The Causal Relation Between the European Union's Coherence and Effectiveness in International Institutions

The Union in the Standard-Setting Procedure of the International Labour Organization

Doctoral dissertation submitted by Bregt Saenen in partial fulfillment of the requirements for the degree of Doctor of Philosophy in EU Studies

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“You're bound to get idears if you go thinkin' about stuff.”

– John Steinbeck, The Grapes of Wrath
Abstract

This doctoral dissertation explores the causal potential of the European Union’s coherence in relation to its effectiveness in international institutions. Specifically, it does so by tracing and comparing the Union’s interaction with the international context found in the International Labour Organization’s standard-setting procedures on maritime labor (2006), work in fishing (2007), and domestic work (2011). The underlying research objective of this exploratory effort is to make an empirical contribution to the research field on the EU in international institutions. This dissertation situates itself in this field by combining recent insights from the one voice debate and the structural incorporation of the international context. The one voice debate questions the dominant assumption that EU coherence and effectiveness can simply be equated with each other and, moreover, aims to establish a more complex account of their causal relation. Contributing to this debate, this dissertation finds that EU coherence is not always a necessary, nor by itself a sufficient condition for the Union to be effective in ILO standard-setting. Although external coherence does contribute to the Union’s effectiveness, this is first and foremost determined by how this causal factor interacts with the international context in which it finds itself. In addition, while this dissertation primarily makes an empirical contribution to the one voice debate, it also takes an excursion to the meta-theoretical level by outlining the potential benefits of recasting this debate through a critical realist lens.

Key words – European Union; Coherence; Effectiveness; Causality; One Voice Debate; Critical Realism; International Institutions; International Labour Organization; Maritime Labor; Work in Fishing; Domestic Work
Bregt Saenen is a doctoral student at the Centre for EU Studies of Ghent University. His doctoral research is supervised by Prof. Dr. Jan Orbie (Ghent University), co-supervised by Dr. Jasmien Van Daele (Ghent University), and funded with a PhD fellowship from the Research Foundation – Flanders (October 2010 – September 2014). In May 2012, Bregt was a Visiting Fellow at the Center for Global Affairs of New York University. Before starting his PhD fellowship, Bregt was an Intern at the ILO Office for the European Union and the Benelux in Brussels (March – July 2010), where he worked under then-Director Rudi Delarue and Audrey Le Guével. Bregt obtained his M.A. in History (2008) and M.S. in EU Studies (2009) from Ghent University. He is looking forward to a holiday.
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August 2014, Ghent
## Contents

Abstract ................................................................................................................................................. v  
Author .................................................................................................................................................. vii  
Acknowledgements ............................................................................................................................. ix  
Contents ............................................................................................................................................... xi  
Figures .................................................................................................................................................. xv  
Tables ................................................................................................................................................. xvii  
Boxes ................................................................................................................................................... xix  
Abbreviations .................................................................................................................................... xxv  

1. Introduction ....................................................................................................................................... 1  
   1.1. Research objective and outline ................................................................................................. 1  
   1.2. The Research Field on the EU in International Institutions .................................................. 4  
      1.2.1. The One Voice Debate ......................................................................................................... 5  
      1.2.2. Recasting the One Voice Debate Through a Critical Realist Lens .................................... 10  
      1.2.3. Abducing the International Context ..................................................................................... 15  
   1.3. The EU in the ILO ......................................................................................................................... 22  
      1.3.1. The ILO .................................................................................................................................. 22  
      1.3.2. The EU in the ILO .................................................................................................................. 30  
      1.3.3. Research on the EU in the ILO ............................................................................................ 36  
2. Research Design ................................................................................................................................... 39  
   2.1. Research Methods ....................................................................................................................... 39  
      2.1.1. The Comparative Case Study Method .................................................................................. 39  
      2.1.2. The Process-Tracing Method ............................................................................................... 41
2.1.3. Source Material ................................................................. 44

2.2. Conceptual Equipment .......................................................... 47
  2.2.1. EU Coherence ................................................................. 47
  2.2.2. EU Effectiveness ............................................................. 54
  2.2.3. The International Context .................................................. 59

3. The Standard-Setting Procedure on Maritime Labor ...................... 65
  3.1. The Tripartite Standard-Setting Procedure .................................. 65
    3.1.1. The Tripartite Standard-Setting Procedure ............................. 65
    3.1.2. The Goal of the Procedure ............................................... 70
    3.1.3. The Tripartite Stage ......................................................... 71
    3.1.4. The Key Issues ............................................................... 77
  3.2. A Bird’s-Eye View of EU Representation .................................... 79
    3.2.1. The 2004 Preparatory Technical Maritime Conference .............. 80
    3.2.2. The 2005 Tripartite Intersessional Meeting ............................ 82
    3.2.3. The 2006 Committee on the Whole ..................................... 83
  3.3. The Causal Potential of EU Coherence in Relation to its Effectiveness .... 88
    3.3.1. The Definitions and Scope of Application ............................ 88
    3.3.2. The Structure of the Instrument ....................................... 97
    3.3.3. The Simplified Amendment Procedure .................................. 102
    3.3.4. Social Security ............................................................ 108
    3.3.5. Compliance and Enforcement ......................................... 117
  3.4. Case Conclusion ................................................................... 131

4. The Standard-Setting Procedure on Work in Fishing ....................... 139
  4.1. The Tripartite Standard-Setting Procedure .................................. 139
    4.1.1. The Tripartite Standard-Setting Procedure ............................. 139
    4.1.2. The Goal and Central Challenge of the Procedure .................. 143
    4.1.3. The Tripartite Stage ......................................................... 145
    4.1.4. The Key Issues ............................................................... 154
  4.2. A Bird’s-Eye View of EU Representation .................................... 156
    4.2.1. The 2004 Committee on the Fishing Sector ............................ 156
    4.2.2. The 2005 Committee on the Fishing Sector ............................ 160
4.2.3. The 2007 Committee on the Fishing Sector .................................................... 165
4.3. The Causal Potential of EU Coherence in Relation to its Effectiveness .......... 167
  4.3.1. The Scope of Application ............................................................................. 167
  4.3.2. Training and Minimum Age ....................................................................... 180
  4.3.3. Medical Examination and Certification ......................................................... 188
  4.3.4. Manning and Hours of Rest ........................................................................ 197
  4.3.5. Private Employment Agencies ..................................................................... 205
  4.3.6. Accommodation .......................................................................................... 212
  4.3.7. Port State Control ....................................................................................... 223
  4.4. Case Conclusion .............................................................................................. 230
5. The Standard-Setting Procedure on Domestic Work ............................................ 239
  5.1. The Tripartite Standard-Setting Procedure .......................................................... 239
    5.1.1. The Tripartite Standard-Setting Procedure ................................................. 239
    5.1.2. The Goal of the Procedure .......................................................................... 243
    5.1.3. The Tripartite Stage ................................................................................... 244
    5.1.4. The Key Issues .......................................................................................... 251
  5.2. A Bird’s-Eye View of EU Representation .......................................................... 254
    5.2.1. The 2010 Committee on Domestic Workers ................................................. 254
    5.2.2. The 2011 Committee on Domestic Workers ................................................. 256
  5.3. The Causal Potential of EU Coherence in Relation to its Effectiveness .......... 260
    5.3.1. The Form of the Instruments ..................................................................... 260
    5.3.2. The Definitions and Scope of Application .................................................... 265
    5.3.3. The Right to be Informed on the Terms and Conditions of Employment ... 270
    5.3.4. Written Employment Contracts ................................................................. 275
    5.3.5. Working Time ............................................................................................ 280
    5.3.6. Occupational Safety and Health ................................................................. 286
    5.3.7. Social Security Protection ......................................................................... 291
    5.3.8. Employment Agencies ................................................................................. 295
    5.3.9. Compliance and Enforcement ................................................................... 300
  5.4. Case Conclusion ............................................................................................... 304
6. General Conclusions ............................................................................................ 311
Figures

Figure 1.1 – The ILO standard-setting procedure, i.e. the double-discussion procedure...... 29
Figure 2.1 – The conceptualization of EU coordination and representation in international institutions........................................................................................................................................... 50
Figure 2.2 – The tripartite stage and the dynamic thereupon............................................. 62
Figure 4.1 – The world’s fishers by region in 2005............................................................... 148
Figure 6.1 – The EU’s relative position during the standard-setting procedures............... 321
Tables

Table 2.1 – Four quadrant structure of external EU coherence in international institutions. 51
Table 2.2 – Tom Delreux’s conceptualization of EU representation in international institutions ........................................................................................................................................... 53
Table 3.1 – The titles of the regulations and the Code of the 2006 Maritime Labour Convention, each consisting of mandatory standards (Part A) and non-mandatory guidelines (Part B)........................................................................................................................................... 68
Table 3.2 – The key issues during the standard-setting procedure on the Maritime Labour Convention, 2006........................................................................................................................................... 78
Table 3.3 – Interventions by EU Member States during the three committees of the 2004 Preparatory Technical Maritime Conference ........................................................................................................................................... 81
Table 3.4 – Interventions by EU Member States during the 2005 Tripartite Intersessional Meeting ........................................................................................................................................... 83
Table 3.5 – Interventions by EU Member States during the 2006 Committee of the Whole 85
Table 3.6 – The changing, but relatively stable and recurrent Core EU Group during the 2006 Committee on the Whole (descending on ‘Total’) ........................................................................................................................................... 87
Table 3.7 – The atypical, layered structure of the 2006 MLC........................................................................................................................................... 97
Table 3.8 – The external coherence of EU representation during the standard-setting procedure on maritime labor ........................................................................................................................................... 133
Table 4.1 – Existing ILO Conventions and Recommendations specifically concerned with the fishing sector ........................................................................................................................................... 144
Table 4.2 – The key issues during the standard-setting procedure on the Work in Fishing Convention (No. 188) and Recommendation (No. 199), 2007 ........................................................................................................................................... 155
Table 4.3 – Interventions by EU Member States during the 2004 Committee on the Fishing Sector ........................................................................................................................................... 158
Table 4.4 – The Core EU Group during the 2004 Committee on the Fishing Sector (descending on ‘Total’) ........................................................................................................................................... 160
Table 4.5 – Interventions by EU Member States during the 2005 Committee on the Fishing Sector ................................................................................................................................................. 162

Table 4.6 – The Core EU Group during the 2005 Committee on the Fishing Sector (descending on 'Total') ................................................................................................................................................. 165

Table 4.7 – Interventions by EU Member States during the 2007 Committee on the Fishing Sector ................................................................................................................................................. 166

Table 4.8 – External EU coherence during the standard-setting procedures on work in fishing ............................................................................................................................................... 232

Table 5.1 – The counter-arguments in favor of a Convention, introduced by the Workers’ Group in response to the concerns of the Employer’s Group .................................................................................. 245

Table 5.2 – The key issues of the standard-setting procedure on the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011 ................................................................................................. 252

Table 5.3 – Interventions by EU Member States during the 2010 Committee on Domestic Workers ............................................................................................................................................... 256

Table 5.4 – Interventions by EU Member States during the 2011 Committee on Domestic Workers ............................................................................................................................................... 259

Table 5.5 – EU representation during the 2010 and 2011 committee discussions ............................................................................................................................................... 260

Table 5.6 – Replies by the governments and the social partners to the 2010 questionnaire when asked about the form of the instruments .................................................................................................................. 261

Table 5.7 – The external coherence of EU representation during the standard-setting procedure on domestic work ............................................................................................................................................... 305
Boxes

Box 1.1 – The 1998 Core Labour Standards................................................................. 24

Box 1.2 – The Decent Work Agenda................................................................. 25

Box 2.1 – The ILO standard-setting procedures that resulted in the adoption of a convention and recommendation since the EU’s 2004 enlargement............................................................. 41

Box 3.1 – The recommended draft of the HLTWG on the definitions and the scope of application (abridged, underline in original)................................................................. 90

Box 3.2 – The draft convention of the 2004 PTMC and 2005 TIM on the definitions and the scope of application (abridged).................................................................................. 94

Box 3.3 – The final provisions on the definitions and scope of application in the 2006 MLC (abridged)............................................................................................................. 96

Box 3.4 – The recommended draft of the HLTWG on the structure of the instrument (underline in original) ................................................................................................. 99

Box 3.5 – The draft Convention of the 2004 PTMC and 2005 TIM and the final provisions on the structure of the instrument in the 2006 MLC................................................. 101

Box 3.6 – The recommended draft of the HLTWG on the simplified amendment procedure (abridged)........................................................................................................... 103

Box 3.7 – The draft convention of the 2004 PTMC and 2005 TIM on the simplified amendment procedure (abridged).................................................................................. 106

Box 3.8 – The final provisions on the simplified amendment procedure in the 2006 MLC (abridged)................................................................................................. 108

Box 3.9 – The recommended draft of the HLTWG on social security (abridged)........ 110

Box 3.10 – The draft convention of the 2004 PTMC and 2005 TIM on social security (abridged).................................................................................................................. 115

Box 3.11 – The final provisions on social security in the 2006 MLC (abridged).......... 116
Box 4.16 – Provisions on manning and hours of rest submitted to the 2005 Committee by the ILO Office
Box 4.17 – Provisions on manning and hours of rest rejected during the 2005 ILC
Box 4.18 – The final provisions on manning and hours of rest in the 2007 Work in Fishing Convention
Box 4.19 – Provisions on private employment agencies submitted to the 2004 Committee by the ILO Office (emphasis added)
Box 4.20 – Provisions on private employment agencies submitted to the 2005 Committee by the ILO Office (emphasis added)
Box 4.21 – Provisions on private employment agencies rejected during the 2005 ILC (emphasis added)
Box 4.22 – The final provisions on private employment agencies in the 2007 Work in Fishing Convention
Box 4.23 – Provisions on accommodation submitted to the 2004 Committee by the ILO Office (Annex II abridged)
Box 4.24 – Provisions on accommodation submitted to the 2005 Committee by the ILO Office (Annex III abridged)
Box 4.25 – Provisions on accommodation rejected during the 2005 ILC (Annex III abridged)
Box 4.26 – The final provisions on accommodation in the 2007 Work in Fishing Convention (Annex III abridged)
Box 4.27 – Provisions on port state control submitted to the 2004 Committee by the ILO Office
Box 4.28 – Provisions on port state control submitted to the 2005 Committee by the ILO Office
Box 4.29 – Provisions on port state control rejected during the 2005 ILC
Box 4.30 – The final provisions on port state control in the 2007 Work in Fishing Convention
Box 5.1 – The definitions and provisions on the scope of application submitted to the 2010 Committee by the ILO Office
Box 5.2 – The definitions and provisions on the scope of application submitted to the 2011 Committee by the ILO Office
Box 5.3 – The final definitions and provisions on the scope of application
Box 5.4 – The provisions on the right to be informed on the terms and conditions of employment submitted to the 2010 Committee by the ILO Office ......................................................... 271
Box 5.5 – The provisions on the right to be informed on the terms and conditions of employment submitted to the 2011 Committee by the ILO Office ................................................. 273
Box 5.6 – The amendment to replace Article 6 submitted to the 2011 Committee on behalf of the EU Member States by Denmark ........................................................................................................... 273
Box 5.7 – The final provisions on the right to be informed on the terms and conditions of employment ................................................................................................................................. 274
Box 5.8 – The provisions on written employment contracts submitted to the 2010 Committee by the ILO Office ......................................................................................................................... 276
Box 5.9 – The provisions on written employment contracts submitted to the 2011 Committee by the ILO Office ......................................................................................................................... 278
Box 5.10 – The final provisions on written employment contracts .................................................................................................................................................................................. 279
Box 5.11 – The provisions on working time submitted to the 2010 Committee by the ILO Office ................................................................................................................................................. 281
Box 5.12 – The provisions on working time submitted to the 2011 Committee by the ILO Office..................................................................................................................................................... 283
Box 5.13 – The amendment to replace the first paragraph of Article 10 submitted to the 2011 Committee on behalf of the EU Member States by the Netherlands ............................................. 283
Box 5.14 – The final provisions on working time ............................................................................................................................................................................................... 285
Box 5.15 – The provisions on occupational safety and health submitted to the 2010 Committee by the ILO Office ................................................................................................................................................. 288
Box 5.16 – The provisions on occupational safety and health submitted to the 2011 Committee by the ILO Office ......................................................................................................................... 288
Box 5.17 – The final provisions on occupational safety and health ............................................................................................................................................................................................. 290
Box 5.18 – The provisions on social security protection submitted to the 2010 Committee by the ILO Office ................................................................................................................................................. 292
Box 5.19 – The provisions on social security protection submitted to the 2011 Committee by the ILO Office ................................................................................................................................................. 292
Box 5.20 – The final provisions on social security protection .................................................................................................................................................................................................................... 294
Box 5.21 – The provisions on employment agencies submitted to the 2010 Committee by the ILO Office ................................................................................................................................................. 296
Box 5.22 – The provisions on employment agencies submitted to the 2011 Committee by the ILO Office ................................................................................................................................................. 297
Box 5.23 – The final provisions on working time................................................................. 299

Box 5.24 – The compliance and enforcement provisions submitted to the 2010 Committee by the ILO Office .......................................................................................................................... 300

Box 5.25 – The compliance and enforcement provisions submitted to the 2011 Committee by the ILO Office .......................................................................................................................... 301

Box 5.26 – The final compliance and enforcement provisions........................................... 303
Abbreviations

ACTRAV  Bureau for Workers’ Activities
ASPAG  Asia-Pacific Group
CEACR  Committee of Experts on the Application of Conventions and Recommendations
CFSP  Common Foreign and Security Policy
CLS  Core Labour Standards
Commission  European Commission
Committee, 2004  Committee on the Fishing Sector, 2004
Committee, 2005  Committee on the Fishing Sector, 2005
Committee, 2006  Committee of the Whole, 2006
Committee, 2007  Committee on the Fishing Sector, 2007
Committee, 2010  Committee on Domestic Workers, 2010
Committee, 2011  Committee on Domestic Workers, 2011
Council  Council of the European Union
DG EMPL  Directorate-General for Employment, Social Affairs, and Equal Opportunities
ECJ  Court of Justice of the European Union
ECSC  European Coal and Steel Community
EEA  European Economic Area
EEC  European Economic Community
EESC  European Economic and Social Committee
EU Presidency  Presidency of the Council of the European Union
EU  European Union
GB  Governing Body
GCC  Gulf Cooperation Council
GRULAC  Group of Latin American and Caribbean States
HLTWG, 2001  High-level Tripartite Working Group, 2001
HLTWG, 2002  High-level Tripartite Working Group, 2002
HLTWG, 2004  High-level Tripartite Working Group, 2004
HRC  Human Rights Council
ICC  International Criminal Court
ILC  International Labour Conference
ILO  International Labour Organization
ILO Office  International Labour Office
IMEC  Industrialized Market Economy Countries
IMO  International Maritime Organization
IOE  International Organisation of Employers
ISF  International Shipping Federation
ITF  International Transport Workers' Federation
ITUC  International Trade Union Confederation
JMC, 2001  Joint Maritime Commission, 2001
Lisbon  Treaty of Lisbon
LN  League of Nations
MARPOL  International Convention for the Prevention of Pollution from Ships
Meeting of Experts, 2004  Tripartite Meeting of Experts on the Fishing Sector, 2004
MLC, 2006  Maritime Labour Convention, 2006
NGO  Non-governmental organization
Parliament  European Parliament
PTMC, 2004  Preparatory Technical Maritime Conference, 2004
REIO  Regional Economic Integration Organization
RIO  Regional Integration Organization
Rotating Presidency  Presidency of the Council of the European Union
Round Table, 2006  Interregional Tripartite Round Table on Labour Standards for the Fishing Sector, 2006
STCW  International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
TIM, 2005  Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference, 2005
Treaty  Treaty of Lisbon
UN  United Nations
<table>
<thead>
<tr>
<th>Acronym</th>
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<tbody>
<tr>
<td>UNGA</td>
<td>United Nations General Assembly</td>
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<tr>
<td>Union</td>
<td>European Union</td>
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<tr>
<td>WPPRS</td>
<td>Working Party on Policy regarding the Revision of Standards</td>
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<td>WTO</td>
<td>World Trade Organization</td>
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1. Introduction

1.1. Research objective and outline
This doctoral dissertation will explore the causal potential of the European Union’s (EU) coherence in relation to its effectiveness in international institutions, specifically by tracing the former’s interaction with the international context found in the standard-setting procedure of the International Labour Organization (ILO).

