‘Man Overboard!’ Was EU influence on the MLC lost at sea?

Abstract

The European Union (EU) is widely regarded as a powerful actor in the establishment and maintenance of many global regulatory regimes. It actively engages in the promotion of labour standards beyond its borders, including through supporting the International Labour Organization (ILO). This article assesses EU influence in drafting one of the most important ILO standards in recent years: the Maritime Labour Convention (MLC) (2006). Through analysis of official ILO records from the entire six-year period of negotiation and tracing the role of the EU during the negotiations of five vital parts of the convention (structure, simplified amendment procedure, inspection and enforcement, scope, and social security), it challenges the view in the literature that the EU significantly influenced the final content of the convention. Delays in establishing a cohesive EU position, the strong tripartite ethos within the ILO, and limitations imposed by rules-based standard setting, are identified as the primary explanations.

Keywords:

European Union Foreign Policy

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Regulation

Social Policy

As Young spells out in the introduction to this special issue (Young 2015), the European Union (EU) is widely regarded as exerting considerable influence over global standards, resulting in labels such as regulatory 'great power' (Drezner 2007: 36) and 'market power Europe' (Damro 2012). Young's literature review concludes that the EU is less influential than widely thought, for a number of reasons. Firstly, 'regulatory influence' lacks a common definition to facilitate comparative studies and examine the mechanisms of exerting influence, and that '[f]ailure to acknowledge such differences about what constitutes influence has muddied the analytical waters' (2015: 6). Secondly, there is selection bias within the literature favouring 'positive' cases of EU influence over regulatory regimes. In principle, selecting cases based on the dependent variable need not create problems, provided a clear justification for why a 'case-orientated' rather than 'variable-orientated' methodology has been chosen (della Porta 2008: 202-7). Rather, it is incorrect inferences from selected cases to the universe of regulatory regimes that overstates EU regulatory power. Thirdly, there is insufficient variation in the degree of EU influence over regulatory regimes resulting in a failure to identify causal mechanisms and scope conditions. This article is a contribution towards addressing these points by examining EU influence over the drafting of the International Labour Organization (ILO) Maritime Labour Convention (MLC) (2006), regarded as the '4th pillar' of the global regulatory regime for international shipping alongside the International Maritime Organization's (IMO) International Convention for the Safety of Lives at Sea (SOLAS), International Convention on Standards of Training, Certification and Watchkeeping (STCW), and International Convention for the Prevention of Pollution from Ships (MARPOL). I argue that the EU played a far less important role in the drafting process than the literature on regulation assumes and studies on the MLC have argued. The explanatory variables considered are (1) the failure of EU member states to coordinate sufficiently early in the negotiation process; (2) lack of EU cohesion once coordinating; (3) the rules-based negotiating environment of the ILO (and its norm of tripartite consensus); and (4) that labour standards are a form of process regulation. While some issues are ILO specific, others travel and contribute to explaining variation in EU regulatory power more generally.

This article focuses on the ILO as the principle international organisation responsible for global social policy regulation through 'rule-mediated negotiation' (Young 2015: 17). The ILO was founded in 1919 to prevent industrialisation and international economic competition forcing working standards downwards in a 'race to the bottom' by setting minimum labour standards that its members ratify and incorporate into national law. It also provides expert legal scrutiny of members' adherence to conventions, a comprehensive complaints procedure and technical assistance to governments unable to implement standards. The ILO has a unique tripartite structure that incorporates trade unionists and employers' groups alongside government officials in the national representation of each ILO member state. Labour standards are drafted in a tripartite manner that seeks consensus whenever possible by giving equal weight to the interests of workers, employers and governments. Consequently, EU member states' voting weight is reduced three-fold in comparison to other intergovernmental negotiations. However, when EU interests align with one or both social partners, its influence is increased by combining with their voice in the search for consensus and their votes in a ballot. It is important to note that ILO members are not obliged to ratify conventions and any exertion of regulatory influence through ILO standards is ultimately acquiesced through national government ratification decisions.

By asking to what extent the EU influenced the content of the ILO's MLC, this article questions whether and how the EU influences global regulations when it has been actively trying. The literature so far has answered affirmatively, with Tortell et al. stating that 'a cursory analysis of the way in which the convention was adopted and is now being ratified shows that the EU has taken a key position in this process' (2009: 125). I assess the claim that EU was an influential actor in the drafting process of the MLC by examining to what extent the EU shaped five core issues during the entire negotiating process from 2001 to 2006.

While the EU undoubtedly became a more coherent actor from 2004 onwards, and successfully influenced a few important issues, this did not amount to significant influence over the core issues of the MLC because most were decided prior to 2004. I show that in three of the issues, the EU had no influence, in the fourth it was limited and in the fifth its major achievement was to insert a regional economic integration organisation (REIO) clause. In order to substantiate these claims, process tracing is used to establish how the final regulatory standards agreed in each issue developed during the six-year negotiating period. Attention is paid to (1) when the regulatory standards were agreed; (2) which actors (both EU and non-EU) supported them; (3) the degree of EU coherence during key debates about the standards; and (4) where EU member states stood in the overall spectrum of preferences.

