis of new expert information in a coordination meeting 18/9-2004 the UK delegate asked for time to get a new national mandate and later changed the UK's position.

On the basis of the data it is however evident that getting specialised knowledge or knowledge of how to secure consistency with existing EU law cannot explain all EU agreements in the areas identified as controversial:

In order to influence on the outcomes you must be well prepared, have good professional arguments, refer to existing EU regulations in the areas where this was relevant and you must have a social orientation, like hindering social dumping [...] The European countries are very seafarer friendly, this is the weak part

(Interview 8/12-2008).

## Normative learning?

When analysing the coordination meetings observed at the PTMC, we see that EU delegations' interventions regarding specific MLC provisions that mainly focused on the individual rights of the seafarers appeared almost as often as interventions mainly referring to national interests/costs (roughly one third of the interventions observed). However, while the data suggest that references to costs were raised primarily in



order to get support for particular issues seen as nationally sensitive, arguments referring to the individual rights of the seafarers were used consistently throughout the observed meetings. Such arguments were forwarded in all the discussions on different provisions observed during the PTMC (Observations 13-24/9-2004). Moreover, the content of the draft provisions was systematically discussed with reference to how the seafarers' rights could be implemented in practice. An illustrative example is the discussion on onshore complaint procedures (regulation 5.2.2) that due to the high level of disagreement on how to actually enforce the regulation returned as a topic all through the process.<sup>12</sup> These discussions explicitly focused on the legal and practical sides of ensuring enforcement, like "right is a legal issue that must be heard by a court and can not be controlled as such by an inspector in a foreign court", 'complaints must go through national administrations and courts' or 'if not (the ship's) own country enforces the Convention, other port state controls should' (Coordination-meeting 22/9-2004).

More importantly for understanding EU agreement, however, in all the meetings observed, references to the rights of the seafarers were not met with counter arguments referring to costs or to national interests. One example is the discussions on the scope of the MLC (Coordination-meeting 17/9-2004). In an interview, one of the delegation members said that her country preferred to limit the scope in accordance with its national interests. However, in the subsequent EU meetings the same delegation refrained from opposing a common EU position on definition and scope that contradicted the country's initial position when it was justified with reference to the importance of securing the seafarers' rights, hence leading to agreement on a different outcome than initially preferred. Another example is how 'Great Britain with its very strict view on rights and rules' has influenced much on EU agreements since 'no one could argue against' (Interview 8/12-2004) its reference to rights. This is evident in the observed discussions on for instance article III (Coordination-meeting 14/9-2004) and regulation 1.8 (Coordination-meeting 13/9-2004). According to two delegation members, the UK's insistence on the importance of limiting fatigue was also important for settling the discussions on regulation 2.3. in the Council since 'Denmark couldn't argue against that argument' (Interviews 23/9-2004, 8/12-2004; coordination-meeting 13/9-2004).

Consequently, the fact that reference to rights was not objected to and thereby settled concrete coordinated positions indicates that the actors involved accepted the validity of these norms. In particular the fact that Greece, Malta and Cyprus initially opposed any regulation in the area but in the end were part of an EU-group which was the main promoter of high standards in the MLC suggests that they accepted the validity of such norms during the process of EU coordination. Is there evidence to support that norms of behaviour developed during the process?

## **Defining context through the exchange of arguments?**

So far I have focused on analysing how different arguments explain agreement amongst the EU members on concrete provisions. However, the data also suggest that

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<sup>12</sup> At the PTMC: 18/9 and 22/9-2004.

the EU's ability to reach such agreements through its internal discussions increased during the MLC process. This development is indicated by the EU's behaviour at the international level, where the EU members went from disagreeing internationally and initially not wanting to be seen as one group (ILO 2006; interview 28/3-2008), to not opposing each other internationally, and finally acting very much as one block.<sup>13</sup> What is more, studying developments in the EU coordination over time suggests that there was a link between this increase in the EU's 'actorness' at the international level and the characteristics of its internal coordination. More precisely, in parallel to the EU's increasingly coordinated behaviour internationally, the data point to a development towards 'less strategic behaviour and less use of threats' and 'after a while very open discussion' (Interview 8/12-2008) in the internal EU meetings. From 2003 and up to the beginning of the PTMC in September 2004, 'there was quite a lot of "we either do it this way or we won't proceed with the coordination meetings', (Interview 23/5-2005) illustrated for instance by the examples above of Germany and Denmark's use of direct threats of withdrawal, or by Greece opposing EU coordination in open ILO-meetings. Threats of exiting or of not ratifying the MLC however decreased during the PTMC onwards and finally fully disappeared from the EU members' argumentation (Coordination-meetings 13-24/9-2004; interview 23/5-2005; interview 8/12-2008).