The question and objective that underlie this dissertation are based on the recent questioning of a long-held assumption on the causal relation between EU coherence and effectiveness. Specifically, it has long been assumed that if the EU Member States speak with one voice in international institutions (i.e. coordinate and represent a common position), the result would be an increase of the Union’s effectiveness, legitimacy, and credibility. While this assumption is not universally shared, its dominance among pro-European officials in the Brussels-based institutions and the national capitals is nevertheless unmistakable and has far-reaching consequences. In practice, it continues to point the legal and political evolution of EU foreign policy in the direction of streamlining the coordination process and representation of the Member States, which was recently reaffirmed with the entry into force of the Treaty of Lisbon (hereinafter ‘the Treaty’ or ‘Lisbon’) in December 2009.

Moreover, this assumption has spilled over into the academic research field on the EU in international institutions, wherein it was initially accepted without question and, as a consequence, either implicitly or explicitly informed the majority of analyses. Recently, however, new empirical observations have run counter to the assumption, which has put its validity in question. Specifically, scholars have derided the overly simplistic and under-specified nature of the assumption’s take on the causal relation between EU coherence and effectiveness. Against this background, exploring the causal potential of the Union’s coherence is a relevant and timely undertaking from both a practical and an academic perspective.
Situating itself within the research field on the EU in international institutions, this dissertation builds on the combination of two recent evolutions that have been defined as promising avenues for further research: the one voice debate and the incorporation of the international context. Firstly, the one voice debate questions the dominant assumption on the causal relation between EU coherence and effectiveness in international institutions. Following the recent empirical observations that have run counter to the assumed positive relation between these two factors, scholars have moved beyond the overly simplistic and under-specified nature of the causal relation that lies at the heart of this assumption, leading them to an in-depth exploration of this relationship and gradually establish a more complex account of how EU coherence and effectiveness are related to each other within international institutions.

Secondly, this dissertation combines the exploratory efforts of the one voice debate with a second avenue for further research: the incorporation of the international context as the best explanation for the puzzling empirical observations that started this debate. While research on the Union in international institutions has traditionally adopted an introverted focus, the evolution of EU foreign policy brought the international context into focus during the 2010s. In this dissertation, we present this evolution as the best way forward for the one voice debate to explore the causal potential of EU coherence in relation to its effectiveness in international institutions. By building and extending upon these avenues as the bedrock of our research question and objective, this dissertation takes its place at the vanguard of contemporary academic research on the EU in international institutions.

In line with the predominantly empirically-driven efforts of the one voice debate, this dissertation will primarily make an empirical contribution to the exploration of the causal potential of EU coherence in relation to its effectiveness in international institutions. In order to do so, it traces the former’s interaction with the international context found in the ILO standard-setting procedure. Since the turn of the century, the inter-organizational relations between the Union and the ILO have intensified and – more importantly for our purposes – a tangible ‘EU identity’ has been said to have emerged in the tripartite committee discussions of the ILO standard-setting procedure. In addition, these evolutions since the turn of the century have more or less coincided with the EU’s 2004 enlargement from 15 to 25 Member States and, a little while later, 27 Member States. As such, the international context found in the ILO standard-setting procedure provides ample opportunity to individuate the causal potential of the Union’s coherence by comparing how it relates to its effectiveness in different procedures. Specifically, this dissertation will trace and compare the potential of the Union’s coherence in three case studies, i.e. the standard-setting procedures that lead to the adoption of the 2006 Maritime Labour Convention (MLC), the 2007 Work in Fishing Convention and Recommendation, and the 2011 Domestic Workers Convention and
Recommendation. Importantly, while our conclusions will be built on a detailed tracing of the role and impact of the Union and its Member states in these procedures, the primary objective of this dissertation is not to provide an insight into the Union’s position in this organization as such, but rather to add to ongoing exploratory efforts on the causal potential of EU coherence in relation to its effectiveness in international institutions.

However, while the contribution of this dissertation will primarily be empirical, we will also take an excursion to the meta-theoretical level by outlining the potential benefits of recasting the one voice debate through a critical realist lens. Notably, we will point out how Critical Realism provides a readily available meta-theoretical footing to extend and sustain the more complex causal relation that is being explored by the one voice debate. To reiterate, this dissertation constitutes a primarily empirical contribution to the one voice debate and the incorporation of the international context. Nevertheless, while a thorough application of the critical realist commitments is left to future research, this meta-theoretical approach does influence the research design of this dissertation in terms of its methods and conceptual equipment.

Turning to the research design, this dissertation makes use of three methods to explore the causal potential of EU coherence in relation to its effectiveness in ILO standard-setting: the comparative case study method, the process-tracing method, and expert interviews. Of these three methods, process-tracing serves as the methodological linchpin of our exploratory effort, notably focusing our attention on the causal ‘how’ of the relation under scrutiny, while the influence of the critical realist approach gears the comparison between the case studies toward individuating, rather than isolating the causal factor of interest. Furthermore, the design of this dissertation includes a sophisticated piece of conceptual equipment to detect the Union’s coherence (i.e. external coherence) and effectiveness (i.e. goal attainment) against the background of the international context found in ILO standard-setting. Influenced by the critical realist approach, both coherence and effectiveness are seen as fundamentally unobservable, but nevertheless detectable at one remove through this conceptual equipment.

Contributing to the more complex account of the causal relation between EU coherence and effectiveness that is being explored by the second wave of the one voice debate, this dissertation finds that external coherence is not always a necessary condition for the Union to be effective in ILO standard-setting, nor is it by itself a sufficient condition. Although we will find that EU coherence has clearly added to its effectiveness in the standard-setting procedures on maritime labor, work in fishing, and domestic work, it is first and foremost how the Union’s external coherence is related to the interaction between the dynamic on the tripartite stage and the Union’s relative position thereupon that determines the extent to which it can contribute to the Union’s effectiveness.
This dissertation is structured as follows. The remainder of the introductory chapter first situates this dissertation in the field of research on the EU in international institutions by providing a detailed overview of the relevant academic literature (i.e. on the one voice debate and on the incorporation of the international context) and outlining the potential benefits of recasting the one voice debate through a critical realist lens. In addition, this first chapter also introduces the ILO and its relationship with the EU and its Member States, as well as giving an overview of the relevant literature on this topic. The second chapter establishes the research design of this dissertation, notably pinpointing the precise use of its research methods (i.e. comparative case studies, process-tracing, and expert interviews) and conceptual equipment. The third, fourth, and fifth chapters respectively trace the causal potential of EU coherence in the ILO standard-setting procedures on maritime labor, work in fishing, and domestic work. Each of these are accompanied by case conclusions. Finally, the sixth chapter compares these conclusions and highlights the contributions of this dissertation.

1.2. The Research Field on the EU in International Institutions

Academic research on the EU in international institutions has gained momentum since the early 2000s.¹ The current phase of research was instigated by the ‘effective multilateralism’ doctrine found in the 2003 European Security Strategy, which focused scholarly attention on the Union’s self-proclaimed commitment to an international order based on effective multilateral institutions (European Council, 2003; for an overview of the preceding phases, see: Kissack, 2010, pp. 15-19). Several years later, the entry into force of the Treaty of Lisbon in December 2009 provided the research field with further impetus (see e.g. Drieskens & van Schaik, 2010; Howorth, 2011; Laatikainen, 2010; Laatikainen & Degrand-Guillaud, 2010; Lieb, von Ondarza, & Schwarzer, 2011; and Vanhoonacker & Reslow, 2010). Seeing as this Treaty was largely preoccupied with overhauling the Union’s external governance, it caused even more scholars to direct their attention to the EU’s foreign policy. Apart from numerous journal articles on this topic, various (edited) volumes (see e.g. Blavoukos & Bourantonis, 2011b; Costa & Jørgensen, 2012; Drieskens & van Schaik, 2014; Jørgensen, 2009b; Jørgensen & Laatikainen, 2013b; Jørgensen, et al., Forthcoming 2014; Kissack, 2010, pp. 15-19; Laatikainen & Smith, 2006b; Orsini, 2014; Rasch, 2008; van Schaik, 2013; Wouters, Hoffmeister, & Ruys, 2006b; and Wouters, Bruyninckx, Basu, & Schunz, 2012) and special issues (see e.g. Conceição-Heldt & Meunier, 2014; Jørgensen, Oberthür, & Shahin, 2011; and Niemann & Bretherton, 2013) have served as the backbone of this research field during the past two decades, providing central places to meet and jumping-off points for any and all

¹ A previous version of these introductory paragraphs was published in an edited volume by Knud Erik Jørgensen et al. (Forthcoming 2014), wherein my colleagues and I wrote a chapter on the Union’s relations with multilateral organizations. For our contribution, see: (Orbie, Saenen, Verschaeve, & De Ville, Forthcoming 2014).
scholars working on this topic. However, most of this vast and exponentially growing body of literature has been characterized by a rather descriptive and mostly introverted ‘mapping’ of how the EU and its Member States organize themselves in international institutions (Orbie, et al., Forthcoming 2014). Furthermore, most of the scholarship has also been characterized by, as Joachim Koops formulates it, ‘[…] a wide range of pre- or a-theoretical case studies and largely unconnected attempts of tentative theorizing.’ (Koops, 2013, p. 71)

Since the early 2010s, research on the Union in international institutions has started to change on both accounts, albeit in a slow and incremental fashion. A fast increasing number of authors have started to go beyond mere descriptive and introverted analyses in their research, thereby giving rise to a number of distinct, but inter-related avenues for further research. This dissertation builds on the combination of two recent evolutions that have been defined as promising avenues for further research: the causal relation between EU coherence and effectiveness, i.e. the one voice debate, and the incorporation of the international context. In the second part of this introductory chapter, we will discuss both evolutions and establish them as the foundation for our research objective.

Firstly, the one voice debate serves as our point of departure (cf. Chapter 1.2.1.). This debate questions the dominant assumption on the causal relation between EU coherence and effectiveness in international institutions. Following the recent empirical observations that have run counter to the assumed positive relation between these two factors, scholars have moved beyond the overly simplistic and under-specified nature of the causal relation that lies at the heart of this assumption, leading them to an in-depth exploration of this relationship and gradually establish a more complex account of how EU coherence and effectiveness are related to each other within international institutions. Secondly, while the contribution of this dissertation will primarily be empirical, we will take an excursion to the meta-theoretical level by outlining the potential benefits of recasting the one voice debate through a critical realist lens (cf. Chapter 1.2.2.), notably in terms of sustaining and adding to the one voice debate’s evolution toward a more complex account of the causal relation between EU coherence and effectiveness in international institutions. Lastly, this dissertation combines the exploratory efforts of the one voice debate with the incorporation of the international context as the best explanation for the puzzling empirical observations that started this debate (cf. Chapter 1.2.3.). By building and extending upon these avenues as the bedrock of our research objective, this dissertation takes its place at the vanguard of contemporary academic research on the EU in international institutions.

1.2.1. The One Voice Debate

The ‘one voice debate’ refers to a growing number of studies that challenge the dominant assumption on the causal relation between EU coherence and effectiveness in international institutions. This assumption or ‘one voice mantra’ (Macaj, 2014, p. 1067) equates internal
Member State coherence with external EU effectiveness, which means that an increase of the former is assumed to automatically lead to an increase of the latter, while *vice versa* a decrease of coherence will result in a decrease in effectiveness. The intuitive and seemingly sound logic behind this assumption builds on a simplistic causal relation between these two concepts, which can be summarized as follows: diverging or opposing Member State positions will cancel each other out during international decision-making procedures and, moreover, result in a loss of effectiveness, legitimacy, and credibility for the Union as a whole. Conversely, if the Union’s Member States and its Brussels-based institutions can internally coordinate their positions, the EU will then be able to externally represent a common position (i.e. speak with one voice) and thereby enhance its overall effectiveness in international institutions.

This assumption is derived from the ‘iconic meaning’ that pro-European officials in the Brussels-based institutions and the national capitals confer to EU coherence. For them, ‘[this concept] conveys the general aspiration of action with ever more unity [and is thus] positively loaded in the sense that it directly appeals to the very core objectives of integration.’ (Gebhard, 2011, p. 110) As such, the assumption that internal Member State coherence will lead to external EU effectiveness in international institutions is closely intertwined with the history of European integration and, while its continued influence was recently reaffirmed with the Treaty of Lisbon’s overhaul of the Union’s foreign policy (for an historical overview, see: Meunier, 2005, pp. 10-13; for a close reading of the Treaty’s relevant provisions, see: Duke, 2011, pp. 30-54; Hillion, 2008; and Marangoni & Raube, 2014, pp. 476-478). Moreover, it has been noted that the demonstrated success of the Union’s one voice in international trade governance has served to increase the clout of the dominant assumption far beyond the confines of the World Trade Organization (WTO) and into other international institutions, where it is assumed that the Union’s coherence will garner similar results (Kissack, 2012, pp. 12-14 and Postolache, 2012, p. 11).

Despite its dominance, it should be noted that the iconic meaning of EU coherence is not universally shared in European and national policy-circles. Caterina Carta (2013) has rightly pointed out that speaking with one voice is just one of several coexisting ideas on how the Union should represent itself in international institutions. Specifically, Carta notes that ‘[w]hile institutional actors tend to believe that coherence and strength may descend from a more unified system of representation, the member states tend to believe that, in certain circumstances, differentiation could increase the EU’s strength.’ (p. 420) Nevertheless, given the unmistakable march toward an ever closer Union, it is safe to say that the iconic meaning of EU coherence and, derived thereof, speaking with one voice in international institutions take up a privileged position in European and national policy-circles, where they presently exert their influence on the direction of the Union’s foreign policy. As mentioned before, the
iconic meaning of EU coherence can be seen as the underlying motivation for the Treaty of Lisbon. Aimed at streamlining the coordination and representation of EU foreign policy, this Treaty introduced reforms that went beyond intergovernmental methods to improve the Union’s coherence, but rather ‘[…] displayed] an increasingly institutionalized trend, even state-like features.’ (Portela & Raube, 2012, pp. 16-17) (see also: Gstohl, 2012; Koehler, 2010; Missiroli, 2010; Saenen & Orbie, 2011; and van Schaik, 2010, pp. 25-28)

Given its dominance in the policy circles of the Brussels-based institutions and the national capitals, this assumption easily spilled over into academic research on the Union in international institutions. As this field of research entered its current phase on the coattails of the effective multilateralism doctrine, many authors explicitly or implicitly equated internal Member State coherence with external EU effectiveness. For example, an edited volume by Wouters et al. concluded that ‘[…] the key to EU influence on UN decision-making lies in speaking with a single voice […]’ (Wouters, Hoffmeister, & Ruys, 2006a, p. 398), while an edited volume by Laatikainen and Smith readily cited an ambassador who claimed that ‘[…] if the EU is united, they cannot be defeated.’ (Laatikainen & Smith, 2006a, p. 16) These are two explicit examples taken from the central meeting points of this research field during the 2000s, but they serve as indicators for a great many more book chapters and journal articles wherein this assumption was also clearly present.

However, when we take a closer look at this assumption from an academic perspective, we find that it amounts to little more than what has been called a ‘folk theory’. In contrast to well-developed theories, John Mearsheimer and Stephen Walt (2013) describe these folksy counterparts as ‘[…] casual or poorly developed theories […] that are stated in a cursory way. Key concepts are not well defined and the relations between them – to include the causal mechanisms – are loosely specified.’ (emphasis added) (p. 432) Despite the intuitive and appealing logic behind conflating internal Member State coherence and external EU effectiveness with each other, this is a fitting description for the dominant assumption, whose intuitive logic relies on a broad conceptualization of its key concepts and – crucially – an overly simplistic causal relation that equates EU coherence and effectiveness in international institutions. As such, describing the dominant assumption as a folk theory serves to point out the overly simplistic and underdeveloped causal relation that lies at its heart.

Since the early 2010s, the dominant folk theory on the causal relation between EU coherence and effectiveness in international institutions has been challenged by the first wave of the one voice debate. In order to challenge the prevalent assumption, a number of case studies have explored instances wherein internal Member State coherence failed to improve or even ran counter to external EU effectiveness. First and foremost, the puzzling empirical material of this first wave has served to start the debate by puncturing the dominant assumption and
shining a light of the intuitive, but shaky logic behind it. Moreover, these early case studies started the debate by pointing to a challenging hypothesis, wherein internal Member State coherence hinders the Union’s external effectiveness in international institutions. Notable examples include Karen Smith’s (2010) research on soft balancing against EU positions by the Global South in the Human Rights Council (HRC), Robert Kissack’s (2009b) findings on the unwillingness of non-European countries to ratify ILO Conventions containing high, European standards, and Gjovalin Macaj (2011) pointing out not only the problematic application of outreach in the HRC, but also its problematic premise (later developed as the ‘perverse effect argument’, see: Macaj, 2014, p. 1073). All these examples point to Member State coherence as a direct or indirect trigger for hostility from non-European states, in effect making it a hindrance for the Union’s effectiveness.