It proceeds in four parts. The first reviews the literature on why the EU might seek to influence ILO standard setting and justifies the case selection. The second develops the variables identified and their connection to the case. The third presents an empirical analysis of ILO documentation of the six years of MLC negotiations and the final section concludes.

The EU and regulating global labour standards

Empirical studies of EU regulatory influence tend to focus on product or financial standards and how access to the EU market serves as a strong incentive for firms and governments to seek regulatory compliance with EU norms, through adopting the same standards, seeking recognition of equivalence, or bilateral regulation. Economic incentives, the distribution of costs, the degree of interdependence asymmetry, and political power have all been identified as importance explanatory variables determining why, when, how and whose terms regulatory systems converge. But how well do these explanations travel to process regulation such as labour standards? In general, economic competition does not drive process standard conformity in the same way it does for product standards, because excluding

non-compliant goods from markets is harder. In turn, this places costs on states with higher standards without imposing penalties on states with lower standards. However, Lazer argues that 'consistent process standards may lower the costs of multinational corporations (MNCs) that are located in different countries, and as a result, they may put pressure on host countries to adopt compatible rules' (2006: 460). In the MLC negotiations, shipowners' behaved in this way, preferring a widely ratified convention to a limited one, and only giving secondary concern to preferring weaker standards over stronger ones. Politicisation is an additional concern to the process regulation of labour standards. When a regulatory authority deems a process non-compliant with a fundamental labour standard, it implies questioning the regulation of private actors within third states. Failure to implement standards places blame on governments, but it is important to differentiate between unwillingness to act as a manifestation of culpability and incapacity to act as a manifestation of weak domestic legal and regulatory institutions. Developing states are wary of labour and environmental regulations being used as a form of protectionism (Orbie & Babarinde 2008), as well as undermining their comparative advantage in the global economy. Since 1998, the ILO has vigorously promoted fundamental labour standards as universal rights, taking a soft-law approach to achieving universal ratification of its eight core labour standards through technical assistance and peer-scrutiny, while also seeking to make ILO standards benchmarks in trade and development agreements (such as the EU's GSP+ preferential trade regime for developing countries c.f. Orbie & Tortell 2009b).

This article investigates the degree of influence the EU had over the drafting of the MLC, an important international legal convention regulating all aspects of employment-related issues on board merchant ships. The shipping industry is one of the most globalised sectors in the world economy, combining multinational workforces aboard ships registered in flag states travelling through international waters to third-state ports. Although the IMO is primarily responsible maritime regulation, since 1920 the ILO has generated 36 conventions,

30 recommendations and one protocol relating to maritime employment, with varying levels of ratification. In 2000, the ILO decided to begin work on an ambitious review of these instruments with the objective of updating and consolidating their content into a single 'super convention' that would serve as a seafarer's 'bill of rights' (ILO 2006a: §13), and constitute the '4th pillar' of international maritime law (ILO 2006a: §28). According to the convention's Preamble, the goal was to 'create a single, coherent instrument embodying as far as possible all up-to-date standards of existing international maritime labour conventions' and that it 'should be designed to secure the widest possible acceptability among governments, shipowners and seafarers', (ILO 2006b: 1-2). The final convention is over 100 pages long and was negotiated over six years according to the ILO's tripartite framework of workers (seafarers), employers (shipowners) and governments, and represents a compromise across the spectrum of interests of ILO members. At the beginning of negotiations, these ranged from forceful advocates of robust social protection to preferences for minimal social standards with greater flexibility in their application. Locating actors on a spectrum of preferences depends on issue area, but generally seafarers sought greater rights, often supported by the Philippines, due to it being 'the number one maritime labour supplying country' (ILO 2006: §27). Open register states[1] sat at the opposite end, with US, Japan and South Korea sharing many of their preferences. Shipowners were disposed to this position too, but were often willing to compromise for the sake of agreeing a workable convention, locating them more centrally. EU member states' positions varied considerably, ranging from Denmark, Netherlands, Germany and the UK advocating high standards, to Malta and Cyprus – two open register states that did not join the EU until 2004 – initially shared preferences with other open register states, although greater coherence was achieved towards the end of negotiations. Despite these differences, a single text was agreed that entered into force on 20 August 2013, '12 months after the date on which there have been registered ratification by at

[1] The practice of registering merchant ships owned by foreign companies is termed 'open register' or 'flag of convenience' and is usually done because of such states have lower regulatory standards.

least 30 Members with a total share in the world gross tonnage of ships of at least 33%' (ILO 2007b: 6). As of January 2015, the MLC as has 64 ratifications with a total share of 80% of gross tonnage. This article is focused exclusively on the drafting process between 2001 and 2006 and does not discuss implementation (i.e. whether EU member states have punished non-ratifying states through the no-more favourable treatment clause), EU Council coordination of the ratification process by member states, or subsequent amendments to the MLC.