### Reaching agreement on norms of legitimate behaviour?

This development contradicts the rationalist expectation that bargaining will become tougher as the negotiations proceed towards a final decision, in particular when the outcome is binding. More importantly, however, this analysis gives an indication of why this was not so. The data suggest that the gradual increase in EU coordination was linked to the development of a common understanding of legitimate behaviour through the EU discussions. This development is particularly evident when studying the change in Malta, Cyprus and Greece's positions. According to an interviewee, Cyprus and Malta 'almost had to change identity [...] [from] in the beginning identifying with the other open registers to becoming EU members, which was not an easy process for them' (E-mail 20/3-2009). Clearly, Malta, Cyprus and Greece learned the rules of the game 'the hard way' by having to explain their outspoken opposition to EU coordination in a closed Council meeting in 2005 (Interview 23/5-2005), but the data indicate that there was more to this change in positions than being forced to accept EU coordination. Though the Council in the 2005 negotiation-mandate made it clear that it is not appropriate to oppose coordinated positions internationally, it is still a fact that EU coordination in the ILO is voluntary. These countries were 'originally opposed to costs' following implementation of strict standards, but during the process 'they understood that it is rational with one instrument' (Interview 28/3-2008). Despite initially underlining that many positions were absolute, also according to delegation members from these countries themselves, coordination 'has helped to better understand the positions of the others and take these into consideration' (Interview 20/9-2004). More importantly, in interviews they also referred to what is and what is not legitimate behaviour when belonging to the EU group, saying for instance that it 'is not appropriate to have member-states coming here and proposing

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<sup>13</sup> This increasingly high level of coordination and involvement of EU-institutions on the MLC has also been noted in Tortell et al. 2009: 118.

anything opposite to EU-legislation' (Interview 17/9-2004). The very fact that the same Greek delegate opposed coordinated EU-policies at an IMO-meeting in 2008 indicates that this learning of legitimate behaviour was linked to the MLC-making process as such, and not part of a general Greek policy in international forums dealing with maritime issues.<sup>14</sup> What is more, there are empirical indications that this learning of how to behave in EU coordination was a learning process not restricted to Greece, Malta and Cyprus. Other countries also initially skeptical towards too much EU coordination, like UK and Denmark, gradually accepted that one should seek coordinated EU-positions on all provisions, for instance on regulation 4.5. covering social protection. In the aftermath the British presidency was even described as better at coordinating common positions towards the MLC than the Dutch (Coordination-meeting 22/9-2004; interviews 23/9-2004, 23/5-2005, 28/3-2008).<sup>15</sup>

### From mistrust to agreement through deliberation?

Lastly, to understand agreement on common positions on all parts of the comprehensive MLC, the data point to a shift from 'a deep mistrust towards EU coordination when it all started', to a situation of discussions that were characterised by openness and 'a very good tone' (Interview 8/12-2008), thereby increasing the EU's ability to reach agreements on the concrete provisions. Much of the early mistrust and suspicion were related to the disagreement on the appropriate role of the EU in the ILO. Once it was agreed that the Council should decide on a negotiation-mandate, settling the role of the Commission in the process and deciding on the wordings used by the Presidency when presenting the EU members present in ILO meetings, it was easier to focus on the substantive content of the convention only. As argued by one interviewee, 'the PTMC was a watershed (in EU coordination) where everyone understood they had to behave and focus on the content [...] from then on there has in general been a good tone in the discussions' (Interview 8/12-2008). However, though important for the tone and issues discussed at the meetings, this removal of a topic seen as sensitive and hence reduction of conflict does not, however, in itself explain the increasingly more open discussions and the disappearance of the use of threats. Instead, though this of course must be studied further, the data suggest that we must look at the effect of sitting together and discussing, of exchanging arguments.