The main takeaway from the one voice debate is starting to be taken to heart by a growing number of scholars, who now acknowledge that the causal relation between internal Member State coherence and external EU effectiveness is still under-specified in academic research and, as such, devote special issues and edited volumes to explore this relation more thoroughly (Conceição-Heldt & Meunier, 2014, p. 962; Drieskens, 2014a, p. 191; and Niemann & Bretherton, 2013, p. 263). However, the initial challenge mounted by the above mentioned case studies similarly relied on an overly simplistic causal relation. Given that the dominant assumption was built on an assumed positive correlation between internal Member State coherence and external EU effectiveness, the early case studies started the debate by focusing on instances wherein a negative correlation was found between these two concepts. While this is understandable, it should be noted that therefore both the dominant assumption and its initial challenge rely on an overly simplistic causal relation between internal Member State coherence and external EU effectiveness.

Recently, a number of studies have initiated a second wave in the one voice debate, wherein an evolution toward a more complex conception of the causal relation between EU coherence and effectiveness can be discerned. Firstly, these case studies build on the main insight of their predecessors in the first wave by explicitly questioning the dominant assumption at the start of their research or even presenting three competing hypotheses on the relation between the Union’s coherence and effectiveness (i.e. positive, negative, or null), thereby turning the dominant assumption into one of three possible scenarios (Conceição-Heldt & Meunier, 2014, pp. 969-971; Panke, 2013; and D. C. Thomas, 2012, pp. 461-462). From there on out, these studies make inroads into developing the dominant folk theory by ‘[...] develop[ing] and illustrat[ing] the use of a parsimonious and generalizable framework for analyzing the relationship between coherence and effectiveness in EU foreign policy [...]’ (p. 458) or ‘[...] specifying further the conditions under which internal cohesiveness impacts
the degree of external effectiveness of the EU in world politics.’ (Conceição-Heldt & Meunier, 2014, p. 962)

Secondly, a more important signifier for studies from the second wave is their presentation of a more complex causal relation between internal Member State coherence and external EU effectiveness in international institutions. Notable examples include Eugénia da Conceição-Heldt (2014) and Tom Delreux (2014) pointing out the influence of the relative bargaining power of a coherent Union in international governance on trade and the environment respectively, Diana Panke’s (2013, p. 287) research on the trade-off for regional organizations in general and the Union specifically (Panke, 2014) within the formal and informal rules and procedures of the United Nations General Assembly (UNGA), and Daniel Thomas’ (2012, p. 472) finding that EU coherence on the reform of the International Criminal Court (ICC) may be necessary, but is not sufficient when confronted with counterbalancing third players in pursuit of incompatible goals.

Crucially, all these scholars explicitly point to the twists and turns the causal relation between the Union’s coherence and its effectiveness undergoes along the way, which leads them to incorporate other causal factors in their assessment, rather than establish a simplistic or straightforward relation between coherence and effectiveness. This does not mean that internal Member State coherence no longer has a causal influence in relation to external EU effectiveness (be it positive or negative), but rather that this influence is increasingly seen within a multitude of other factors. We will return to the more complex conception of causality that is found within these studies in the next two parts of this introductory chapter, when we expand more thoroughly on this evolution by introducing a meta-theoretical foundation for this evolution (cf. Chapter 1.2.2.) and outlining how the international context was incorporated within this field of research and the one voice debate in particular (cf. Chapter 1.2.3.). For now, it should be clear that the second wave of the one voice debate has gone through a subtle, but unmistakable evolution compared to the dominant folk theory and the first wave challenge to that assumption.

Throughout this evolution, the one voice debate has continued to be one that is predominantly empirically-driven or, at best, backed by simple tools derived from spatial analysis (Frieden, 2004). Reflecting the a- or pre-theoretical tradition of this research field, both the initial challenge (i.e. the first wave of the one voice debate) and the subsequent evolution toward a more complex account of the causal relation between EU coherence and effectiveness (i.e. the current second wave) were built on empirical findings. This dissertation places itself in this tradition and will make an empirical contribution to the debate (cf. the research design in Chapter two). However, it should be noted that attempts are underway (or very recently published) to establish a firmer theoretical footing for this debate. For example,
Introduction
despite the fact that the dominant assumption quickly spilled over into academic research, it has recently been pointed out that scholars do not necessarily share the expectation that coherence leads to effectiveness, legitimacy, and credibility. Anne-Claire Marangoni and Kolja Raube (2014) have explored how the expectations that surround coherence in the pro-European circles would play out when they are explicitly approached from theoretically-informed accounts (i.e. constructivist, realist, and governance) (for another early attempt to establish a firmer theoretical footing for what is means to ‘speak with one voice’, see: Kissack, 2012). Interestingly, Marangoni and Raube find that these approaches often lead to much more nuanced expectations on the causal relation between EU coherence and effectiveness. This is an important contribution to the one voice debate, as it points to a specific pitfall that was caused by the traditionally a- or pre-theoretical approach of this research field, which allowed the folk theory on the causal relation between EU coherence and effectiveness in international institutions to spill over from practice.

In summary, the empirically-driven one voice debate has challenged the dominant folk theory that equates internal Member State coherence with external EU effectiveness in international institutions, i.e. the assumption that the Union’s coherence improves its effectiveness. This assumption found its origins in the iconic meaning that is conferred to the EU coherence in pro-European policy-circles and subsequently spilled over into academic research, where this intuitive, yet overly simplistic causal relation did not hold up once it was subjected to close scrutiny by a number of case studies. However, the initial challenge mounted by this first wave of cases similarly relied on an overly simplistic causal relation between EU coherence and effectiveness, albeit now focusing on instances wherein EU coherence hindered its effectiveness. Recently, a second wave of case studies has taken a step in the right direction and has started to present a more complex account of the causal relation between these two concepts, but at present this empirically-driven evolution is still underdeveloped and needs to find a firmer footing.

1.2.2. Recasting the One Voice Debate Through a Critical Realist Lens
While the contribution of this dissertation will primarily be empirical, we will now take an excursion to the meta-theoretical level by outlining the potential benefits of recasting the one voice debate through a critical realist lens. Notably, we will point out how Critical Realism provides a readily available meta-theoretical footing to extend and sustain the more complex causal relation that is being explored by the one voice debate. What makes this excursion especially worthwhile, is that the close connections between the evolution on the empirical and this meta-theoretical approach have so far gone unnoticed, with scholars working on the one voice debate remaining unaware of the close connections and the readily available meta-theoretical bedding to sustain their findings. To reiterate, this dissertation constitutes a primarily empirical contribution to the one voice debate and the incorporation of the international context. Nevertheless, while a thorough application of the critical realist
commitments is left to future research, the meta-theoretical approach that is introduced here does influence the research design of this dissertation in terms of its methods and conceptual equipment (cf. Chapter two).

Critical Realism finds its common denominator in three shared commitments. While critical realist authors are able and willing to debate the finer points of their worldview, almost all of them share a commitment to ontological realism, epistemological relativism, and judgmental rationalism (Bennett, 2013, p. 465 and Patomäki & Wight, 2000, pp. 223-224). Reduced to their bare bones, (1) ontological realism entails that there is a reality outside of our minds, to which (2) epistemological relativism immediately adds that any and all knowledge we might have about that reality is socially produced. However, since an independent reality nevertheless does exist, (3) judgmental rationalism provides the final cornerstone of the critical realist way of thinking by acknowledging that it is still possible, in principle, to decide between competing theories on that reality. Since the 2000s, the critical realist way of thinking has started to make inroads into International Relations research, albeit incrementally and somewhat belatedly when compared to its impact on other (social) sciences. Building on the foundations laid out by the work of Roy Bhaskar (1978 and 1979), several authors have provided Critical Realism with a firm foothold by writing extensively on the promises and benefits of the central commitments when they are applied to International Relations research and, as one can infer from these publications, for EU Studies (e.g. Bennett, 2013; Kurki, 2008; and Patomäki & Wight, 2000; for an application specifically within EU Studies, see: Bache, Bulmer, & Gunay, 2012).

When recasting the one voice debate through a critical realist lens, our main interest lies in the promises and benefits this way of thinking brings to the table for research on the causal relation between internal Member State coherence and external EU effectiveness in international institutions, i.e. how it can provide a meta-theoretical foundation to reimagine causality in the one voice debate. The dominant understanding of causality in present-day social science research (and beyond) is built on David Hume’s philosophy of causation, which itself builds on three commitments: (1) causal relations occur in a regular fashion, (2) they can be observed as they occur, and (3) these regularly observable relations are determined in their occurrence, i.e. once a causal relation has been established by observing a regular pattern between two or more variables, the same relation is expected to reappear under similar conditions. While these assumptions are instinctively familiar to most social science scholars and, moreover, seem like a commonsensical commitments when thinking about causality, Milja Kurki (2006) has argued that the Humean understanding of causality in fact represents an ‘emptied out’ version of a much richer concept, wherein causality arises ‘[…] simply from human observation of ‘constant’ conjunctions’ of events.’ (p. 192) Indeed, according to the Humean philosophy, we can only establish causal relations through
empirical observations of the world that surrounds us, meaning that causes cannot be said to exist in an independent reality beyond our observations.

We will return to Kurki’s deeper conception of causality in a moment, but first let us dwell for a moment on Hume’s constant conjunctions as the dominant foundation for causality in social science research and, more specifically, how these conjunctions influenced the first wave of the one voice debate. Constant conjunctions (dubbed ‘concatenations’ by Benjamin Banta 2013, p. 390) are instinctively familiar to most social science researchers because they are central to the positivist way of knowing, wherein the causes of a phenomenon are established (or dismissed) by testing hypotheses on the constant conjunctions or covariance of independent and dependent variables (Haverland & Yanow, 2012, p. 404). To offer an explanation for these concatenations, the researcher typically sets out to unearth the ‘covering law’ or universal regularity that encapsulates the covariance between one or more independent variables and the observed outcome of the dependent variable (Bennett, 2013, p. 465). As such, positivism clearly builds on the Humean philosophy of causality.

Returning to the first wave of the one voice debate, we find that this debate started as a reaction against a concatenation between internal Member State coherence and external EU effectiveness that was predominantly assumed to be positive, i.e. both concepts are causally related to each other and covary in the same direction. While never thoroughly researched, the covering law assumed to be at work boiled down to the following explanation: internal Member State coherence focuses the political and economical power resources of these states toward the same goals and, as such, makes the Union as a whole a more effective, legitimate, and credible actor in international institutions. Inversely, the case studies of the first wave argued against this positive relationship by relying on a negative concatenation, i.e. both concepts are causally related to each other, but covary in opposite directions. As we have seen, both the dominant assumption and the first wave challenge therefore relied on an overly simplistic causal relation. For example, one of Kissack’s (2009b) early publications on the role of the Union in ILO standard-setting found that ‘[…] the fewer interventions made in the name of the EU during the drafting of an instrument, the more ratifications an instrument is likely to receive.’\(^2\) (p. 106) Findings like these served to first puncture the dominant assumption on EU coherence and effectiveness, but nevertheless continued to rely on constant conjunctions to offer an explanation.

\(^2\) It should be noted that Kissack’s (2009b) study did not focus on the causal relation between internal Member State coherence and external EU effectiveness in the precise way that these concepts are conceptualized in this dissertation (cf. the conceptual equipment in Chapter 2.2.), but rather on the relation between the level of the Union’s involvement in the standard-setting procedure and the ratification of the resulting ILO instrument. Nevertheless, this example still serves to illustrate the pervading influence of the Humean philosophy of causation and its constant conjunctions in social science research.
However, a general dissatisfaction with explanations based on constant conjunctions has been taking hold in social science research. Several structural problems with this model of explanation have been defined in recent years. Firstly, it has been pointed out that ‘[…] based as it is solely at the level of co-joined events, [covariance] does not really constitute an explanation at all.’ (Patomäki & Wight, 2000, p. 228) For example, while the first wave of the one voice debate served to puncture commonly held assumptions, it made little headway in terms of opening the black box and exploring precisely how the causal relation between EU coherence and effectiveness functions in international institutions. Indeed, in his early publication Kissack concluded with three alternative explanations for the negative concatenation he found in his empirical data, but because of his continued reliance on concatenations, an insight into the actual nuts and bolts of the black box remained obscured from both the author and the readers (Kissack, 2009b, pp. 106-108). Secondly, constant conjunctions by themselves cannot distinguish between a simple correlation and an actual causal relation between independent and dependent variables (Patomäki & Wight, 2000, p. 228). Importantly, in order to establish a causal relation, it is necessary to open the black box and turn it into a transparent box by exploring the nuts and bolts that inform how the causal relation between EU coherence and effectiveness functions in international institutions (Hedström & Ylikoski, 2010, p. 51).

The critical realist way of thinking offers an alternative model of explanation that overcomes the problems inherent with relying on Humean constant conjunctions as the foundation for causal relations. Specifically, the critical realist commitment to ontological realism opens up a ‘deeper’ conception of causality that stands in opposition to the Humean position that causes cannot be said to exist independently from our empirical observations (Kurki, 2006, pp. 201-204; for a brief introduction to the debate on the nature of causation in social science research, see: Grynaviski, 2013). In contrast to Hume’s emptied out notion of causality, this ontological position translates into causes that ‘[…] must be assumed to exist as real ontological entities, that is, they are not mere creations of our imagination, but have real existence in the world outside our thought and observations.’ (Kurki, 2006, p. 201) As a consequence, ‘[c]ausal analysis, then, is about analyzing causes ‘out there’ (outside what we think or observe) […]’ (emphasis in original) (p. 201). These causes take the form of ‘causal mechanisms’, which are defined by Alexander George and Andrew Bennett as ‘[…] ultimately unobservable physical, social, or psychological processes through which agents with causal capacities operate, but only in specific contexts or conditions, to transfer energy, information, or matter to other entities. In doing so, the causal agent changes the affected entity’s characteristics, capacities, or propensities in ways that persist until subsequent causal mechanisms act upon it.’ (George & Bennett, 2005, p. 137)
This definition indicates how this model of explanation differs from the Humean constant conjunctions and how it overcomes the problems inherent with relying on those conjunctions. Firstly, in this model of explanation regular patterns between two or more variables are explicitly seen neither necessary nor sufficient to establish a causal relation (Kurki, 2006, p. 202). While the covariance between two or more variables points to a mere correlation of ‘what’ is happening, establishing a causal relation requires the scholar to actually open the black box and explore the causal ‘how’ of what is happening. Secondly, Critical Realism also challenges the Humean regularity-determinism assumption that causal relations are determined, i.e. once a relation has been established, the same relation is expected to reappear under similar conditions. Instead, in the critical realist way of thinking ‘[…] causes exist outside closed systems and […] the world, in fact, consists of ‘open systems’, where multiple causes interact and counteract each other in complex and, importantly, unpredictable ways.’ (emphasis added) (p. 202) As such, Critical Realism challenges the Humean regularity-deterministic view of causes operating in closed systems and replaces it with the probabilistic tendencies of open systems wherein a myriad of causal mechanisms interact in complex and unpredictable ways. More than anything, this replacement highlights why concatenations as a model of explanation is no longer a viable option. Allowing for ‘as if’ explanations (Bennett, 2013, pp. 466-467) based on the covariance of two or more variables cannot account for the goings-on in the complex and unpredictable systems any causal relation passes through along the way from its independent to its dependent variable.

Again returning to the one voice debate, we find that the case studies of the second wave have left behind the earlier reliance on constant conjunctions (either positive or negative) and have started to evolve in the direction of the mechanism-based model of explanation. For example, in his article on the EU’s role in safeguarding the functioning of the ICC, Thomas finds that ‘[a]lthough the outcomes evident in this case study appear most consistent with [the hypothesized] negative relationship between EU coherence and effectiveness, the causal mechanisms discussed earlier for [this hypothesis] do not apply in this case.’ (D. C. Thomas, 2012, p. 472) Clearly, this is a conclusion that comes at the back end of a study that was not satisfied with an ‘as if’ explanation based on constant conjunctions, but has gone the extra mile to establish an actual causal relation by tracing how the causal mechanisms at play in-between the dependent and independent variable informed this relation. As such, it offers a clear illustration of the added value of a mechanism-based explanation over one based on constant conjunctions, which in this case reveals that the apparent negative concatenation

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3 Literature buffs might look to the opening line of Leo Tolstoy’s *Anna Karenina* as an illustration of the differences between the Humean and the deeper conception of causality on this point, i.e. ‘Happy families are all alike; every unhappy family is unhappy in its own way.’ Specifically, the Humean conception of causality sees the world as filled with happy families whose happiness is assumed to be regular and determined, while the deeper conception counterposes that the world is in fact filled with unhappy families, whose unhappiness must be seen as irregular and unpredictable.
between EU coherence and effectiveness in fact masks a much more complex interaction of mechanisms.

However, curiously enough Thomas and other scholars of the second wave are seemingly unaware that their empirically-driven evolution would readily find a meta-theoretical bedding in the innovations brought about by Critical Realism. As we have seen, the evolution to a mechanism-based model of explanation in the second wave of the one voice debate is driven by a pursuit to explain puzzling empirical findings on the causal relation between EU coherence and effectiveness, rather than by an explicit reimagining of causality on the meta-theoretical level. For example, in her doctoral dissertation on the EU’s effectiveness in multilateral negotiations, Megan Dee expresses surprise when her findings overturn conventional wisdoms by finding a concatenation between a high level of effectiveness and only a moderate level of coherence (Dee, 2013, pp. 235-237). Intrigued by this empirical finding, she develops an insightful and elaborate analysis that asks how this covariance between EU coherence and effectiveness came about (for a summary of this analysis, see: Dee, 2012), thereby going beyond the found correlation and establishing an actual causal relation. Crucially, the point here is that all of this is seemingly done without any awareness of the opportunities offered by Critical Realism to underscore this empirically-driven evolution on the meta-theoretical level. Similarly, while Thomas does mention causal mechanisms in his findings (cf. supra), this is not backed by explicit references to the philosophical innovation brought by Critical Realism.