There are several reasons why this case has been chosen. Firstly, the relatively limited literature studying the EU's influence over process regulation has mostly focused on environmental policy, and this article addresses the under-researched area of social policy regulation. Secondly, as the MLC is a significant addition to maritime regulation, any actor regarded as a regulatory 'great power' would be expected to seek influence over such an instrument. Thirdly, the EU is expected to be less influence in institutional setting where rule-mediated standard setting take place compared to power-based bargaining situations where the possibility of exclusion exists (Young 2015). The ILO in general, and the MLC negotiations in particular, exemplify a negotiating environment in which EU power is reduced. Firstly, while the EU can in some institutions enjoy more voting power through its member states, in the ILO this is reduced for structural and normative reasons. The tripartite architecture grants workers, employers and government equal voting shares during drafting negotiations, reducing the significance of the EU's combined votes. Moreover, the norm of seeking consensus is especially pronounced in the MLC due to a strong cooperative ethos between the social partners in the maritime sector and meant parties strive to avoid resorting to voting on contentious issues. Secondly, the EU is more likely to engage in strategic interaction (policies anticipating how others will respond) in reciprocal negotiations such as those of the MLC, requiring it to sometimes accept policies that do not reflect EU preferences, for the sake of consensus. As elaborated below, this has implications for both the

position of the EU on the spectrum of preferences, as well as further reducing its bargaining power over other negotiating parties. By using official ILO records to ascertain when the EU spoke, how often and how closely its preferences aligned with other actors, the clearest picture yet is presented of EU influence over the MLC.

There are three important reasons developed in the literature to explain why the EU would seek influence over ILO labour standards. The first is the EU's foreign policy goal to promote effective multilateralism, the United Nations System and international law, and the ILO clearly falls within this remit (Council 2003: 9). Although the EU is not a member of the ILO, the European Commission has officially cooperated with the secretariat of the ILO since 1955, periodically updating, expanding and strengthening its cooperative relationship, most recently in 2001 (Johnson 2005). Originally, cooperation between the ILO and the EU focused exclusively on creating a harmonised social policy among member states (Kissack 2014), but today this has broadened into a wider concern for social standards within development policy (Commission 2001) and globalisation (Orbie & Tortell 2009a). European studies has been interested in international labour standards for almost a decade, drawing together scholarship on the EU in the ILO (Delarue 2006; Kissack 2008, 2009, 2011; Riddervold 2008, 2010; Nedergaard 2011; Saenen & Orbie 2011; Sjursen & Riddervold 2012), conditionality and trade policy (Orbie & Tortell 2009b), and the external impact of EU social policy (Novitz 2009). The second reason derives from the normative nature of the EU as an international actor. Manners' 'normative power Europe' (NPE) thesis argues that the *sui generis* nature of the EU predisposes it to a foreign policy promoting universal norms and values in the place of national interests (2002). The ILO's work to promote fundamental labour rights, which are also set out in the Universal Declaration of Human Rights (Alston 2005), constitutes part of the corpus of international human rights law that NPE supports (Orbie 2011). Riddervold and Sjursen argue that the EU promotes human rights through

international law as part of a constitution-building process for cosmopolitan rights, drawing on examples of EU coordination during MLC negotiations (2012).

The third reason centres on what Orbie and Barbinde (2008) call the 'social-trade nexus': how to reconcile neoliberal economic policies and solidarist social policies both inside and outside the EU. The global trend that began in the 1980s to reduce the size of the state through neoliberal policies of privatisation and marketisation has led to the creation of isomorphic regulatory regimes supervising liberalised sectors (Levi-Faur 2005). European states have retained many welfare policies designed to counter the negative externalities of liberalisation and protect basic standards deemed socially important. However, trade liberalisation adversely affects sectors (such as apparel and footwear) that struggle to compete with foreign producers without the cost of implementing the European social model.[2] World Trade Organization rules make it difficult to use product regulation to prevent competition in vulnerable sectors, so one alternative is to develop process regulation in the form of promoting high labour standards beyond EU borders. The EU has diffused these norms through the enlargement process to accession states, and with limited success through external governance mechanisms (Lavenex & Schimmelfennig 2009), diffusion (Börzel & Risse 2012), and its bilateral and regional trade agreements. The ILO's Decent Work campaign to improve working conditions globally makes it an ideal partner for a self-interested EU trying to maintain its competitiveness. The EU offers generalised system of preferences (GSP) trade incentives to encourage third states to ratify all eight ILO core labour standards and has suspended trade preferences to serious violators (Orbie & Tortell 2009b), but critics identify inconsistency in the application of penalties and developing states remain suspicious that labour standards are a veil hiding protectionist policies. The MLC was an

[2] The European social model is codified in Title IV (Solidarity) of the Charter of Fundamental Rights of the European Union, regarding freedom of association and collective bargaining, fair treatment and equal opportunities, minimum ages, upholding health and safety laws, provision of social security and parental leave.

opportunity for the EU promote all three of these concerns: international law, improved human rights and levelling the playing field between European flag states implementing high standards and open register flag states where protection is lower.