To sit together as an EU group in the ILO Maritime to coordinate was something new that was initially pushed by the Commission despite the opposition of many of the members (Interviews 18/9-2004, 8/12-2008). However, with the background of agreement on the main principles for the Convention, agreement that relevant standards should be close to EU law and the importance of controlling the Commission, the EU-countries engaged in discussions where they gave reasons for and explained their position, as shown. By taking part in these meetings and discussing the different issues, the delegates 'got used to talking to each other, they

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<sup>14</sup> The same Greek delegate however also opposed coordinated EU-policies in an ILO meeting regarding MLC-guidelines in September 2008.

<sup>15</sup> That Norway, who initially took part in EU coordination meetings, was denied access from 2005, also indicates that EU coordination increasingly was seen more as a forum for reaching common position amongst the belonging EU members than a forum for exchanging views and information.

trusted each other more' and 'we saw that it was helpful to talk things through' (Interview 8/12-2008). What is more, the same persons meeting over a long period of time means that 'there is a strong socialisation that strongly influences what one accepts and also what one suggests' (Interview 10/12-2008). 'The meetings create a feeling. Here we talk in another way. There is a group-feeling [...] of being with likeminded. We speak a common language and this is positive' (Interview 15/9-2004). The analysis hence suggests what might be called a dialectic process between deliberation on the one hand and trust-building and socialisation on the other: Taking part in EU discussions led to an increased level of commonality and trust amongst the EU members, increasingly opening up for reaching agreement on 'the rules of the game' and the content of concrete provisions on the basis of the perceived legitimacy of the arguments presented.

## Conclusion

This article has addressed the question of how we can account for EU agreements on common positions towards the MLC despite the EU members' initially diverging interests. The analysis supports the hypothesis that common EU policies were the results not of exchanging threats and promises, but of different types of learning on the basis of reason-giving. Through the discussions, EU actors changed their preferences on the basis of expertise knowledge, they accepted the validity of arguments referring to relevant EU-regulation, and they accepted the legitimacy of policies based on the protection of the individual seafarers, thereby agreeing to common policies.

To account for EU agreements, the approach in this paper was not so much to study the applicability of alternative hypotheses. Rather, the focus has been on further developing and operationalizing communicative theory, and then study the relevance of this approach for better understanding a concrete case of EU foreign policy coordination. Analytically opening up to the possibility that arguments when perceived as valid by the actors involved can lead to agreement on a common outcome allowed me to see that EU foreign policy decision-making processes are characterized by more than bargaining between national interests. Despite what we would conventionally assume, the EU members not only adjusted their preferences as part of the bargaining game, but also changed them on the basis of the "better argument". In the MLC process, both pragmatic and desire-independent arguments were presented, but it was reference to the latter that led to agreement in the discussions observed. Agreeing on outcomes were in other words linked more to arguments perceived as legitimate than to relative strength or national interests.

The analysis indicates a link between how EU foreign policies are made and the type of foreign policy the EU conducts. In the EU, some arguments are viewed as more legitimate than others. When not objected to they can lead to agreements that bind the EU members to conduct certain policies. Not least the changes in Greece', Malta' and Cyprus' policies towards the MLC suggest that many of the EU members would have conducted different and less norm-promoting policies had they not coordinated their policies in the EU.

Lastly, by suggesting a development from bargaining to deliberation during the process, the analysis indicates that engaging in coordination, in exchanges of arguments, over time, increases the possibility that the actors agree on the basis of desire-independent arguments, despite initial conflict. As such, the analysis also helps to shed light on the theoretical debate on scope-conditions, i.e. on whether certain conditions make argument-based agreements more or less likely. More precisely, the analysis suggests two factors that might be important for understanding EU foreign policy-making and should be studied further: Trust building and socialisation understood as a process of inter-subjective norm internalization. As such it also helps shed light on an important aspect of how common institutions matter in EU integration, namely by offering a forum where common norms and trust might develop, thereby increasing the member states' ability to reach agreements on the basis of the perceived legitimacy of the arguments presented. Not least in an intergovernmental policy-area such as EU foreign policy, these may be important insights for better understanding the gradual integration.

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