To our knowledge, this excursion in our dissertation constitutes the first time that the potential of Critical Realism as a meta-theoretical bedding for the empirically-driven evolution of the one voice debate has explicitly been pointed out. Specifically, by highlighting the close connections between on the one hand the second wave’s empirically-driven evolution toward a more complex causal relation between EU coherence and effectiveness and, on the other hand, the critical realist meta-theoretical reimagining of causality, it has become abundantly clear how the latter holds the potential to sustain and even further expand the former. Indeed, recasting the one voice debate through a critical realist lens makes it clear that the one voice debate has moved beyond the overly simplistic causal relation that was used to start the debate in a reaction against the dominant assumption and, at present, is focused on developing a more complex relation between internal Member State coherence and external EU effectiveness in international institutions.

1.2.3. Abducting the International Context
Finally, we turn to the recent incorporation of the international context in academic research on the EU in international institutions. While this field of research has traditionally adopted an introverted focus, the practical evolution of EU foreign policy brought the international context clearly into focus during the 2010s, leading scholars to abductively infer it as the best
explanation for numerous empirical puzzles that hitherto confounded this field of research. In this dissertation, we present this evolution as the best way forward to give substance to the one voice debate’s evolution toward a more complex account of the causal relation between the Union’s coherence and effectiveness.

The field of research on the EU in international institutions traditionally adopted an introverted focus on how the Member States and the Brussels-based institutions organize the complex and increasingly tight-knitted European foreign policy system. While this calibration has resulted in a detailed ‘mapping’ of how the Union manages the coordination and external representation of its Member States from one institution to the next (Orbie, et al., Forthcoming 2014), the international context itself was thereby implicitly relegated to the background and had to be content playing second fiddle to the ‘domestic’ context of the EU. For example, looking back at the (edited) volumes that served as central meeting points for this research field during the 2000s, it is hard not to notice their preoccupation with the legal and political issues that were internally shaping the EU’s foreign policy (e.g. Jørgensen, 2009b; Laatikainen & Smith, 2006b; Rasch, 2008; and Wouters, et al., 2006b). The introverted focus of these volumes is obviously not without its merits and more recent publications continue to clarify the legal and political organization of the Union as an actor in international institutions (e.g. De Waele & Kuipers, 2013; Degrand-Guillaud, 2009; Gstöhl, 2009; Jørgensen & Wessel, 2011; Nedergaard & Jensen, 2014; and Wessel, 2011). However, within the pages of the early publications the international context mostly figured as a static background against which it was explored how the Union was either enabled or hindered by its internal characteristics to play a role as an international actor.

In retrospect, it seems curious that this research field – which essentially aims to place the EU within the global governance architecture beyond Brussels – would adopt an introverted (or ‘actor-centric and bottom-up’ (Wouters, Basu, & Schunz, 2008, p. 4)) focus and thereby have the international context play second fiddle to the internal organization of the Union’s foreign policy system. Indeed, even in some of the edited volumes referred to above, it is readily acknowledged that the international context is a self-evident part of the puzzle when assessing the EU’s role and impact within international institutions (Jørgensen, 2009a, pp. 12-14; furthermore, in the same edited volume the choice between an introverted and an extravert focus was explicitly spelled out in the contribution by Franziska Brantner and Richard Gowan 2009, p. 56). Nevertheless, during the 2000s the focus of this research field rested squarely on the internal legal and political dynamics shaping the Union’s foreign policy, while ‘[…] little, if any, systematic attention [was] paid to the question of how the character of the multilateral system influences, constrains, or enables the EU to act.’ (Kissack, 2010, p. 5) However, curious as the traditionally introverted focus might seem in retrospect, it should not be overlooked that this field of research has always been heavily
influenced by the incremental build-up of the EU foreign policy. Specifically, this result of this close connection has been a research focus that closely follows the evolution of the Union as an international actor. In this context, it is no coincidence that the current phase of research was instigated by the launch of the effective multilateralism doctrine (European Council, 2003), nor was it an accident that the 2009 Treaty of Lisbon gave further impulse to the literature (Lieb, et al., 2011).

Nowhere is the close connection between this field of research and the practice of EU foreign policy more clearly illustrated than in the conceptualization of the Union as an international actor. Specifically, as EU foreign policy went through its incremental build-up, ‘presence’ (i.e. the EU exerts influence internationally, albeit non purposively) gave way to ‘actorness’ (i.e. the EU purposively exerts influence internationally) and – more recently – ‘performance’ (i.e. how does the EU perform as it purposively exerts influence internationally?) as the dominant way of capturing the EU’s international role (for a more detailed overview of the early conceptualizations, see: Bretherton & Vogler, 2006, pp. 12-36). As such, placing the trajectories of the EU’s foreign policy build-up and this research field side by side, it becomes clear how the internal reforms of the EU’s foreign policy were able to draw scholarly attention away from the international context.

However, by the same token it was precisely this close connection that brought the international context into focus during the 2010s. Recall that the Treaty of Lisbon’s *raison d’être* was to streamline the Union’s foreign policy in order to improve its effectiveness, legitimacy, and credibility in international institutions. This placed the spotlight on the EU’s role and impact beyond Brussels and, as such, confronted scholars with the long lingering, but now unmistakable limitations of the traditionally introverted focus. For example, as we have seen before, the one voice debate is a reaction against the dominant folk theory that equates internal Member State coherence with external EU effectiveness, which thereby attempted to explain the latter in light of the legal and political issues that internally shape the Union’s foreign policy without much attention for the international context (cf. supra). Elsewhere in this field of research, scholars have started noting that the variation of the EU’s membership status in international institutions cannot be captured adequately without balancing out the traditionally introverted focus with adequate attention for the international context (e.g. Debaere, De Ville, Orbie, Saenen, & Verschaeve, 2014; Gehring, Oberthür, & Mühleck, 2013; Wetzel, 2012; Wouters, Odermatt, & Ramopoulos, 2013).

Confronted with these and other puzzling observations on the EU’s role and impact in international institutions during the first half of the 2010s, an increasing number of scholars abductively inferred the best explanation for these puzzling observations: the hitherto overlooked influence of the international context. As a third mode of logical reasoning,
‘abduction’ sets itself apart from deduction (i.e. necessary inference starting from a general rule) and induction (i.e. non-necessary inference starting from particular observations) by its ability to generate plausible, but unconfirmed explanations based on puzzling and incomplete observations of a phenomenon, i.e. it allows scholars to generate hypothetical conjectures that offer the best explanation for a certain phenomenon based on the knowledge available to them (Douven, 2011). Building on the foundations Charles Sanders Pierce laid out, Ulrich Franke and Ralph Weber (2012) differentiate this third mode of logical reasoning from its counterparts as follows:

‘Grasped as the suggestion ‘that something may be’ [Pierce] distinguished [abduction] both from ‘necessary reasoning’ which ‘proves that something must be’ (deduction) and from ‘a course of experimental investigation’ which ‘shows that something actually is operative’ (induction.’ (emphasis in original) (p. 672)

To clarify the value of abduction in social science research, Jörg Friedrichs and Friedrich Kratochwil (2009) conjure up a ‘typical situation’ in which this mode of reasoning excels over its deductive and inductive counterparts: ‘[a situation] when we, as social scientists, become aware of a certain class of phenomena that interests us for some reason, but for which we lack applicable theories.’ (p. 709) When such a situation occurs, deduction and induction can impose straightjackets on the scholarly pursuit to explain a certain phenomenon. In contrast, the abductive mode of reasoning allows scholars the freedom to infer the best explanation based on puzzling and incomplete observations and run with it. In other words, scholars use this mode of reasoning to make a creative jump from the available, but puzzling and incomplete knowledge to a hypothetical conjecture that would offer the best explanation for a certain phenomenon, instead of forcing themselves into stifling attempts ‘[…] to impose an abstract theoretical template (deduction) or “simply” inferring propositions from facts (induction).’ (p. 709)

However, as Patrick Jackson (2011) is quick to point out, ‘[i]t cannot be stressed enough that abductive inference is a technique for generating conjectures and is not a technique for establishing the truth or falsity of any particular conjecture […].’ (emphasis in original) (p. 83) Indeed, it is important to acknowledge that any explanation based purely on the abduction mode of reasoning is ‘[…] a provisional claim, pending direct observation or detection.’ (emphasis in original) (p. 88) In this regard, Friedrichs and Kratochwil acknowledge that both deduction and induction remain important auxiliary tools, despite their insistence on placing abduction front and center of the scientific enterprise. Similarly, Franke and Weber (2012, pp. 672-673) have mapped out abduction, deduction, and induction as consecutive phases in research, wherein the former takes the lead by first developing plausible or ‘best’ explanations in the
form of hypothetical conjectures, before these are confirmed or dismissed by subsequent deductive and inductive exercises.

Returning to our outline of the literature, we find that the typical situation in which the abductive mode of reasoning shows its strengths is the same situation in which the research field on the EU in international institutions presently finds itself. As scholars are confronted with puzzling and incomplete empirical observations in the one voice debate and elsewhere, the traditionally introverted focus is giving way as the influence of the international context was abductively inferred as the best explanation for these findings and, as such, is quickly becoming a promising venue for further research. For example, as the one voice debate went through its empirically-driven evolution toward a more complex account of the causal relation between internal Member State coherence and external EU effectiveness, there were no applicable theories available for them to deductively infer the influence of the international context from, nor did the traditionally introverted focus of this research field generate many useful observations from which to inductively infer the influence of the international context. Both modes of logical reasoning would thus have constituted an unhelpful straightjacket on the scholarly pursuit for an explanation, while the abductive mode of reasoning allowed them to incorporate the influence of the international context. In retrospect, it seems obvious that the international context was the best explanation, but that is precisely the point when using this mode of reasoning: abductive inference allows scholars to make a creative jump from puzzling and incomplete data to a hypothetical conjecture that, were it true, would offer the best explanation for a certain phenomenon, even though the available knowledge does not automatically point in that direction.

As such, at present ‘[a] growing group of scholars acknowledges that the study of the EU in international affairs cannot be limited to EU variables only and that the variety in and success of the EU’s approach are not only determined by the EU’s internal decision-making procedures and dynamics, but also by contextual factors.’ (Drieskens, 2014b, pp. 5-6) In contrast to the edited volumes of the 2000s, similar statements on this shifting focus can be found in most of their counterparts and special issues from the 2010s, not to mention many journal articles and book chapters (e.g. Blavoukos & Bourantonis, 2011b; Conceição-Heldt & Meunier, 2014, pp. 971-975; Costa & Jørgensen, 2012; Groen & Oberthür, 2013; Gstöhl, 2009; Jørgensen & Laatikainen, 2013b; Jørgensen, et al., 2011; Kissack, 2010; Niemann & Bretherton, 2013; Oberthür & Rabitz, 2014; Orsini, 2014; van Schaik, 2013; and Wouters, et al., 2012). Again, it seems curious that such a self-evident part of the puzzle was long relegated to playing second fiddle, but keeping in mind the close connection between the build-up of EU foreign policy and this research field (cf. supra), one can see why the abductive inference of the international context as part of the explanation arrived only when it did.
Once the international context was abductively inferred as the best explanation for the puzzling observations in the research field on the EU in international institutions, scholars have enthusiastically taken up the challenge of exploring in greater detail how any and all exogenous factors enable and constrain the Union’s foreign policy, thereby finally looking beyond Brussels and truly placing the EU within the global governance architecture in a flurry of publications. Nowhere is this more clearly illustrated than in the conceptualizations of the EU as an international actor, which have again been adjusted to keep up with the current focus on the external effectiveness EU’s foreign policy and, as some have noted, its new self-legitimization strategy (Bickerton, 2011, p. 2; Blavoukos & Bourantonis, 2013, p. 2; and K. E. Smith, 2013).

Three recently adjusted or new conceptualizations of the Union as an international actor stand out in this regard. Firstly, in a 2011 special issue of the Journal of European Integration, Jørgensen et al. (2011; see also: Jørgensen, 2013) established a conceptual foundation for ‘performance’ by unpacking it into four core elements (i.e. effectiveness, relevance, efficiency, and financial/resource viability), which unmistakably aims to create analytical room for the shifting focus on the Union’s external effectiveness. Secondly, in a 2013 special issue of International Relations, Arne Niemann and Charlotte Bretherton (2013) fall back on the older concept of actorness, but keep pace with the recent evolution in the field – and, indeed, further add to it – by fleshing out its relation with the EU’s external effectiveness and creating analytical room to incorporate the international context. Lastly, in a 2014 special issue of the Journal of European Public Policy, Eugénia da Conceição-Heldt and Sophie Meunier (2014) engage in a similar exercise to further our conceptual understanding of actorness and its relation to external effectiveness by structurally incorporating the international context in their analysis.

4 Conversely, several authors have committed themselves to establishing a two-way street between the EU and international institutions by exploring the top-down influence of the latter on the Union’s domestic context. In this regard, see: Spyros Blavoukos and Dimitris Bourantonis (2011a, pp. 3-4), Oriol Costa (2013), and, for an edited volume dedicated to this reversed analysis, Costa and Jørgensen (2012). By the same token, it should be mentioned that there is a small, but interesting subset of the literature that is dedicated to exploring the perceptions of the EU in international institutions (e.g. Creed, 2006; Brantner, 2010; and Lucarelli, 2013) and in the global environment beyond these institutions (e.g. Lucarelli, 2007 and Lucarelli & Fioramonti, 2010).

5 It should be noted that the actorness-concept was previously adapted by Joseph Jupille and James Caporaso (1998) to include the international context. However, a close reading reveals that the latter was only included insofar as it could provide additional arguments for the EU’s purposive role on the global stage (e.g. to what extent is the Union recognized as an actor by its international peers?). While this was a step in the right direction in terms of balancing the research focus, it stopped short of systematically considering the influence of the international context.
However, while this recalibrating of the research focus has made great strides in a small amount of time, the relatively recent nature of this systematic exploration of the international context and its influence on EU foreign policy in international institutions shows growing pains. Most importantly, scholars have yet to achieve a firm grasp of the large and unwieldy number of factors that have suddenly come into focus by integrating the international context into the analysis. In its most basic form, the international context can be conceptualized as two, interlinking dimensions that surround the Union as it manages the coordination and representation of its Member States: (1) the ‘broader political constellation’ or global environment and (2) the ‘formal and informal rules and procedures of the international institutions’ (Jørgensen, et al., 2011, pp. 614-615). While these two dimensions cannot be fully distinguished from each other when placing the EU within the international context (e.g. Alasdair Young (A. R. Young, 2014) illustrates how it is precisely their interaction that influences the Union’s effectiveness in international institutions), at present the exploration of the latter dimension is furthest along, albeit still far from completed. Notably, recent publications by Kissack (Kissack, 2010, pp. 5-7) have done much to emphasize the need to systematically consider the heterogeneity of the international institutions (i.e. the second dimension) and its diverse impact on EU foreign policy from one institution to the next. While Kissack’s example has received ample follow-up research, other authors have called to broaden the research focus further and have adopted ‘[…] a horizon that is profoundly more international than European.’ (i.e. the first dimension) (Jørgensen & Laatikainen, 2013a, p. 4) For example, Katie Laatikainen (Laatikainen, 2013) has started to make inroads on this front by bringing in scholarship on multipolarity and its more explicit focus on power and diffusion, while in a similar vein Conceição-Heldt (Conceição-Heldt, 2014) and Delreux (Delreux, 2014) look more closely at international bargaining power. Again, these two dimensions cannot be fully distinguished from each other, but as the explorative effort continues, it is good to stay vigilant that both dimensions are given their proper place in the analysis.

In the next chapter of this dissertation, we will incorporate the international context by conceptually outlining the specific context that is found in the ILO standard-setting procedure (cf. Chapter 2.2.3.). However, given that our dissertation is situated within the exploratory efforts of the broader field of research, it should be pointed out that our goal is only to establish a basic outline of the double-discussion procedure, but not how the large and unwieldy number of factors from the interlinking dimensions that surround the Union influence the causal potential of EU coherence in relation to its effectiveness. The latter will have to avail itself by process-tracing of the three case studies in the third, fourth, and fifth chapter of this dissertation.
1.3. The EU in the ILO

‘ILO – the International Labour Organisation, whose guidelines on labour conditions, living standards, social justice and so on, are almost universally ignored.’ – The Bluffer’s Guide to World Affairs (Milsted, 1990, p. 60)

The ILO is the oldest international institution operating under the flag of the United Nations (UN). Despite winning the Nobel Peace Prize in 1969, its achievements have often been belittled during its long history. In addition to the organization’s entry in The Bluffer’s Guide to World Affairs (cf. supra), a telling example of this belittlement is found in the 1936 novel War with the Newts, wherein author Karel Čapek takes a satirical look at the state of international politics between the two World Wars. Using an outrageous plot involving the discovery of a species of highly intelligent newts and their subsequent economic exploitation, Čapek mocks the prevalent ideologies and institutions of his time. This includes the ILO, which, ‘needless to say’, undertook futile attempts to improve the working conditions of the Newts in the face of what the author saw as the runaway capitalism that pervaded all facets of society:

‘At that point the International Labour Office in Geneva began to take up the Newt Problem. [A compromise on the employment standards for Newts was] laid down in a code of nineteen paragraphs which we do not propose to quote in detail if only because, needless to say, no one took any notice of them.’ (emphasis added) – Karel Čapek (1990, pp. 158-160), War with the Newts

However, Nobel Peace Prizes are generally not won by accident and for every belittling comment the ILO received during its long history, there are examples of this organization’s resilience in the face of major challenges. In the third and final part of this introductory chapter, we will outline the organization’s history, its institutional set-up, establish the tripartite structure as its defining characteristic, and give an overview of the standard-setting procedure on which we will focus in our case studies (cf. Chapter 1.3.1.). We will also take an extended look at the relations between the EU and the ILO (cf. Chapter 1.3.2.) and, finally, the existing academic literature on the latter topic (cf. Chapter 1.3.3.).