Explaining EU influence at the ILO

In his introduction to this special issue, Young identifies the tendency in the literature to concentrate on ascribing influence over regulatory regimes to EU attributes rather than identifying causal mechanisms, and the following section links the case of the MLC to this issue's common methodology. This case study is an example of regulatory cooperation rather than regulatory diffusion, and the attributes of market size, regulatory stringency and regulatory capacity are expected to be less significant in determining the level of EU influence. Nevertheless, it is useful to briefly consider each in turn as they help contextualise the position of the EU in negotiations. In terms of market size, in 2006 (the year the MLC was concluded), the European Commission reported that 28% of the total number of ships worldwide were registered in states belonging to the European Economic Area[3] (2006: 6), a significant number but considerably less than the 50% in open register states. In terms of regulatory stringency, many provisions of the MLC fall within EU member state competencies and resulted in different preferences and difficulty acting coherently during the early years of negotiations. Lastly, regulatory capacity is significant in this case because the MLC grants port states that have ratified the convention powers to impound vessels believed to violate standards. Given large quantity of traded goods exported and imported to the European market, EU states gained 'territorial extension' (Scott 2014) to enforce the MLC on ships registered in non-ratifying states that entered European ports through the 'no more favourable treatment' clause' (ILO 2003: §285), which was accepted in principle from the

[3] The EEA is cited in European Commission reports because Norway and Iceland participated closely in the final stages of EU coordination, and both have sizable fleets – Norway's fleet is the same size as that of France.

outset (ILO 2001, §50). Shipowners, wishing to avoid this, applied pressure on flag states to negotiate a convention they would be willing to ratify.

An important distinction between regulatory diffusion and regulatory cooperation is that the latter requires all parties to be actively engaged, while the former can take place unilaterally (i.e. through emulation). Within the MLC negotiations, it is necessary to clarify our assumptions about EU actorness, EU goals, and the impact the institutional settings on the capacity of the EU to operate. Addressing actorness first, given the importance of labour market harmonisation for European integration, it is unsurprising that EU representation in ILO debates dates back to 1971, when a member of the European Commission addressed the annual conference, and the first Presidency intervention in the name of the EEC came in 1973 (Kissack 2008). The 1986 Single European Act created Community competencies in areas of employment policies (e.g. occupational safety and health) that required the Commission to represent member states, but the institutional design of the ILO is built upon national tripartite representation and there remains resistance to enhancing the role of regional economic integration organisations (REIO) (EESC 1995). Consequently, EU member states are sometimes forced to negotiate issues that they have formally ceded sovereignty over to the Union level (Cavicchiolo 2002). Efforts by the Commission to take a prominent role in coordinating these issues have repeated led to confrontation, the first of which was arbitrated by European Court of Justice Opinion 2/91 (1993). EU member states continue to jealously guard their status as members of the ILO and the Council only mandated the Commission to assist formal coordination in the MLC negotiations in April 2005, over four years into the process and 10 months prior to its completion (European Commission 2006: 6). According to Riddervold, since 2003 ‘EU coordination meetings were held during and in between the ILO meetings, where concrete provisions in the MLC were discussed. The EU members established common positions on all areas of the MLC prior to its final adoption in 2006’ (2010: 583). This article goes beyond existing research by examining EU coordination in

relation to when key decisions were taken, assessing EU coherence in comparison to the preferences of other negotiating parties, and measuring influence in terms of shaping the text of the MLC.

This article draws its empirical data from the ILO's official proceedings, in order to establish when EU common positions were given (degree of EU cohesion), their position in the spectrum of preferences, and the impact made. The advantages of this approach are that one can see (a) exactly how often the EU presents common positions; (b) their location in a wider debate and whether they are outliers or represent the median; (c) the positions of member states (if speaking alone) can also be identified and consistency gauged; (d) ILO official records are circulated to participants prior to final publication to ensure accuracy. There are, however, a number of disadvantages, such as (a) focusing on only formal interventions and not green room, un-minuted or informal influence; (b) inaccuracy recording when the EU Presidency speaks *qua* sovereign state and when on behalf of the EU; (c) an underrepresentation of coordination efforts if there are no concrete outputs to be minuted in the proceedings. The final, and perhaps most important shortcoming is that not all EU member states attended negotiations in the early years, with landlocked states often absent. Saenen's detailed analysis of the MLC preparatory meetings records which EU member states attended which meetings and his solution to the problem of how to identify EU actorness in MLC negotiations was to treat an 'EU core group' of member states speaking frequently as a bloc but not in the name of the EU as a proxy, and measure coherence and consistency over time (2014). While this undoubtedly served the purpose of his research, its pragmatic approach to identifying the EU in international negotiations must respond to the criticism that unless decisions are taken through EU institutions and issued in the name of the union, there is no meaningful EU output. To keep within the common methodology of this special issue, the strict definition of EU influence deriving from EU interventions as recorded in the official documentation of the ILO is used.