1.3.1. The ILO

The ILO was founded in 1919 as part of the Treaty of Versailles and was originally an agency of the newly-formed League of Nations (LN) (Hughes & Haworth, 2010, pp. 5-19 and Rodgers, Swepston, Lee, & Van Daele, 2009, pp. 1-36). Following the First World War, a committee of international experts was established as part of the post-war negotiations at Versailles, where they were tasked with developing a fitting response to the ‘social question’ that had confounded political leaders long before the war. Indeed, the inspiration behind the ILO can be traced back to the long nineteenth century and the Industrial Revolution (Van Daele, 2005). In the wake this revolution, the social question referred to the growing social
unrest among workers and their increasingly organized demands for better working conditions. In response, some among the pre-war elites had already started to develop ideas regarding international cooperation on labor standards, but were therein not followed by the political leaders. However, the disruption of the First World War created a more open political climate wherein politicians were more susceptible to the prospects of international cooperation. In addition, a fitting response to the social question was seen as particularly urgent, given that the events during the 1917 Russian Revolution had come as a great shock (Maupain, 2009, pp. 833-836).

Against this background, the 1919 Constitution of the ILO was drawn up at Versailles. In its Preamble, this Constitution spells out the goal of the organization as follows: ‘Whereas universal and lasting peace can be established only if it is based upon social justice.’ (International Labour Office, 1919) As such, it clearly reflects the post-war preoccupation with peace by framing the organization’s goal of global social justice in these terms. Indeed, the ILO’s central goal was and is to promote social justice as a means for universal and lasting peace. As we will see below, it typically pursues this goal by serving as a political arena for its tripartite members as they set international standards in the form of conventions and recommendations, which are subsequently also promoted and supervised. In addition, over the course of its long history, the ILO has also taken on the role of a technical assistance provider and a ‘social laboratory’ for the creation, exchange, and transfer of new ideas (Van Daele, 2006, p. 3). While these roles have become important for the organization, standard-setting and –supervision remain the two activities that are central to the ILO.

The long and eventful history of the ILO has been detailed many times already (e.g. Helfer, 2006; Hughes & Haworth, 2010; Maupain, 2013; Rodgers, et al., 2009; Saenen, 2011; A. Thomas, 1921; Van Daele, 2005; and Van Daele, Rodriguez García, Van Goethem, & van der Linden, 2010) and can be broadly outlined by pointing to two key events. Firstly, after the Second World War and the LN’s demise, the ILO was one of the few international organizations to survive Europe’s second plunge into the abyss and, subsequently, joined the newly-founded UN to become the oldest specialized agency that operates under this flag. As such, it continued its role as an international standard-setter and –supervisor during the Cold War, although it could not escape the stifling influence of the discord between the Eastern and the Western bloc. Secondly, following the end of the Cold War, the ILO left behind the institutional instabilities that were informed by these East-West tensions between its tripartite members and returned to a more familiar global economical context (Maupain, 2009, pp. 825-828). Indeed, the ILO was originally founded with the late-nineteenth century period of globalization in mind, leading many in the organization to expect and hope for a return to prominence now that a new period of globalization was rapidly gaining momentum in the wake of the Cold War. However, the neoliberal hegemony thwarted these ambitions
and made a return of the ILO to the heart of international politics far from an evident conclusion.

Following a period of stagnation in the immediate wake of the Cold War, the 1998 adoption of the Declaration on Fundamental Principles and Rights at Work is commonly seen as the start of the ILO’s current relance (International Labour Conference, 1998). Specifically, this declaration defined four Core Labour Standards (CLS) (cf. Box 1.1 infra), which were themselves built on eight existing conventions.

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<tr>
<th>Freedom of association and the effective recognition of the right to collective bargaining</th>
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<th>Elimination of discrimination in respect of employment and occupation</th>
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<td>- Equal Remuneration Convention, 1951</td>
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<td>- Discrimination (Employment and Occupation) Convention, 1958</td>
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Box 1.1 – The 1998 Core Labour Standards

All 185 tripartite members of the ILO are expected to adhere to these four standards, regardless of whether or not they have ratified the eight Conventions that underline them. Their membership of the organization itself is taken as a principal commitment to these four standards that are now elevated as the fundamental building blocks for the goals of the organization. Importantly, the CLS represent a new approach to the international labor regime that the ILO has built through the adoption of conventions and recommendations. For the first time, the ILO prioritized several of these instruments, specifically by elevating the eight conventions that serve as the basis for the CLS. In the early 2000s, this shift in the ILO’s approach lead to the infamous CLS debate that played itself out between academics and officials (in chronological order, see: Alston, 2004; Langille, 2005; Maupain, 2005; Alston, 2005; and Maupain, 2009; see also: La Hovary, 2009). This debate is an insightful
exchange of nuanced and well thought through arguments, but the central cause for discord is summarized easily enough. For the authors on one side of the debate, the CLS meant that the ILO had defined a set of eight primary conventions and, thereby, relegated all other instruments to a secondary status. As such, these authors feared that this approach had set in motion a narrowing down of the ILO’s extensive international labor regime. On the other side of the debate, authors countered that the erstwhile ‘cafeteria approach’ (Maupain, 2005, p. 444) had now been left behind, wherein the tripartite members could pick and choose which of the available instruments they would ratify. Establishing a focal point in the form of the CLS meant that the ILO would now be better equipped to promote the fundamental building blocks of the international labor regime and, subsequently, use this as a beachhead to have its tripartite members also ratify the other instruments as well. With regards to the practical impact of the CLS, it should be noted that the Commission has subscribed to their promotion (European Commission, 2001), but that this itself has raised concerns – in line with the broader debate – on a potential narrowing of the Union’s global social objectives (Orbie et al., 2009).

In 2008, ten years after the adoption of the CLS, the ILO adopted the Declaration on Social Justice for a Fair Globalization, which reformulated the organization’s central goal in function of the present-day challenges that are brought by political and economical globalization (International Labour Conference, 2008). Notably, this declaration formally integrated the Decent Work Agenda and established this Agenda as the strategic framework for the ILO’s activities. For example, when the ILO in 2009 adopted the Global Jobs Pact as its response to the global financial, economic, and social crisis, this Pact translated the Decent Work Agenda into the organization’s preferred response to the crisis (International Labour Conference, 2009).

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<th>The Decent Work Agenda</th>
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<td>- Creating jobs</td>
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<td>- Extending social protection</td>
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<td>- Promoting social dialogue</td>
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<td>- Guaranteeing rights at work (i.e. the 1998 CLS)</td>
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Box 1.2 – The Decent Work Agenda

The Decent Work Agenda focuses the efforts of the ILO toward four strategic and interlinked goals (cf. Box 1.2 supra), which currently form the leitmotif for all of the ILO’s activities within today’s global political and economical context (Maupain, 2009, pp. 833-836). Firstly, the organization is focused on job creation, seeing as the availability of a sufficient number of jobs is a necessary precondition before these can be turned these into decent jobs. Secondly, the ILO focuses its attention on extending social protection for workers. As such,
the quantitative goal of job creation is complemented with a qualitative goal to create decent jobs. Thirdly, the organization is focused on the promotion of social dialogue between employers and workers on the national and international level. Through this dialogue, the specificities of job creation and extending social protection can be negotiated between the social partners. Finally, the *Decent Work Agenda* refers back to the 1998 CLS and aims to guarantee these rights at work. In addition, the *Agenda* is further complemented with goals regarding equality between men and women and non-discrimination on the job market. Importantly, this Agenda struck a chord with the ILO’s partners and has been successful in generating support for the organization’s activities. For example, the EU has subscribed to the promotion of decent work for all in a May 2006 communication by the Commission (European Commission, 2006) and a May 2007 resolution by the Parliament (European Parliament, 2007).

Turning to the institutional set-up of the ILO, we find that it consists of three separate bodies that are organized differently and have a distinct function within the organization. This makes it important to clearly distinguish between (1) the International Labour Conference (ILC), (2) the Governing Body (GB), and (3) the International Labour Office (ILO Office). Firstly, the Conference is the main political body of the organization and is held yearly in Geneva. For about three weeks in June, the ILC gathers national representatives of the governments and the social partners from all ILO members and has them discuss and agree (or not) on issues related to the international labor regime. Either through general discussions, standard-setting in the form of conventions and recommendations, or standard-supervision, the full membership of the organization gathers to try and form a global consensus on these issues.

Importantly, the ILC reveals the central characteristic of the ILO: its tripartite structure. This structure is the organizing principle of all facets of the organization and means that each of the ILO’s 185 members is represented by a composite delegation that consists of four delegates: two from the government, one from the workers, and one from the employers. These four delegates have independent voting rights, giving the national worker and employer representatives the freedom to coordinate themselves across national borders, thereby effectively creating an Employers’ Group and a Workers’ Group that operate separately from the governments. What is important about this, is the fact that the governments only hold half the total number of votes during the plenary vote on the adoption of conventions and recommendations. Not only does this give the Employers’ (one quarter of the votes) and Workers’ (one quarter of the votes) Group considerable sway over the adoption of the final instruments, this also underlines the dynamic during the standard-setting procedure. Because of their inherent motivations, the Workers’ (i.e. strong international labor standards) and the Employers’ Group (i.e. more flexible or no standards)
routinely find themselves on opposite ends of the tripartite stage, with the governments finding themselves in the middle as bridge builders that attempt to overcome the gap with workable solutions (Interview No. 29). However, in practice this dynamic is not set in stone. As one EU Official expressed it, the relations between the tripartite members change ‘à géométrie variable’ from one standard-setting procedure to the next (Interview No. 19). When establishing our conceptual equipment (cf. Chapter two), we will return to the tripartite structure and its effects in greater detail.

Secondly, the GB is the political body of the organization that functions as an executive board of directors. Its tripartite members gather three times per year (i.e. in March, June, and November) to oversee the management and the activities of the ILO, notably by setting the agenda for upcoming ILC’s. Similar to the latter conference, the GB is organized along the lines of the organization’s tripartite structure, although its membership is more limited. The GB has only 56 members, which are naturally divided over 28 government representatives, 14 employer representatives, and 14 worker representatives. Of the governments, ten are permanently part of this executive board (i.e. Brazil, China, France, Germany, India, Italy, Japan, the Russian Federation, the United Kingdom and the United States), while the others rotate every three years.

Thirdly, the ILO Office functions as the permanent secretariat of the organization. It is led by the Director-General (i.e. Guy Ryder, who took over from Juan Somavia in October 2012) and is staffed by officials who either work at the ILO’s headquarters in Geneva or in one of its delegations worldwide. As such, the ILO Office is the body that makes the ILO an international organization, rather than an institution. Compared to any and all social practices that can be included in the latter concept, organizations are more narrowly defined as ‘[…] material entities possessing physical locations (or seats), offices, personnel, equipment, and budgets.’ (O. R. Young, 1989, p. 32) It is here that it becomes especially important to distinguish between the three different bodies when referring to ‘the ILO’. While the ILC is the organization’s main political body wherein its full membership gathers to try and form a global consensus on issues related to the international labor regime, the ILO Office is a secretariat whose activities are performed in function of the mandate and the goals that are laid down in the ILO’s Constitution.

The respective roles of the ILO Office, the GB, and the ILC are illustrated when we turn to the ILO’s standard-setting procedure. Arguably, setting international labor standards in the form of binding conventions and non-binding recommendations is the most important role this organization has played throughout its nearly one hundred year lifespan. Since its foundation in 1919, the ILO’s tripartite members have adopted 189 conventions and 202 recommendations on a wide range of issues, although respectively only 77 and 82 are
deemed to be still up-to-date. This means that only the latter instruments are still actively promoted by the ILO, while the Working Party on Policy regarding the Revision of Standards (WPPRS) decided that all others were no longer applicable to the present-day world of work. As we will see during our case studies, a substantial number of the out-of-date instruments were revised and included in the 2006 MLC and – to a lesser extent – the 2007 Work in Fishing Convention and Recommendation.

The conventions and recommendations are typically adopted through a so-called double-discussion procedure, which finds its legal basis in Part II, Section E of the ILC’s standing orders (International Labour Office, 2012b) (see also: Boonstra, 2008, pp. 24-27). Looking at the overview of this procedure in Figure 1.1 (cf. infra), it quickly becomes apparent that its name is derived from the two tripartite committee discussions that take up a central place in this procedure. After the GB decides to place a standard-setting item on the ILC’s agenda, this item then goes through a ‘double discussion’ that spans two consecutive conferences, during which representative gather in a tripartite committee to discuss and adopt the new instruments by consensus. Once the committee achieves a consensus, the final instrument can no longer be altered and is submitted to the plenary session of the ILC to be adopted (or rejected) in its entirety by a simple majority vote. In the case of a convention, after an instrument is adopted, the national parliaments of each government still need to ratify the final outcome in order for it to become binding. Recalling the traditional cafeteria approach to the international labor regime, it is this institutional opt-out option that the ILO tried to counter by expecting all of its members to adhere to the CLS, regardless of their ratification of the underlying conventions.

Figure 1.1 – The ILO standard-setting procedure, i.e. the double-discussion procedure

In addition, the overview in Figure 1.1 (cf. supra) also clearly shows the important role the ILO Office plays throughout this procedure. Firstly, the ILO Office makes the initial proposal to the GB to place a certain standard-setting item on the agenda of the ILC, thereby
often initiating new standard-setting procedures. Secondly, once a standard-setting item has been placed on the agenda of the ILC, the ILO Office then prepares and guides the tripartite members through the double-discussion procedure. Notably, the ILO Office sends out reports and questionnaires to the tripartite members before each committee discussion in order to inform them on the current state of draft instruments, make suggestions on possible ways forward, and inquire about proposals and possible concerns from the members themselves. As such, the ILO Office plays a central role in the procedure by gathering and disseminating information and – based thereupon – drafting and redrafting the instruments.

As such, it is apparent that this secretariat ‘holds the pen’ and is thereby in a position to actively shape the resulting convention and/or recommendation. Michel Barnett and Martha Finnemore see an international organization as an autonomous bureaucracy, i.e. ‘[…] a distinctive social form of authority with its own internal logic and behavioral proclivities […] and the ability to shape the world around them.’ (Barnett & Finnemore, 2004, p. 3) Within the institutional set-up of the ILO, the Office and its agenda for social justice can be seen as an explicit exemplification of this autonomy. By drafting the initial report discussed by the tripartite members of the GB and, even more importantly, drafting the proposals of the convention and/or recommendation that are under discussion during the ILC’s tripartite committees, it is in a position to actively shape the final outcomes. Additionally, a representative of the Office is present during the ILC’s tripartite committees to answer questions from the tripartite members and clarify complex issues. However, the influence of the ILO Office during the double-discussion procedure should also be qualified. While the course of the procedures is shaped to some extent by the proposals and drafts that are made by the ILO Office, the many amendments and subamendments introduced by the tripartite members during the committees create a final outcome that is markedly different from what was originally proposed. The ILO Office might be able to steer these instruments, it will nevertheless have to work within the boundaries set by the tripartite members.

1.3.2. The EU in the ILO

The relations between the ILO and the EU were established quickly after the latter’s predecessors were founded in the fifties of the twentieth century. Since then, their relationship has continued to evolve in order to keep pace with the political and legal developments in Geneva and – especially – Brussels. After having outlined the history and key characteristics of the ILO in the previous part of this introductory chapter, we now turn to the legal and political framework through which the relations between this organization and the Union are managed. This will include a look at the internal European coordination process and external EU representation during the ILO standard-setting procedure, given that the focus of the case studies in this dissertation will be on exploring the causal relation between EU coherence and effectiveness in this procedure.
Before outlining the many ways in which the EU and the ILO interact with each other, we first need to distinguish between on the one hand (1) the inter-organizational relations between the ILO Office and the Union’s institutions and, on the other hand, (2) the EU’s institutions and Member States as actors within the ILO. Inter-organizational relations refer to the Union’s (foreign) policy activities that it carries out ‘[…] in cooperation or competition with other major international organizations.’ (Koops, 2013, p. 71) Seen through this lens, the focus lies on the cooperation between the Union’s institutions and the ILO Office, which has intensified since the turn of the century (Delarue, 2013, p. 133 and Orbie & Tortell, 2009a). However, in this dissertation we focus on the EU and its Member States as actors within the ILO, rather than the Union’s attempts to be an international organization in its own right (Jørgensen, 2009a, p. 4). Our focus on exploring the causal potential of EU coherence in relation to its effectiveness in the ILO standard-setting procedure will have us focus on this second category of relations and, thereby, have us leave aside inter-organizational inquiries on the Union’s work through, with, or even against the ILO Office as its partner (Ojanen, 2011).

When looking through this second lens, the Union’s role as an actor within the ILO is complicated by the ‘intersecting multilateralisms’ that confound the Union’s ambitions in any international institution, i.e. the intersection of a regional organization with supranational traits that attempts to work alongside its sovereign Member States in a global, predominantly intergovernmental environment (Laatikainen & Smith, 2006a). The resulting interaction is complex and wrought with legal and political challenges, leading many to describe the EU as a ‘patchwork power’ (Gstöhl, 2009) or an ‘accidental player’ (Pisani-Ferry, 2009) in international institutions. While similar comments have been made about the Union and its Member States in the ILO (Kissack, 2011, p. 656), others have pointed to the emergence of a tangible ‘EU identity’ in the tripartite committee discussions of the ILO standard-setting procedure (Delarue, 2013, p. 133).

Transposed to the EU and its Member States as actors within the ILO, the complexity of intersecting multilateralisms is underscored by the different membership status of the Union and its Member States. While all EU Member States are full members of the ILO and have been for some time, the Union itself is formally a ‘public international organization’. This stems from Article 12 (2) of the ILO’s 1919 Constitution, which states that ‘[…] appropriate arrangements [may be made] for the representatives of public international organizations to

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7 While in this context inter-organizational relations refer to the relations between the Union and other international institutions, elsewhere scholars have also referred to ‘intra-institutional’ and ‘inter-institutional’ relations in order to assess the internal relations between the Union’s institutions (Christiansen, 2001).

8 An shortened version of this description of the EU’s membership status in the ILO was published in an edited volume by Amandine Orsini (2014), wherein my colleagues and I wrote a chapter on the Union’s membership status in international organizations. See: (Debaere, et al., 2014).
participate without vote in its deliberations.\footnote{Article 12 (2) of the 1919 ILO Constitution has resulted in formal relations with many international organizations. For a full list of agreements, see: http://www.ilo.org/public/english/bureau/leg/rel_org.htm (accessed 28 May 2014).} (emphasis added) (International Labour Office, 1919) In the absence of more specific provisions on regional organizations with supranational traits, the Union’s participation in the ILO is formally managed through this Article and is thus understood to include the right to speak, but implicitly stops short of the right to table proposals or amendments and explicitly excludes the right to vote (Maupain, 1990).\footnote{In contrast to the EU’s formal membership status, recent ILO instruments take into account the supranational traits of the Union by including references to Regional Economic Integration Organizations (REIOs). These references exempt EU Member States from those parts of Conventions that are incompatible with the \textit{acquis communautaire} and would otherwise bar the Member States from ratifying these instruments. Specifically, see the discussion on social security during the standard-setting procedure on maritime labor (cf. Chapter three) and the discussion on written employment contracts during the procedure on domestic work (cf. Chapter five).} As a result, the EU Member States enjoy a high level of discretion as full members of the ILO when their status is compared to that of the Commission (now working through the EU Delegation), which for all intents and purposes may be described as a \textit{de facto} observer, despite formally being categorized as a public international organization. In this regard, it should be noted that references to ‘the Union’ in this dissertation predominantly, though not exclusively refer to either an EU Member State or the Commission formally intervening to represent a common position on behalf of all EU Member States during a standard-setting procedure.

Based on the aforementioned Article 12 (2), formal relations between the ILO and the Union were established quickly after the latter’s predecessors were founded in the fifties of the twentieth century, i.e. with the European Coal and Steel Community (ECSC) in July 1953 (International Labour Office, 1953, pp. 290-291) and the European Economic Community (EEC) in July 1958 (International Labour Office, 1958, pp. 65-66). Since then, the inter-organizational relations between the Commission and the ILO Office have been regularly renewed with an exchange of letters, notably in October 1961 (International Labour Office, 1961, pp. 532-533), December 1989 (International Labour Office, 1990b, pp. 180-181), and – most recently – May 2001 (International Labour Office, 2001d, pp. 79-81).\footnote{The EU’s membership status was first explicitly dealt with in the December 1989 exchange of letters, wherein the Commission was granted its \textit{de facto} observer status. Specifically, this exchange refined and extended the former agreements with the then-Community’s predecessors, stipulating that ‘[…] the Community, represented by the Commission, shall attend the meetings of the International Labour Conference and the Governing Body, to which it will continue to be regularly invited.’ (International Labour Office, 1990b, pp. 180-181) This might give the impression that the EU’s membership status was altered or even upgraded in 1989. However, it should be noted that, while the initial decision in the July 1953 and July 1958 exchanges of letters did not explicitly address the EU’s membership status, the Commission did regularly attend the ILC and GB meetings from then on. Thus, the December 1989 exchange of letters did nothing more than formalize an already existing practice.} These regular
exchanges have followed the expanding social dimension of the Union. For example, the December 1989 exchange of letters stated that ‘[…] the development of the social policy and the completion of the Single Market in 1992, the achievement of economic and social cooperation and the development of the social dimension of the Single Market are impelling the Community to assume a greater role in the economic and social field at world level.’ (International Labour Office, 1990b, p. 180). As such, these exchanges of letters have formed the backbone of the intensification of the inter-organizational cooperation between the Commission and the ILO Office, while at the same time the Union’s institutions also play an increasingly prominent role in the coordination and representation of the EU Member States as actors within the ILO.

Based on its ever growing social dimension (an extensive overview of which can be found in: Johnson, 2005, pp. 155-161), the EU has repeatedly expressed the wish for the Union to become a member of this organization, thereby mediating the complexities of their intersecting multilateralisms by placing itself on equal footing with its Member States. For example, the Parliament’s Financial, Economic and Social Crisis Committee proposed in its 2010 mid-term report that ‘[…] following the entry into force of the Treaty of Lisbon, the EU should become a direct signatory of the ILO conventions and that it should sign all the conventions adopted by the ILO to date.’ (European Parliament, 2010) This is in line with earlier reports by the Parliament (e.g. the 1977 Geurtsen Report, see: Kissack, 2008, p. 473). However, the Union has consistently been rebuffed by the challenges of an organization with supranational traits operating in an intergovernmental environment. Apart from the legal roadblocks to full membership found in the ILO’s 1919 Constitution (cf. supra), the organization’s tripartite membership has been unwelcoming to the idea of upgrading the Union’s membership status. Moreover, the sensitivity of issues concerning social and employment policy that are discussed in the ILO, have made EU Member States also reluctant to extending the role of the Union’s institutions (Johnson, 2005, p. 161). Famously, the internal struggles in this regard resulted in the Court of Justice of the European Union (ECJ) to advise on this matter in its Opinion 2/91, which states that there should be close cooperation between the Union (then-Community) and the Member States (Cavicchiolo, 2002). Nevertheless, while internally the Union’s competences in this field have been

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The timing itself further qualifies the importance of the December 1989 exchange of letters in this regard. Michel Hansenne had become Director-general earlier that year in March. As an outsider unfamiliar with the workings of the organization, Hansenne and his staff opted not to launch politically sensitive initiatives during the first years of his mandate (Interview No. 20). As the December 1989 exchange of letters was a direct result of the new Director-general’s close ties with the Council, this indicates that it would not have happened if it were in any way politically sensitive to the reluctant EU Member States. Indeed, the latter voiced no opposition when the Commission was granted its de facto observer status, with France even mediating concerns expressed by national worker and employer representatives during the GB’s March 1990 session (International Labour Office, 1990a, pp. IX/2-IX/7).
expanding, externally in the ILO the Union’s formal role remains circumscribed by the combination of these obstacles.

Finally, having described the legal and political framework for the EU and its Member States as actors within the ILO, we now extend specifically on the Union’s coordination and representation through which they participate in the latter’s standard-setting procedure. While here we provide a descriptive overview of the legal and political goings-on during the internal European coordination process and external EU representation, we will again revisit these in the next chapter of this dissertation as we include them in our conceptualization of the Union’s coherence (cf. Chapter 2.2.1.).

Firstly, let us take a look at the internal coordination process between the EU Member States and the Brussels-based institutions before and during ILO standard-setting procedures. Coordination meetings predominantly take place on-the-spot in Geneva during the yearly ILCs, while until recently preparatory meetings in Brussels were less frequent (Delarue, 2006, pp. 100-101). However, since the standard-setting procedure on maritime labor that took place in the first half of the 2000s (cf. Chapter three), preparatory meetings have become more frequent and are now held in Brussels before all relevant sessions in Geneva. However, in terms of EU coordination before and during a standard-setting procedure, it has remained unchanged that formal coordination only takes place in the run-up to the tripartite committee discussions of the double-discussion procedure, while the Member States handle all previous stages of that procedure independently (Kissack, 2011, pp. 653-654).

Traditionally, the Commission’s role in the internal coordination process situated itself mostly in the preparatory phase that takes place in Brussels, while the holder of the EU Presidency would subsequently take over and manage the on-the-spot coordination meetings once the ILC had started in Geneva (Nedergaard, 2008, pp. 8-9). Given the comparatively greater importance of these on-the-spot coordination meetings, this traditional division of labor limited the Commission’s role in the process. However, parallel to the intensification of the inter-organizational relations between the Commission and the ILO Office, the former has also started to expand its role with regards to the internal European coordination process. Under the guise of a ‘discursive coordinator’ (p. 9), the Commission plays an increasingly active role in terms of smoothing out the on-the-spot coordination process by lending its expertise to provide and facilitate compromises between the Member States. As such, the Commission has been said to have reached its high watermark during the standard-setting procedure on maritime labor (Tortell, Delarue, & Kenner, 2009). During this procedure, the Commission succeeded in coordinating the initially reluctant Member States and became the driving force behind the European position during the tripartite discussions taking place in Geneva (Riddervold & Sjursen, 2012).
With the entry into force of the Treaty of Lisbon, the Commission’s increasingly active role in the internal coordination process has been folded into the EU Delegation in Geneva and has been given a formal footing. Based on Union’s newly acquired legal personality, the EU Delegation has taken on a more prominent role in the coordination process and works closely together with the holder of the EU Presidency (Interview No. 22). Notably, with the so-called ‘EU Team’ an experimental arrangement has been put in place to manage the Union’s coordination and representation in the ILO (Delarue, 2013, pp. 139-140). This Team gathers representatives of the Member State holding the EU Presidency, the Brussels-based institutions, and the EU Delegation itself and has them work together to coordinate Member State positions, draft EU statements, and deliver these during the tripartite committee discussions of the double-discussion procedure (Interview No. eleven). Importantly, the EU Delegation now formally chairs the on-the-spot coordination meetings, thereby formalizing and strengthening the Commission’s role in the process. However, it is important to note that the Treaty of Lisbon did not alter the fundamentally intergovernmental nature of the internal European coordination process, which means that the representation of common EU positions remains dependent on an internal agreement between the EU Member States. Despite the EU Delegation taking on a more prominent role and the Treaty formalizing the Commission’s increasingly active role during on-the-spot coordination meetings in Geneva, the Member States still possess a high level of discretion in ILO standard-setting, wherein they are free to represent their national positions or coordinate through alternative configurations such as the Industrialized Market Economy Countries (IMEC) (Interview No. 19).

Secondly, taking a look at EU representation in the ILO standard-setting procedure, we see that formal representation on behalf of the Union is traditionally handled by the holder of the EU Presidency, while the EU Delegation can also intervene on behalf of the Union when exclusive competences are at stake (Delarue, 2006, pp. 101-102). In addition, given their large degree of discretion as full members of the ILO, the Member States are also able to intervene independently or in other configurations to represent their positions during the tripartite committee discussions of the double-discussion procedure. With the entry into force of the Treaty of Lisbon, little has changed in terms of EU representation and officials speak of a continuity between the period before and after Lisbon, although the Treaty no longer confers a formal role to the EU Presidency in the Union’s foreign policy (Interview No. 15 and 16). In the next chapter of this dissertation, we will take a more extended look at EU representation in ILO standard-setting as we conceptualize its tactical and substantive dimension.
However, this continuity hides the fact that behind the scenes the Treaty has spurred significant debates between the EU institutions and the Member States on the former’s role in representing the Union in the double-discussion procedure. In this regard, it has been noted that the changes in Lisbon have muddled, rather than streamlined EU representation, ‘[...] because Member States will continue to have permanent representation while the new EU delegation will also insist on visible representation.’ (Laatikainen, 2010, p. 480) In other words, the post-Lisbon legal and institutional framework has forced the Union’s institutions and the Member States (in the form of the EU Presidency) to redefine their respective roles in the context of the ILO standard-setting procedure, without offering clear guidance on what to expect. As many officials note, this has led to intensive debates behind the scenes. Different from the internal expansion of the EU’s social dimension, Member States have resisted a bigger role for the Brussels-based institutions in external EU representation regarding these issues. EU Delegation officials admit that the search for a new post-Lisbon balance is ongoing in Geneva and only slowly progresses (Interview No. four and eleven). Moreover, several officials have noted that, according to them, the United Kingdom seems to have decided on a ‘guerilla war’ by questioning the extent to which the Commission can still intervene on behalf of the Union’s interests during the tripartite committee discussions or whether the Parliament can speak as part of the EU Delegation (Interview No. five and 17).

1.3.3. Research on the EU in the ILO

The ILO has been the subject of a vast amount of academic research throughout its long history, not in the least because under its guise as a knowledge centre it encourages relevant studies through the publication of many books and several journals (among which the International Labour Review takes a prominent place, see: Bollé, 2013). Moreover, officials from this organization are often prolific writers on topics that are directly related to the ILO and thereby provide a large reservoir of knowledge for anyone to draw on.12 For example, the infamous debate on the CLS played itself out between academics and officials (in chronological order, see: Alston, 2004; Langille, 2005; Maupain, 2005; Alston, 2005; and Maupain, 2009). In addition to the other primary and secondary source material on which we will rely in this dissertation (cf. Chapter 2.1.3.), drawing on these publications by officials further adds to our understanding of the ILO’s institutional set-up and inter-organizational

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12 Interestingly, former officials that continue to publish on the ILO at times paint a lackluster or outright negative image of the organization in their writings. Notable examples of this include publications by Robert Cox (1977, pp. 412-413 and 1980) and Guy Standing (2008 and 2010). The latter goes so far as to suggest a complete overhaul of the organization: ‘The ILO’s future should be re-evaluated as part of the restructuring of the international regulatory architecture in the aftermath of the financial crisis. All three aspects of its work – standard setting, technical assistance and knowledge gathering – are in disrepair and many of its pronouncements lack substance, leaving it open to criticism from all political directions. The UN should set up an independent commission of experts to propose a way forward.’ (emphasis added) (p. 317).
relations with the EU (e.g. Delarue, 2006 and Maupain, 1990) and recent standard-setting procedures (e.g. Bollé, 2006; Doumbia-Henry, 2004; Oelz, 2014; and Politakis, 2008).

Besides these ILO Officials, scholars from a variety of disciplines have approached this organization using widely different research questions, methodologies, and theories (for an excellent overview, see: Jasmiën Van Daele (2008 and 2010), while descriptive accounts of its work and evolution throughout its long history are also readily available (e.g. Helfer, 2006; Hughes & Haworth, 2010; Maupain, 2013; Rodgers, et al., 2009; Saenen, 2011; A. Thomas, 1921; Van Daele, 2005; and Van Daele, et al., 2010). Looking specifically at how the organization has been approached from a political science perspective, the classic works of Ernst Haas (1964) and Cox (1973) stand out among a multitude of studies, because their analyses were part of the peak in respectively the Neo-Functionalist and Realist schools. More recently, the ILO has been popular among political scientists that work on the EU in international institutions.

Similar to the broader field of research on the EU in international institutions, many studies on the Union’s role within the ILO and the inter-organizational relations between them are largely descriptive. For example, publications from both officials (e.g. Brinkmann, 2011; Delarue, 2006; 2010, pp. 69-73; 2011; and 2013) and scholars (e.g. Boonstra, 2008; Cavicchiolo, 2002; Johnson, 2009; Orbie & Tortell, 2009a; Orbie, et al., 2009; Saenen & Orbie, 2011; Taylor, 2006; and Tortell, et al., 2009) have often limited themselves to describing the goings-on between these two organizations, albeit thereby providing an informative account of the ins and outs one needs to be aware of when studying their relationship. However, it has been noted that the literature on EU-ILO relations is comparatively larger and more established in its analysis than the scholarship on the Union in most other social-economic institutions, barring the exceptionally well-established literature on the relationship between the EU and the WTO (Orbie, et al., Forthcoming 2014). In this regard, we can highlight the work of Jan Orbie (2011; with Olufemi Babarinde 2008; with Ferdi De Ville 2010; with Bart Kerremans 2009; and with Lisa Tortell 2009b and Orbie & Tortell, 2009c) who assessed the EU’s promotion of the Social Dimension of Globalization along the lines of ILO standards, Peter Nedergaard (2009), who applied the principal-agent framework to his analysis of the Union’s role during the 2005 ILC, and Marianne Riddervold (2010), who made use of Habermasian theories of communicative action to assess the EU’s

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13 The study of EU-ILO relations is further aided by the regularly published reports and brochures. Notably, (1) the reports of the annual High-Level Meetings between the ILO Office and the Commission, see: http://www.ilo.org/brussels/key-documents/lang–en/index.htm (accessed 9 July 2014), (2) the yearly Saving and Improving Lives report on the results of the partnership between the UN and the EU, see: http://www.unbrussels.org/ (accessed 9 July 2014), and (3) the recent brochure on their partnership since the turn of the century, see: (International Labour Office, 2012a).
arguments in the standard-setting procedure on the 2006 MLC, as examples wherein authors went beyond descriptive accounts of the relationship between these organizations.

Moreover, the scholarship on EU-ILO relations has often been instrumental in the rise and development of the avenues for further research that are currently pushing the research field on the Union in international institutions forward (cf. Chapter 1.2.). For example, the EU’s interaction with the ILO has received considerable attention in the work of Kissack (2008; 2009a; 2009b; 2010; 2011; and 2014), who has built on this topic to help advance broader research trends in the field on the EU in international institutions. Firstly, building on a fine-grained analysis of the institutional set-up within ILO standard-setting, he demonstrated the heterogeneous influence of the rules and procedures of international institution and thereby convincingly argued to take this dimension of the international context into account more systematically (Kissack, 2010). Secondly, Kissack’s analysis of EU coherence in ILO committee discussions was one of the first to puncture the dominant folk theory on the causal relation between EU coherence and effectiveness, thereby creating room for the one voice debate to take flight (Kissack, 2009a and Kissack, 2009b). In more general terms, Ailish Johnson (2005), Daniel Marchand (1993), Jill Murray (2001), and Tonia Novitz (2003; 2005; 2009; and with Phil Syrpis 2010) previously also provided critical accounts of how the EU’s social policy and legislation may be counterproductive when one takes a global perspective on social governance. Dimitris Tsarouhas and Stella Ladi (2012) offer another example of how the literature on EU-ILO relations is often instrumental for the broader trends in this research field. In their journal article, these authors use the Union’s impact on ILO policies to draw conclusions on the interaction between Europeanization and globalization at the international level.

Lastly, it should be noted that all these studies are bound together by their focus on the Union’s impact on ILO policies, rather than the other way around. Indeed, with the exception of Riddervold and Helene Sjursen’s (2012) work on the impact of ILO standard-setting on the Union’s internal policy-making processes, the ILO’s influence on the Union has received scant attention. Comparative analyses are similarly lacking, although Nedergaard (2008) has made an effort to compare the coordination practices of the Union with those of IMEC within ILO standard-setting and supervision.
2. Research Design

For its research design, this dissertation makes use of three methods to explore the causal potential of EU coherence in relation to its effectiveness in ILO standard-setting: the comparative case study method (cf. Chapter 2.1.1.), the process-tracing method (cf. Chapter 2.1.2.), and expert interviews (part of our discussion of the source material, cf. Chapter 2.1.3.). Of these three methods, process-tracing serves as the methodological linchpin of our exploratory effort, notably focusing our attention on the ‘how’ of the causal relation under scrutiny, while the influence of the critical realist approach gears the comparison between the case studies toward individuating, rather than isolating the causal factor of interest. Furthermore, the design of this dissertation includes a sophisticated piece of conceptual equipment to detect the Union’s coherence (cf. Chapter 2.2.1.) and effectiveness (cf. Chapter 2.2.2.) against the background of the international context found in ILO standard-setting (cf. Chapter 2.2.3.). Influenced by the critical realist approach, both coherence and effectiveness are seen as fundamentally unobservable, but nevertheless detectable at one remove through this conceptual equipment.