What was the EU trying to achieve at the MLC negotiations? Since many of the conventions being consolidated pre-date EU law, and member states' national law already conforms with the ILO conventions they have ratified, there were few opportunities to upload EU preferences into the MLC. Despite this, the literature identifies three core EU objectives. The first was to ensure that the MLC was a widely ratified convention that would create a level playing field in the place of the inconsistent coverage of the existing maritime labour instruments. Tortell et al argue that 'an explanation of why the EU was so actively involved in the drafting stage of the MLC and its eventual adoption was to ensure that the EU's norms [of maximal labour standards] … were projected onto the resulting convention' (2009: 125). The European Commission clearly articulated this goal (2006: 3), as did many member states. So too did both social partners – seafarers unsurprisingly (ILO 2003: § 10) and shipowners, who although usually disposed towards lower and/or more flexible standards, recognised that 'a level playing field' for the industry would improve competition and was in the interests of their constituents (ILO 2002: §37; ILO 2004b: §7). The EU's second goal was to maximise the standards codified in the MLC and create a 'seafarers' bill of rights', against opponents' view of the MLC purely as a consolidation exercise. The Netherlands and the UK were two of the strongest proponents of this position from the beginning, and Riddervold argues 'the EU has been the main promoter of a Convention of high-minimum standards' (2008: 2) as coordination consolidated a common view of the MLC as a human rights issue. The final goal was to insert a REIO clause in the titles on social security to ensure it was compatible with EU law (European Commission 2006: 6). The convention carefully balanced the duties of flag states and seafarers' national social security systems according to short- and long-term benefits, but EU member states required a waive from this arrangement for EU citizens working on ships registered in EU states other than their own, which the REIO clause permits. EU influence cannot be doubted in insertion of the REIO clause as it was the only

supporter of the proposal and is an example of defensive action preventing international commitments constraining existing EU law and practice.

What is the wider significance of this case in terms of lessons that can travel to the broader debate on EU regulatory influence? Rather than label it either 'hard' or 'easy', it is more accurate to see it as juxtaposing competing expectations. We would expect less EU influence as a result of the ILO's tripartite structure and rules-based procedures. Yet contrary to this, the importance of the EU as an origin or destination for so many traded goods and the regulatory competency of port states, its status as a regulatory 'great power' and the consensus in the literature suggest that the EU should exert influence. The empirical data presented will determine which is correct, and why.

Assessing EU influence in the MLC negotiations

This section presents empirical data drawn from official ILO documentation of MLC negotiations over the six years from 2001 to 2006.[4] Influence in the MLC is defined across a continuum from high to low as the ability of an actor to (a) successfully upload a policy preference into the MLC; (b) shift a median position closer to its own preferences; (c) convince others to support its preferences (even if ultimately unsuccessful in mobilising enough support to shift the median position). While authors such as Saenen (2014) equate blocs of EU member states exerting influence with EU influence, for reasons specified above this article concentrates on influence from EU common interventions. Wherever possible an overview of EU member state positions is provided to situate the search for common

[4] These were the final reports of the *High-level Tripartite Working Group on Maritime Labour Standards* (TWGMLS) from 2001 to 2004 (ILO 2001; 2002; 2003; 2004a), two reports of the *Preparatory Technical Maritime Conference* (PTMC) (ILO 2004b; 2004c; 2004d), three reports of the *Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference* (TIM) (ILO 2005a; 2005b), and the *Report of the Committee of the Whole* at the 2006 Maritime International Labour Conference (ILO 2006a).

positions within EU member state preferences. I argue that while the EU undoubtedly became a more coherent actor during negotiations, and successfully influenced a few important issues, this did not amount to significant influence over the content of the MLC because many major issues were decided prior to EU coordination. EU influence in five issues is examined: structure, simplified amendment procedure, inspection and enforcement, scope and social security. The first four were identified by the negotiating parties as of key concern (ILO 2002: §4) and the fifth is social security provision, an issue area where the MLC moves beyond consolidation to new legislation. I argue that many of these issues were fundamentally resolved prior to formal EU coordination, and when unresolved issues remained open in the later meetings, the EU was less influential than expected.

Structure

Of the five key issues, the structure of the MLC was the first to be decided. The convention is tiered on four levels, starting with norms and principles in the Articles (level 1), and continues with increasingly detailed technical instructions for implementation in Regulations (level 2), Standards (level 3) and Guidelines (level 4) (ILO 2002: §34). Levels 1-3 are mandatory for all states ratifying the convention and level 4 are non-mandatory. The four-level design, although using different names at the time, was modelled on IMO conventions and agreed by the government group in 2002. The major division between states was over the rigidity of the levels (ILO 2002: §6). South Korea and the Bahamas (an open register state) supported a 'MARPOL-type approach' (ILO 2002: §20 & 24) while a more stringent 'STCW-type approach' was preferred by the UK, Denmark (the only two EU member state governments to speak and reveal their preferences), a number of non-EU governments, seafarers and shipowners (ILO 2002: §30-33). The more stringent approach was eventually adopted, and while two EU member states supported it early on, the consensus of the social partners was undoubtedly a more important factor determining the outcome. The EU cannot

be said to have influenced this issue, as there was neither EU coordination nor representation in 2002, and the UK and Denmark were part of a larger group of governments in favour of the shared preference of seafarers and shipowners.