2.1. Research Methods

2.1.1. The Comparative Case Study Method
This dissertation utilizes the comparative case study method to explore the causal potential of EU coherence in relation to its effectiveness in ILO standard-setting. According to Bent Flyvbjerg, a ‘definitional morass’ exists surrounding the case study method, wherein scholars sink deeper and deeper every time they make an attempt to come up with an academic definition. Rather than risk life and limb by venturing into the swamp himself, Flyvbjerg turns to the commonsensical definition found in the 2009 Merriam-Webster dictionary: ‘Case Study: An intensive analysis of an individual unit (as a person or community) stressing developmental factors in relation to environment.’ (quoted from Flyvbjerg, 2011, p. 301). This definition hints that the case study method is first and foremost an exercise in making a well thought through cases selection in function of one’s research objective, rather than an actual method. Indeed, according to Flyvbjerg, case study research involves ‘[…] not so much making a methodological choice as a choice of what is to be studied. [The methods employed are] not decisive for whether it is a case study or not; the demarcation of the unit’s boundaries is.’ (emphasis added) (p. 301) (a similar argument is found in Gerring, 2004, p. 342). As such, this part of our research design will present our case selection strategy and how the
comparison between these cases will enable us to reach our research objective. Importantly, both our case selection strategy and our case comparison are influenced by the critical realist approach.

While a case selection is always made in function of one’s research objective, the selection strategy itself is far from neutral and can differ considerably depending on the meta-theoretical underpinnings of the research project in question. A typical, positivist case selection strategy aims to isolate the causal factor of interest through a nonrandom procedure that is intended to create a selection that ‘[…] reproduces the relevant causal features of a larger universe (representativeness) and provides variation along the dimension of theoretical interest (causal leverage) [...]’ (Gerring, 2010, p. 645) This strategy builds on the Humean understanding of causality, wherein the causes of a phenomenon are established (or dismissed) by testing hypotheses on the constant conjunctions or covariance of independent and dependent variables (Haverland & Yanow, 2012, p. 404). For example, given that this dissertation aims to explore the causal potential of EU coherence in relation to its effectiveness in international institutions, this would mean selecting case studies wherein the Union’s coherence and effectiveness are present (or absent) in different configurations in order to study their covariance.

However, influenced by the critical realist approach and its deeper understanding of causality, our case selection strategy differs considerably from the strategy that is typically used in positivist research. A critical realist case selection strategy aims to make a selection of cases that is able to individuate, rather than to isolate the causal factor of interest by comparing ‘[…] the variety of ways that causal factors and the complexes into which they are arranged play out in practice […]’ (Jackson, 2011, p. 111) This strategy builds on the critical realist challenge to the Humean understanding of causality. While the latter aims to observe regularly-determined causes as they operate (i.e. covary) in closed systems, the critical realist view of causality replaces this with the goal of exploring the probabilistic tendencies of open systems wherein a myriad of causal factors interact in complex and unpredictable ways (cf. Chapter 1.2.2.). As a result, the case selection strategy first and foremost needs to make sure that the causal factors of interest are present in all cases, given that ‘[…] it would not be very helpful to compare cases in which individual causal factors were present or absent, since nothing follows from a single causal property in isolation […]’ (p. 110), after which – importantly – these ‘[…] factors, in order to be causally relevant, have to be integrated into case-specific narratives that explain how such factors interact with the actions of particular agents to produce social outcomes.’ (pp. 110-111)

Translated to our objective to explore the causal relation between EU coherence and effectiveness in international institutions, the international context found in the ILO
standard-setting procedure provides an ideal opportunity to individuate the causal potential of the Union’s coherence by comparing how it relates to its effectiveness in different procedures. As we have seen, the inter-organizational relations between the EU and the ILO have gradually intensified since the turn of the century and – more importantly for our purposes – a tangible ‘EU identity’ has been said to have emerged in the tripartite committee discussions of the ILO standard-setting procedure (Delarue, 2013, p. 133). In addition, these evolutions have more or less coincided with the EU’s 2004 enlargement from 15 to 25 Member States and, a little while later, 27 Member States. As such, the procedures that took place during this period form a population that provides us with an opportunity to comparatively explore the causal relation between EU coherence and effectiveness.

**The ILO standard-setting procedure on**

- The Maritime Labour Convention, 2006
- The Promotional Framework for Occupational Safety and Health Convention (No. 187) and Recommendation (No. 197), 2006
- The Work in Fishing Convention (No. 188) and Recommendation (No. 199), 2007
- The Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011

Box 2.1 – The ILO standard-setting procedures that resulted in the adoption of a convention and recommendation since the EU’s 2004 enlargement

Four ILO standard-setting procedures have resulted in the adoption of a binding convention and non-binding recommendation since the EU’s 2004 enlargement (cf. Box 2.1 supra). Of these four, we have selected the three main procedures which together span the entire period between 2001 and 2011 and in which we will process-trace the Union’s coherence in relation to its effectiveness, i.e. the standard-setting procedures on the 2006 MLC, the 2007 Work in Fishing Convention and Recommendation, and the 2011 Domestic Workers Convention and Recommendation. This case selection allows us to individuate the causal potential of the Union’s coherence by comparing how it relates to its effectiveness in these procedures. By the same token, this selection reiterates that our research objective is not to provide an insight into the Union’s role in the ILO as such, given that the inter-organizational relations and the Union’s role in the ILO standard-supervisory procedure are not included, but rather to make an empirical contribution to the exploratory efforts on the causal relation between EU coherence and effectiveness in international institutions in general.

**2.1.2. The Process-Tracing Method**

This dissertation utilizes the process-tracing method to explore the causal potential of EU coherence in relation to its effectiveness in ILO standard-setting. Importantly, this method
serves as the methodological linchpin that translates the influence of the critical realist approach into our practical research effort.

Process-tracing is often compared to a Holmesian whodunit, which offers an intuitive starting point to demarcate its central characteristics (Collier, 2011). In the whodunit-metaphor, the researcher takes on the role of a detective who is faced with a number of possible culprits for the crime that is under investigation. Consequently, he or she tries to narrow down the possibilities by carefully investigating the intermediate process between the possible perpetrators and the crime at hand, whereby the aim is to establish (or dismiss) causal relations between them. Apart from offering an excellent excuse to start carrying around Holmesian attributes around the office (a deerstalker and a smoking pipe come to mind), the whodunit-metaphor serves to establish the central characteristics of the process-tracing method. However, some caution is warranted when using this metaphor, as scholars using different meta-theoretical underpinnings in their research will have a different interpretation of the focus and end goal of this method.

Firstly, the whodunit-metaphor serves to clarify that the focus of the criminal investigation lies on tracing the intermediate process to establish (or dismiss) causal relations between the possible culprits and the crime under investigation. Translated into more scientific terms, this part of the metaphor highlights that process-tracing is a method that ‘[…] attempts to identify the intervening causal process – the causal chain and causal mechanism – between an independent variable (or variables) and the outcome of the dependent variable.’ (George & Bennett, 2005, p. 206) However, while the focus and end goal of this method seems clear enough, it should be noted that scholars will interpret this part of the metaphor differently depending on the philosophical underpinning of their research. From a Humean perspective, the whodunit-metaphor is read with a focus on finding out a correlation between one or more perpetrators (independent variables) and the crime that was committed (the outcome of the dependent variable), after which the concatenation of these variables serves as the basis for an explanation of what happened. As such, the intervening causal process is necessarily seen as a series of intervening variables, each of which ‘[…] is both fully caused by the independent variable(s) that preceded it, and […] transmits this causal force, without adding to it, subtracting from it, or altering it, to subsequent intervening variables and ultimately through them to the dependent variable.’ (Bennett & Checkel, Forthcoming 2014, p. 6)

However, Bennett and Checkel have noted that the meta-theoretical standard for a good application of process-tracing requires a ‘[…] philosophical base that is ontologically consistent with mechanism-based understandings of social reality [...]’ (Bennett & Checkel, Forthcoming 2014, p. 26) As we have seen before, the critical realist commitments fulfill this
requirement. When interpreting the focus and end goals of this method from a critical realist perspective, '[…] process tracing appears to be about the causal ‘how’ of mechanisms, not the causal ‘what’ of correlational analysis.' \(^{14}\) (Guzzini, 2012, p. 258) In contrast to the Humean perspective, the intervening causal process is no longer interpreted as a series of intervening variables without an independent effect on the outcome of the dependent variable, but rather as the result of a complex and unpredictable interaction between a multitude of causal mechanisms. As such, for critical realist scholars who are not satisfied with offering an ‘as if’ explanation (Bennett, 2013, pp. 466-467) based on concatenations between independent and dependent variables, the process-tracing method offers the opportunity to focus their practical research effort on the mechanism-based model of explanation that underlines the critical realist conception of causality (Panke, 2012, p. 136). In other words, this method allows, even forces, scholars to go the extra mile and ‘[…] provide] the how-we-come-to-know nuts and bolts for mechanism-based accounts of social change.’ (Checkel, 2008, p. 115)

Secondly, the whodunit-metaphor clarifies that, under the guise of a detective, the researcher needs to consider all possible perpetrators during the course of his or her criminal investigation. Translated into more scientific terms, the methodological standard for a good application of process-tracing forces the researcher to systematically take into account the possibility of ‘equifinality’ throughout the analysis, i.e. ‘[…] the alternative causal pathways through which the outcome of interest might have occurred.’ (Bennett & Checkel, Forthcoming 2014, p. 27) Given the critical realist stance that Humean concatenations are neither necessary nor sufficient as a causal explanation, this central characteristic points out that this method is used to trace ‘[…] the unfolding of the process both for finding out why the same event did not effect [sic] the same outcome, and, when it did, whether we have cases of equifinality.’ (emphasis added) (Guzzini, 2012, p. 59)

Building on these central characteristics, the process-tracing method is well-suited both for testing and developing theories. In terms of theory testing, Mearsheimer and Walt have pointed out that process-tracing offers key advantages as a third way of evaluating a theory. In contrast to (1) simply inspecting the logical soundness of a theory or (2) testing Humean

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\(^{14}\) In what is quite possibly the best example ever to figure in an academic publication, Daniel Drezner (2011) uses the zombie apocalypse to illustrate the added advantage of tracing the causal how of mechanisms, rather than limiting oneself to the causal what of a covariance between one or more independent variables and the outcome of the dependent variable. Specifically, in his example Drezner points out that governmental agencies would be hard-pressed to adopt preventive measures in order to stop a zombie apocalypse from happening, given the various origins and – importantly – subsequent ways of spreading that have been imagined for the nightmarish hellscape of the undead roaming the world and feasting on human flesh. Indeed, ‘[…] the very multiplicity of causal mechanisms makes prevention both highly unlikely and prohibitively expensive.’ (emphasis added) (p. 26)
hypotheses on the concatenation of independent and dependent variables, what sets this method apart is (3) its aim to ‘[...] determine whether a theory’s causal mechanisms are actually operating in the real world in the manner it depicts.’ (Mearsheimer & Walt, 2013, p. 434) As such, process-tracing is the ideal companion for scholars who, influenced by the critical realist commitments, aim to go beyond Humean concatenations as a sufficient measure to assess the soundness of theories.

However, what happens in the absence of applicable and well-developed theories? In a research field as the one on the EU in international institutions, process-tracing brings the same advantages to the table when exploring phenomena and developing theories, rather than testing them (George & Bennett, 2005, p. 217). As Bennett notes, process-tracing case studies ‘[...] provides a powerful means of using both induction and deduction to develop and test theories about hypothesized mechanisms.’ (Bennett, 2013, p. 472) Particularly interesting is that the balance between these modes of reasoning can easily be adjusted depending on the availability of applicable and well-developed theories in a specific field of research, i.e. ‘[f]or phenomena on which there is little prior knowledge and for cases that are not well-explained by extant theories, process tracing proceeds primarily through induction.’ (Bennett & Checkel, Forthcoming 2014, p. 22) Moreover, during the ‘soaking and poking’ phase wherein ‘[...] one immerses oneself in the details of the case and tries out proto-hypotheses [...]’ (p. 22), the abductive mode of reasoning also finds its place within the established practices of the process-tracing method.

Given the state of research on the causal relation between EU coherence and effectiveness in international institutions, the exploratory effort of this dissertation will combine two varieties of process-tracing that tilt the balance toward the inductive and abductive modes of reasoning (George & Bennett, 2005, pp. 210-212). Firstly, the ‘detailed narrative’ variety offers a narrative that is ‘[...] highly specific and makes no explicit use of theory or theory-related variables.’ (p. 210) This variety is the simplest starting point when working on a phenomena on which applicable theories are not readily available, in which situation it offers a useful step forward to more theoretically oriented varieties. Secondly, given that the one voice debate currently takes place between a dominant folk theory and tentatively theorized challengers, this dissertation can complement this detailed narrative with the abductive use of working hypotheses, wherein ‘[...] at least parts of the narrative are accompanied with explicit causal hypotheses highly specific to the case without, however, employing theoretical variables for this purpose or attempting to extrapolate the case’s explanation into a generalization.’ (p. 211)

2.1.3. Source Material
This dissertation meets the ‘significant data requirements’ (Checkel, 2008, p. 114) of the process-tracing method by triangulating three types of source material. Originally a
methodological principle, ‘triangulation’ boils down to the confrontation of different types of source material in order to gain a richer and ‘[…] in-depth knowledge of all aspects, details, and dimensions of a research object.’ (Arts & Verschuren, 1999, p. 416) Notably, we will triangulate (1) primary documentation, (2) material from expert interviews, and (3) secondary literature. While generally an important principal to adhere to in scientific research, in the field on the EU in international institutions this triangulation is especially worthwhile, because assessing the Union’s role and impact from one institution to the next does not allow many shortcuts and is ‘[…] an empirical question to be clarified case by case.’ (emphasis added) (Jørgensen, et al., 2011, p. 601)

Firstly, the ILO is a rich repository of primary documentation. The organization has thoroughly documented its past and present activities while they were being carried out and – fortunately for interested scholars – has made the resulting multitude of reports, record of proceedings, etc. easily accessible online or through the helpful staff of the Bureau of Library and Information Services. Concerning the digitalization and online availability of primary documentation, special mention should be made of the ILO Century Project. With this project, the ILO wishes to emphasize its historical role as an incubator for new ideas by bringing its databases and the available documentation together in a clearly structured website. For example, with regards to process-tracing ILO standard-setting procedures, the Labordoc catalogue allows quick and easy access to all the available material related to the procedure behind a specific convention and/or recommendation. Notably, this includes preparatory reports and commentaries by the ILO Office, minutes of GB sessions, replies from the tripartite members to questionnaires, records of the tripartite committee proceedings, records of the ILC’s plenary proceedings, and final record votes.

Importantly, the records of the tripartite committee proceedings are all readily available. While the flurry of other primary documentation is critically important to process-trace the totality of the three standard-setting procedures we have selected as case studies, it is based on these records that our conceptual equipment detects the external coherence of EU representation and its effectiveness in terms of goal attainment. Given the central importance of these records of proceedings among our source material, we should emphasize that these documents give a detailed and precise overview of all interventions (i.e. who said what, who spoke on behalf of who, etc.) and that the representatives sign off on the final documents. Nevertheless, these records do have their imperfections. Most importantly, recording practices change over time and between Reporters, which results in (mostly minor) distortions when comparing between case studies. These and other imperfections will be

pointed out explicitly and mediated during our exploration of the causal potential of EU coherence in relations to its effectiveness.

On the side of the EU, a similarly large body of primary documentation is available, albeit not on the same level of comprehensiveness as is offered by the ILO. The Council, the Commission, the Parliament, and other Brussels-based institutions all offer a wealth of material on their websites. In addition, the Eur-Lex database provides easy access to the *acquis communautaire* and the website of the EU Delegation to the UN and other international organizations in Geneva provides an overview of the Union’s statements in the ILO and other Geneva-based institutions. In light of the research topic and objective of this dissertation, the latter two are especially relevant.

Secondly, the imperfections and distortions of the primary documentations are mediated by our use of expert interviews. Conducting interviews is a tried and tested method in combination with a qualitative research design, wherein it infuses a journalistic approach into an otherwise distinctly academic methodology (Rathbun, 2012). Specifically, this dissertation makes use of the material derived from expert interviews to add depth and fill-in specific parts of the process that is predominantly traced from primary documentation. An overview of the expert interviews that were conducted in function of this dissertation can be found in the Annex. As agreed with the interviewees, their names are not mentioned in this overview. Rather, the interviews are identified by the affiliation of the interviewee, and the date and location of the interview.

Finally, we complete our triangulation of source material by adding secondary literature as the third piece of the puzzle. The introduction to this dissertation has already provided an extensive discussion of the relevant literature with regards to the research topic and objective of the this dissertation (cf. Chapter 1.2.), but it is fitting to reiterate some of the key points here. Notably, we have pointed out that the literature on EU-ILO relations is comparatively larger and more established in its analysis than the scholarship on the Union in most other social-economic institutions, barring the exceptionally well-established literature on the relationship between the EU and the WTO. While we also added that, similar to the broader field of research on the EU in international institutions, many studies on the Union’s role within the ILO and the inter-organizational relations between them are largely descriptive, this relatively well established body of academic literature nonetheless provides an informative account of the ins and outs scholars need to be aware of when studying their

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relationship. In this regard, we also noted that ILO officials are often prolific writers on topics that are directly related to the ILO and thereby provide an additional reservoir of knowledge for anyone to draw on.

In summary, by triangulating primary documentation, material from expert interviews, and secondary literature, we are able to fulfill the significant data requirements of the process-tracing method.

2.2. Conceptual Equipment

We now turn to this dissertation’s conceptual equipment to detect EU coherence and effectiveness against the background of the international context found in the ILO standard-setting procedure. Influenced by the critical realist approach, both coherence and effectiveness are here seen as objects that are fundamentally unobservable by the human senses, but nevertheless real in that they exist within and exert their causal influence on the international context. Using Jackson’s (2011) distinction between detectable and undetectable unobservables, we place coherence and effectiveness in the former category. Indeed, while fundamentally unobservable to the human senses, these objects are still detectable given that they ‘[…] can be indirectly glimpsed – or, perhaps better, perceived at one remove – via the direct traces that [they are] taken to leave on [our conceptual] equipment.’ (p. 85) In sum, both coherence and effectiveness are here seen as fundamentally unobservable, but nevertheless detectable objects through the use of the sophisticated piece of conceptual equipment which we will now establish.

2.2.1. EU Coherence

In the research field on the EU in international institutions, coherence is intuitively understood and commonly used as ‘[…] referring to the necessity of bringing together different strands of political action both strategically and procedurally.’ (Gebhard, 2011, p. 103) However, despite (or even because of) the existence of an intuitive understanding and common usage of this concept, establishing an academic definition and conceptualization of the Union’s coherence has proven to be a difficult task. We will first offer an overview of the difficulties scholars are confronted with in this regard, before turning to the conceptual equipment that will allow us to mediate these difficulties and detect the Union’s coherence in the ILO-standard setting procedure.