Simplified amendment procedure

Negotiators spoke of the need for a 'living convention', by which they meant an instrument that could be amended relatively easily, in order to remain up-to-date and relevant to the maritime industry. The primary concern was finding a compromise between imposing too high a threshold for amendment that made change impossible, and too low a threshold that risks fundamentally altering the nature of the convention states initially ratified. The solution was an IMO model that established different rules for 'explicit' modifications to Articles and Regulations (levels 1 and 2) through normal ILO procedures (agreed by ballot at conference) and 'tacit' modifications to Standards and Guidelines (levels 3 and 4) that could be adopted in specially convened technical meetings. The basic principle of a simplified amendment procedure was accepted in 2002 (ILO 2002: §6) and re-affirmed in 2003 (ILO 2003: §170-204), although discussion continued until 2006 about the voting majorities required, the rules on tabling an amendment, and how modified rules would come into effect (ILO 2005b: 9-10). There is insufficient space to consider all aspects, so focus is turned to the question of how many government members must support an amendment seeking to change the MLC in order for it to be considered.

In 2004, the social partners suggested 12 states must support an amendment, to which the 'Government member of Denmark and Chairperson of the Government group cautioned that some governments might find this too high' (ILO 2004a: §171), a view echoed by the Republic of Korea. The following year, the social partners proposed a figure of ten in the place of 12, while 'Japan proposed a total of five or seven [and…] Korea proposed "1+4"'

(ILO 2005a: §50), meaning one state proposing an amendment and four states seconding it. Among the government group '[m]ost had concurred with the position of the social partners (1+9 solution); some had preferred the 1+4 option' (ILO 2005a: §51). With no resolution in sight, at the final negotiation in 2006 a small working group of seafarers, shipowners, and 13 states (including Ireland, the Netherlands and the UK) was convened to finalise Article XV of the convention (ILO 2006a: §4). The finalised text read that 'an amendment proposed by a government must have been proposed or supported by at least five governments' (Article XV §2) and was recorded as 'a package deal had been agreed upon which delicately balanced the interests concerned and was a compromise position for the members of each group' (ILO 2006a: §240). More specifically regarding the positions of governments, the representative of China 'speaking on behalf of the Government group said that the proposed text had the unanimous support of the Government group' (ILO 2006a: §246). Tracing influence through the negotiation process reveals that the Korean proposal from 2004 was the one finally agreed and supported by all states, representing a shift in the government group away from the 1+9 that 'most' states previously preferred. This is an example of the exertion of influence over the final outcome of the MLC, but by the Republic of Korea rather than the European Union.

Inspection and Enforcement

From the outset port states inspections were seen as essential for enforcing the convention. How port authorities would enforce compliance was one of the most contentious issues of the negotiations and there is insufficient space to present anything more than a snapshot of proceedings, albeit an informative one. The example chosen is the negotiation of Standard A5.1.4 relating to 'Inspection and Enforcement', and initially discussed only in very broad terms in 2003. Clearly identifiable positions emerged in September 2004, where the central issue dividing all states (including EU member states) was a preference for looser, procedural rules that granted more flexibility, or maximal protection of seafarers' rights. 'Most

governments had preferred the first alternative […] because the consequences of the language of the second alternative when too far. Some government members had favoured the second alternative because it contained the words "serious breach of seafarers' rights"' (ILO 2004b: §325). Following the debate reveals that the among the explicitly stated national positions, Spain and the UK supported maximal rights and Denmark did not (ILO 2004b: §328-331), and that Malta (not at the time an EU member state) introduced a compromise text that prevented negotiations reaching an impasse (ILO 2004b: § 333-347).

In 2005, there was insufficient time to debate all the amendments proposed relating to this issue, and instead each amendment was vetted for tripartite support and only successful ones placed on the agenda for the 2006 negotiations. In this process EU coordination was highly visible, with 13 common positions presented in support of tabled amendments and one declaration of an inability to reach a common position (ILO 2005a: §271). Of the 13 amendments supported, five were drafted by the EU and eight were drafted by other governments. EU interests were clearly not aligned with those of shipowners and seafarers, as only one of their drafted amendments received the necessary tripartite support, while five (of the eight) amendments by other governments they supported did receive backing from seafarers and shipowners (ILO 2005a: §349). In 2006, the EU made one common amendment with regard to Standard A5.1.4 §9, with a proposal to lessen the burden of reporting 'unintentional violations' on port states. The UK government justified the amendment, saying 'true breaches [of standards] needed to be recorded, along with the action taken to remedy them. Requiring inspectors to record every exercise of discretion would lead to unnecessary paperwork' (ILO 2006a: §1029). The proposal was opposed by the Seafarers' group and partly undermined by the Spanish delegate who admitted the seafarers' 'argument carried weight' and then 'suggested compromise wording' (ILO 2006a: §1033). After further interventions by the France, Germany and the UK, as well as support from other states,

shipowners and constructive engagement by seafarers, a reworded version of the EU amendment was adopted (ILO 2006a: §1051).

What influence did the EU have over inspection and enforcement? Firstly, during this period the development of EU coordination is evident, from the divergent national positions of 2004 to common EU positions in 2005 and 2006, as expected after the April 2005 Council decision. However, common EU positions did not translate into greater influence. In the 2005 meeting, over one half of the amendments EU member states agreed to collectively support did not receive the requisite tripartite support for inclusion in the 2006 meeting, and four out of five amendments drafted by the EU fell. Secondly, the empirical evidence does not concur with Riddervold's argument that EU coordination coalesced around seeing the MLC as a human rights issue. Instead, the EU exerted influence to reduce the bureaucratic burden on inspectors, rather than championing seafarers' rights.[5]

Scope

Seafarers' representatives wanted the MLC to cover workers on all commercial vessels, and any restrictions in scope would lead to 'institutionalised maritime apartheid' (ILO 2005a: §12). Conversely, governments wanted to the convention to apply to a minimum size ship. Preliminary drafts suggested a figure of 500 gross tons, and the first detailed discussions on this figure occurred in 2004, during which the UK stated that it 'was of fundamental

[5] The other major EU drafted amendment in Title 5 (Compliance and enforcement) was in Regulation 5.2.1 where the EU with Norway, Iceland, Bulgaria and Romania proposed reducing the burden on inspectors to pass details of minor violations onto other port authorities (ILO 2006a : §1101). Instead, they proposed integrating into an existing regulatory system (EQUASIS). While receiving support from many governments and shipowners, the EU was forced to accept a revised text to secure seafarers' support that 'differed significantly from the original amendment and would involve an additional burden for seafarers, shipowners, flag states and port states' (ILO 2006a: §1124).

importance to protect seafarers with this convention' but still advocated size limits because in 'the absence of such limits in some cases would create a serious burden to the governments for regular inspection' (ILO 2004b: §26). The Netherlands, Denmark, Sweden, Germany and France supported this position in their interventions (ILO 2004b: §27-31), as did many other states, including 'a number of government members from the Asia-Pacific group [that] supported the 500 gross ton limit' (ILO 2004b: §38). The issue was returned to in 2005, where the rationale to keep the 500 gross tons limit was 'to make the convention acceptable to member states' (ILO 2005a: §11). As the issue could not be resolved, a tripartite working group composed of seafarers, shipowners, China, Japan, Korea, Norway, UK and US agreed a figure of 200 gross tons (ILO 2005a: §36). The preferences of the parties was not revealed, but from the interventions on this subject it is clear that China (ILO 2004b: §29) Korea (ILO 2004b: §37), the US (ILO 2006a: §604), and Employers (ILO 2006: §602) sought a limit of 500, while seafarers preferred 100 and 'had agreed on a compromise figure of 200, which was the maximum that had been acceptable' (ILO 2006a: §603). Two scenarios may explain the setting of the limit at 200 gross tons; either seafarers exerted a considerable amount of influence, or Norway, Japan and the UK (either individually or collectively) also exerted influence in support of the lower limit. While the UK held the EU Presidency at the time and gave the Union a presence in the room, these sources cannot definitively say how much influence the EU had over this.

Social Security

One issue immediately stands out in the EU's contribution to the debate over social security: ensuring that the convention did not negatively impact on existing EU law. In 2004, a year before the Council decision to authorising the Commission to assist in coordination, the Dutch Presidency and the European Commission spoke on behalf of the EU, confirming expectations of the theory of implied powers. Early into negotiations the Netherlands

announced the EU member states 'intended to submit a proposed change related to the relationship between the convention and regional legal instruments […] towards safeguarding existing rights under EU law' (ILO 2004d: §282). Later, the highly unusual step was taken to allow a 'representative of the European Commission' explain the incompatibility between the convention and EU law and justify the need for an amendment, as it would be difficult for EU member states 'to ratify a convention which could be seen as derogating from European Union law' (ILO 2004d: §378). The solution was to incorporate an amendment proposed by Belgium, Denmark, Germany, Greece and the Netherlands permitting regional economic integration organisations to make 'other rules concerning the social security legislation seafarers are subject to' (ILO 2004d: §356), which was reworded by the drafting committee and became Standard 4.5.§4. The following year in 2005, the discussion on social security focused on technical issues within the guidelines (level 4) and there was no evidence of EU representation (ILO 2005a: §69-82), while in 2006, the entire code (Regulation, Standard and Guidelines) was adopted without amendments (ILO 2006a: §825-27.) The inclusion of the REIO clause is an important example of EU influence that was achieved with the support of the social partners and was explicitly presented as an EU common position. The Council Decision of 7 June 2007 followed up on this point, authorising the ratification of the MLC on the grounds that the member states are 'bound by the Community rules on the coordination of social security schemes based on Article 42 of the Treaty to ratify the Convention in the interests of the Community' (Council 2007: §8). Indeed, the credible legal reasons why failure to secure the amendment might lead to non-ratification by EU states may have heightened their influence. However, aside from this, there is little evidence of coordinated EU efforts successfully shaping other social security provisions. In summary, Table 1 provides a chronological summary of the key events in the five issue areas considered above.

Table 1 here.

Conclusion

This article assesses EU influence over the final content of the ILO MLC, intended to be the 4th pillar of the global maritime regulatory regime. The objective of the ILO was to consolidate 67 standards into one 'super-convention' that would greatly increase the coverage and consistency of labour protection in commercial shipping. The EU, as regulatory 'great power', with over 25% of the world fleet registered with its member states, and as a major global trader of goods that travel through European ports, was *prima facia* expected to take a strong interest in shaping the document. ILO official records of negotiations over six years from 2001 to 2006 were used to measure the influence of the EU in five key issues of the MLC: structure, simplified amendment process, inspection and enforcement, scope and social security.

This article argues that the EU was less influential in the negotiation of the MLC than the existing literature maintains, based on process tracing the positions of EU and non-EU actors on the five most important areas of the MLC over six years. No EU voice was heard during the debate on the structure nor simplified amend procedure. On the issue of scope, the EU Presidency participated in the informal working group that reached a compromise, but ILO records are inconclusive about EU influence over therein. Enforcement was an area in which the EU did have impact, although the thrust of its influence reduced the burden on port authority inspectors instead of championing seafarers' rights. Finally, in the area of social security, the inclusion of the REIO clause is a clear example of EU influence since it serves very clearly its own interest in making the MLC compliant with existing EU law.

There is strong evidence to support the claim that the degree of cohesion between EU member states is important, but insufficient, to exert influence. The need to make the MLC compliant with existing EU social security law was a powerful catalyst for EU coordination. Measured by documented interventions in negotiations, the EU appears as a coherent actor for

the first time in 2004 in this debate, one year before the Council mandate was granted. More strikingly, it was the only issue on which a European Commission official made an intervention on behalf of the EU, supporting the thesis of implied powers conveying external competence where internal rules might be adversely affected by an international agreement. Conversely, an important part of the explanation for why the EU did not influence several key parts of the MLC is because they were agreed prior to the start of EU coordination. While a number of EU member states were undoubtedly influential during the first three years of talks, the EU itself was absence.

As stated at the outset, the EU was rarely a preference outlier in negotiations, flanked on one side by seafarers and open register states on the other. In the early years of negotiations EU member states were divided, with northern states preferring strong rights and Greece, along with Malta and Cyprus preferring looser standards. The existing literature presents the EU as a rights promoter, thus placing it closer to seafarers, and the closest this article's empirical data comes to supporting that claim is the inconclusive records of whether the EU influenced the fixing of the scope of the MLC at 200 gross tons. Evidence to contrary was presented too in the case of lessening the enforcement burden on inspectors, explicitly against the wishes of seafarers. Finally, the example of the EU as a policy outlier (REIO) clause was one of successful influence of the MLC, albeit in a provision that only applied to them.

Finally, considerable evidence was found in support of the argument that the ILO, as an example of rules-based negotiations, is an institutional setting that lessens EU influence. The norm of tripartite consensus was strong, which had two important consequences. The first is that it helped negotiate a process regulation that was widely acceptable and in contrast to how process regulation in environmental or social standards is often perceived – as a form

of protectionism. The second is that the EU was often located close to the tripartite median position, making it difficult to measure its influence in isolation from other actors. In the empirical examples used, the EU was often unrepresented, divided, or a preference outlier, overcoming this problem. However, it is important to stress that the five issue areas were selected based on their significance to the MLC, not to intentionally portray the EU negatively. An important task in future research is to look at more MLC issue areas that were less important and where the EU was (potentially) unified and influential, to consider the pays-offs between achieving influence and the significance of influence. Additionally, techniques of triangulation through expert interviews with EU and non-EU negotiators could identify forms of EU influence not captured in the formal records. Until more work is done, however, the official records of MLC negotiations do not provide convincing evidence that the EU was a great power in shipping's 4th regulatory pillar.

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Table 1: Timeline of MLC negotiations, key issues, and EU coordination

Event	December 2001: TWGMLS1	June 2002: Subgroup on issues	September 2002: TWGMLS 2	June 2003: TWGMLS 3	January 2004: TWGMLS 4	September 2004: PMTC
EU coordination				Riddervold's date for initial EU coordination		
Structure			Decision to follow IMO standards, 'STCW-model' agreed			
Simplified Amendment Procedure: Article XV §2.			Principle of simplified amendment accepted	Principle of simplified amendment affirmed		No consensus on number of states needed to support an amendment
Inspection and enforcement Standard A5.4.1				Very broad discussions		UK and Spain identifiable as supporting greater rights protection, Denmark more sceptical
Scope Article IV						500 gross ton limit accepted by all except seafarers
Social Security Standard A4.5						NL speak on behalf of MS on social security, as did Commission, REIO