Scholars face two difficulties that create pitfalls on the path to establishing an academic definition and conceptualization of EU coherence in international institutions: (1) the normative undertones that spilled over from practice and (2) the introverted focus that is more preoccupied with the internal coordination process than the external coherence of EU representation. Firstly, precisely because of its common usage, existing academic definitions and conceptualizations are often plagued with normative undertones that have inadvertently
spilled over from practice. As we have seen in our overview of the one voice debate (cf. Chapter 1.2.1.), pro-European officials in the Brussels-based institutions and the national capitals confer an ‘iconic meaning’ to the Union’s coherence, which for them ‘[…] conveys the general aspiration of action with ever more unity [and is thus] positively loaded in the sense that it directly appeals to the very core objectives of integration.’ (p. 110) Indeed, far from offering a neutral description, the intuitive understanding and common usage of this concept echoes the normative undertones of this iconic meaning (cf. supra). Specifically, note that EU coherence is seen as a necessity in the common usage of the concept. The impression that coherence should be defined as a goal is one that has spilled over from practice to academia. However, while it is indeed true that the practical usage of EU coherence in the Brussels-based institutions is limited to the goal of coordinating the Member States and representing the resulting common position, the insights of the one voice debate have revealed that it becomes problematic when this practical usage spills over and is used as the foundation for academic research.

Secondly, the existing conceptualizations of EU coherence are influenced by the traditionally introverted focus of this research field, resulting in them being mostly preoccupied with capturing the finer details of the internal coordination process, while being less adapted to detecting the coherence of EU representation in international institutions. For example, in an excellent overview Carmen Gebhard organizes the conceptual work of those before her and distinguishes between no less than two dimensions, four types, and three faces of EU coherence. Out of these distinctions, most scholars are intuitively familiar with the four ‘types’ of coherence: (1) vertical between the Member States and the Union level, (2) horizontal between the Common Foreign and Security Policy (CFSP) and the external policies of the Community, (3) internal within each of these two foreign policy domains, and (4) external between the EU and third actors (p. 107). However, while these four types have informed most, if not all, existing conceptualizations of EU coherence in this research field, a closer inspection quickly reveals that, with the exception of external coherence, all these types essentially relate to the internal coordination process that takes place within the EU. Indeed, these distinctions are tools that are mostly geared toward exploring the internal coordination process through which the Brussels-based institutions and national capitals (vertically) and the Union’s policies (horizontally and internally) are brought together. While this intricate maze of dimensions, types, and faces of EU coherence has its merits in terms of providing an insight into the internal coordination process, it is less adapted for detecting the coherence of EU representation in international institutions.

Before turning to our own conceptual equipment, we first need to address these difficulties. Firstly, in order to counter the normative undertones spilled over from practice, it is useful to go beyond the intuitive understanding and common usage of this concept and take our lead
from Gebhard’s extended definition, which sees coherence as ‘[…] a high stage of structural harmonization, which presupposes a set of ‘more primitive’ secondary conditions or requirements such as comprehensiveness, completeness, continuity – and consistency.’ (p. 106) While one can still read normative undertones in defining coherence as a ‘high stage’, this extended definition no longer frames coherence as a necessary goal. Moreover, it makes it clear that although coherence and consistency are often used interchangeably, differentiating between these two concepts does help clarify that coherence signifies synergies and positive connections, while consistency is understood more narrowly as the absence of contradictions (see also: Duke, 2011, pp. 16-19).

Secondly, in order to focus our attention on the external coherence of EU representation, this dissertation explicitly differentiates between the coordination and representation of EU external policy, which we will now conceptualize as closely related, but nevertheless distinct dimensions of EU foreign policy. The representation of EU external policy is seen as the politically complex and often sensitive question of how the Union can (or should) express its position internationally. While it is usually assumed that common representation will increase the EU’s influence, for the Member States this means compromising their individual positions and even risk diluting them into a so-called lowest common denominator. The Member States are thus confronted with ‘[…] a fundamental tradeoff between the benefits of increased bargaining power and the costs of compromise among heterogeneous interests.’ (Frieden, 2004, p. 274) While representation is the outcome of this tradeoff, the tradeoff itself between bargaining power and a compromised position is settled through the coordination of EU external policy. If common representation is its outcome, then coordination is the procedural-tactical process through which the Member States calculate this tradeoff (Groen & Niemann, 2012, p. 3). As such, coordination and representation are two closely related, but nevertheless distinct dimensions of the Union’s foreign policy. As the EU Member States calculate the fundamental tradeoff between a potential increase in bargaining power and a compromised position, these two concepts are respectively the procedural-tactical process and the outcome of this calculation.

Having addressed and mediated these difficulties, we now turn to the conceptual equipment that will allow us to detect the Union’s coherence in ILO standard-setting. Keeping in mind

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18 Alternatively, a special issue of Journal of European Public Policy speaks of ‘(internal) cohesiveness’, rather than coherence, while establishing a similar distinction between coherence and consistency (Conceição-Heldt & Meunier, 2014, pp. 963-966). In addition, cohesiveness is seen as the last component of a ‘logical sequential order’ within the concept of EU actorness (i.e. authority, autonomy, external recognition, and internal cohesiveness).

19 On the relation between coherence and consistency, some authors even warn for linguistic pedantry when attempting to disentangle these two concepts. See: (Nuttall, 2005, p. 93).

20 Not to be confused with Gebhard’s two dimensions of EU coherence that were mentioned previously.
the objective of this dissertation to explore the causal potential of EU coherence in relation to its effectiveness, we use the external type of coherence as our starting point. Notably, this type of coherence is defined as ‘[…] the way the [EU] presents itself to third parties or within a multilateral system […]’ (p. 108) (i.e. the ‘output dimension’ of internal cohesiveness, see: Conceição-Heldt & Meunier, 2014, p. 966) and is the only type that is geared toward the external coherence of EU representation in international institutions, rather than the internal European coordination process. As such, in Figure 2.1 below we place the external type of coherence under EU representation, wherein it constitutes the tactical dimension (i.e. how a position is represented) that stands alongside the substantive dimension (i.e. the content of the position being represented).

![Figure 2.1 – The conceptualization of EU coordination and representation in international institutions](image)

Building on the external type of coherence, we add two distinctions between on the one hand the EU Member States representing common or independent positions and on the other hand between the Member States representing symbiotic or antagonistic positions. Together, these two distinctions result in a four quadrant structure that allows us to detect with a high degree of precision the external coherence of the Union and its Member States presenting themselves to third parties in ILO standard-setting. Firstly, we make a straightforward distinction between instances wherein (1) a ‘common position’ is represented on behalf of the Union by one or more EU representatives (i.e. the Member States and/or the Delegation) and instances wherein (2) only ‘independent position(s)’ are represented by one or more EU Member States.

Secondly, we make an additional distinction between instances wherein (3) ‘symbiotic’ or (4) ‘antagonistic’ position(s) are represented independently by one or more EU Member States (terminology taken from Blavoukos & Bourantonis, 2011a, p. 4). While this might seem similar or even identical to our first distinction, adding this second distinction allows us to detect two additional categories of the Union’s external coherence that would otherwise remain outside the scope of our conceptual equipment. In order to explain this, we must first
recall that only the EU Member States are members of the ILO, while the Union is invited as a de facto observer without the right to introduce amendments or the right to vote (cf. Chapter 1.3.2.). As we have seen, this legal hurdle has not stopped the Union from expanding its inter-organizational relations with the ILO Office or from taking on an even greater behind-the-scenes role in the European coordination process, but its restricted status nevertheless gives the EU Member States a high degree of discretion to continue representing their independent positions during ILO standard-setting. Adding this second distinction to our conceptualization of EU external coherence acknowledges this situation by allowing us to detect instances wherein symbiotic or antagonistic positions are independently represented by the EU Member States, either alongside a common position or vis-à-vis each other’s independent positions.

Together, these two distinctions result in the four quadrant structure found in Table 2.1 below, wherein each quadrant stands for a category of EU coherence as it presents itself to third parties in ILO standard-setting. Importantly, these categories allow us to detect external EU coherence as more of a continuum, rather than as a strict dichotomy, i.e. something that either is or is not (Conceição-Heldt & Meunier, 2014, p. 966).

<table>
<thead>
<tr>
<th>Symbiotic MS position(s)</th>
<th>Common EU position</th>
<th>Independent MS position(s)</th>
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<tr>
<td>Coherent</td>
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<td>Consistent</td>
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<tr>
<td>Antagonistic MS position(s)</td>
<td>Incoherent</td>
<td>Inconsistent</td>
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Table 2.1 – Four quadrant structure of external EU coherence in international institutions

Firstly, in cases where a common position is represented on behalf of the Union by one or more EU representatives, external coherence can be categorized as either (1) ‘coherent’ (i.e. either symbiotic or no additional position(s) independently represented by the EU Member States) or (2) ‘incoherent’ (i.e. antagonistic position(s) independently represented by the EU Member States). Returning to Gebhard’s conceptual overview of EU coherence, we recall that coherence is a high stage of structural harmonization, which refers to purposive action on behalf of the EU Member States and its institutions to coordinate and represent a common position (Gebhard, 2011, p. 106). Conversely, incoherence refers to a situation wherein one or more EU Member States make a conscious effort to oppose this high stage.

Secondly, in cases where only independent position(s) are represented by one or more EU Member States, external coherence can be categorized as either (3) ‘consistent’ (i.e. the EU Member States independently represent symbiotic positions vis-à-vis each other) or (4) ‘inconsistent’ (i.e. the EU Member States independently represent antagonistic positions vis-à-vis each other). Returning to Gebhard’s conceptual overview of EU coherence, we recall that
consistency is a more primitive secondary condition or requirement for coherence, which refers to a banal absence of contradictions (Gebhard, 2011, p. 111). Indeed, in the absence of a common position to indicate purposive (or successful) coordination and representation on behalf of the Union, symbiotic positions of the EU Member States amount only to this secondary absence of contradictions, rather than a high stage of structural harmonization. Conversely, in the absence of a common position, antagonistic positions of the EU Member States indicate the presence of contradictions, but not a conscious effort to oppose a high stage of coherence that other Member States coordinate and represent.

Having arrived at our conceptual equipment to detect the external coherence of EU representation in ILO standard-setting, it should be noted that with this equipment we give substance to a broader conception of the Union in international institutions that has been called for by Blavoukos and Bourantonis (2011a). When conceptualizing the EU in international institutions, they do no limit themselves ‘[…] to the EU collective actions alone but incorporate the ‘presence’ and contributions of individual member-states with an effect on the EU dimension, especially given that in several cases the two cannot be easily disentangled.’ (p. 4) As we have seen, the high level of discretion available to the EU Member States in ILO standard-setting indeed creates a situation wherein the independent contributions of these Member States cannot be ignored, least of all because third parties generally do not differentiate between positions that are represented on behalf of the Union and those that are represented on behalf of an independent Member State (Brantner, 2010). Moreover, as Blavoukos and Bourantonis argue, such ‘[…] a broadening of the concept [is] extremely useful, not least because it sheds light on the co-existence of the two sets of contributions. This scarcely researched relationship may not always be symbiotic, with national contributions also functioning potentially in an antagonistic way to the EU ones.’ (Blavoukos & Bourantonis, 2011a, p. 4)

This broadened conception of the EU in international institutions is clarified by comparing our own conceptual equipment with the one used by Delreux (2011, pp. 172-174) This author starts from a distinction between the Union’s voice (i.e. is there one position or are there multiple positions?) and the Union’s mouth (i.e. is this position represented by one or multiple representatives?). As we can see in Table 2.2 below, this distinction results in a four quadrant structure which, at first sight, seems similar to our own. Notably, it also offers a more fine-grained conceptualization of EU representation that is able to detect external EU coherence as a continuum, rather than as a dichotomy, i.e. something that either is or is not.
Table 2.2 – Tom Delreux’s conceptualization of EU representation in international institutions

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<thead>
<tr>
<th>One mouth</th>
<th>Multiple mouths</th>
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<td></td>
<td>Agents and principals</td>
</tr>
</tbody>
</table>

However, in terms of broadening the conception to the independent contributions by EU Member States alongside the Union’s common position, his conceptual equipment has some drawbacks. The key drawback is that Delreux focuses on the Union’s collective action and, as a consequence, has trouble accounting for the ‘[…] contributions of individual member-states with an effect on the EU dimension, [which is important] given that in several cases the two cannot be easily disentangled.’ (Blavoukos & Bourantonis, 2011a, p. 4) While the distinction between the Unions voice and its mouth might give the impression that this conceptual equipment is able to capture the ‘co-existence’ of the contributions on behalf of the Union and independent Member States, it is important to understand that here it is implicitly assumed that these two sets of contributions are mutually exclusive. For example, where in these four quadrants would we place antagonistic positions taken by one or more EU Member States against the Union’s common position? This brief exercise illustrates that this conceptual equipment is not able to capture the full range of co-existence between these two sets of contributions.

Finally, we need to point out at which stage of the ILO standard-setting procedure we can most reliably detect the appropriate category of the Union’s external coherence. According to Kissack (2010, pp. 35-38), the most reliable stage of the procedure to detect the Union’s external coherence (and many other things) are the tripartite committee discussions (i.e. the fourth and fifth stage), wherein the instruments are discussed and finalized by consensus before being submitted for adoption to the Plenary Session of the ILC. At first sight, it would seem best to detect the Union’s external coherence during the final vote on the adoption of the convention and/or recommendation. However, while the voting record of the EU Member States at the end of the standard-setting procedure does provide an indication of the Union’s external coherence, Kissack has nuanced the importance of the final vote in this regard. As this author has convincingly established, this final voting stage of the procedure cannot be assumed to provide a completely reliable indication of the Union’s external coherence, notably because it is prone to strategic voting and free riding behavior by the EU Member States. Similarly, the replies of the EU Member States to the questionnaire the ILO Office sends out before the committee discussions can provide a preliminary indication on the Union’s substantial position, but they tell us little about its external coherence. Given that these replies are submitted independently by the EU Member States
and – importantly – that they are submitted before the start of the internal European coordination process (Kissack, 2011, pp. 653-654), these replies only provide us with an indication of the initial position of the Member States before the start of the double-discussion procedure. As a result, the most reliable stage of the ILO standard-setting procedure to detect the Union’s external coherence is during the tripartite committee discussions.

In summary, our conceptual equipment is able to detect the external coherence of EU representation in ILO standard-setting as a continuum, rather than as a dichotomy. By distinguishing between on the one hand the EU Member States representing common or independent positions and on the other hand between the Member States representing symbiotic or antagonistic positions, we arrive at a four quadrant structure wherein coherence, consistency, incoherence, and inconsistency all have a place. Moreover, this equipment gives substance to calls for a broader conception of the Union in international institutions, notably by its ability to detect the full range of co-existence between interventions on behalf of the Union and independent Member States.

2.2.2. EU Effectiveness

Academic research on the EU in international institutions predominantly relies on a narrow approach to effectiveness. In this regard, Niemann and Bretherton (2013, p. 267) have noted that ‘goal attainment’ and ‘problem solving’ are the two most frequently used categories through which the Union’s effectiveness is understood in this research field. For example, Thomas finds it ‘[…] best to define EU foreign policy effectiveness as the Union’s ability to shape world affairs in accordance with the objectives it adopts on particular issues.’ (D. C. Thomas, 2012, pp. 460-461) Similarly, Jørgensen et al. define effectiveness ‘[…] as the degree to which the EU has achieved its goals and objectives in the decision-making process within that institution (not their implementation).’ (Jørgensen, et al., 2011, p. 603) These and many other definitions illustrate the narrow approach to EU effectiveness that is dominant in this field of research.

This dissertation subscribes to the narrow definition of the Union’s effectiveness, thereby exploring the causal potential of EU coherence in relation to its goal attainment in ILO standard-setting. This results in a straightforward comparison between the Union’s self-proclaimed goals and objectives during a standard-setting procedure and the final provisions found in the adopted ILO instruments. However, before turning to our operationalization of EU effectiveness, we first need to point out some of the limitations that this narrow

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21 To avoid any confusion, it should be pointed out that effectiveness is conceptually distinct from ‘efficiency’, which Jørgensen et al. define as ‘[…] the relationship between the goals achieved (effectiveness) and the costs incurred.’ (Jørgensen, et al., 2011, p. 605)
approach entails. Specifically, this approach to EU effectiveness is underscored by a Eurocentric focus and, as such, risks isolating our assessment of the Union’s effectiveness from the international context. Subsequently, we will also point out how our use of the process-tracing method is able to mediate this risk.

At first sight, defining and conceptualizing EU effectiveness in terms of goal attainment or problem solving seems to be not only a narrow approach, but also a commonsensical one. When assessing the Union’s effectiveness in international institutions, comparing the EU’s self-proclaimed goals with the outcomes at the end of an international decision-making procedure intuitively comes across as a reliable indicator of effectiveness. As such, most academic research in this field has continued to rely on a narrow approach to EU effectiveness, despite the fact that in recent years almost all other facets of our conceptualization of the Union in international institutions have been further developed. For example, while a special issue establishing EU performance (Jørgensen, et al., 2011), two special issues extending the conceptualization of EU actorness (Conceição-Heldt & Meunier, 2014, pp. 968-969 and Niemann & Bretherton, 2013), and a book on the intricacies of EU coherence and its relation to effectiveness (van Schaik, 2013) have all further extended our understanding of the Union in international institutions, these efforts all share in common that they continue to rely on the same narrow approach to EU effectiveness.

However, if we take a step back from this narrow approach and place it within a multi-dimensional framework for EU effectiveness, we find that this approach is underlined by a strong Eurocentric focus. Laatikainen and Smith (2006a, pp. 9-10; recently reiterated in Jørgensen & Laatikainen, 2013b) have distinguished between four separate dimensions of the Union’s effectiveness in international institutions. According to their multi-dimensional framework, the EU can be considered (1) effective as an international actor (i.e. internally coherent) or (2) effective as an actor in an international institution (i.e. externally effective, narrowly defined in terms of goal attainment). Additionally, the third and fourth dimension are less Eurocentric and refer to (3) the Union’s contribution to the effectiveness of an international institution and (4) the effectiveness of an institution regardless of the EU’s role therein. The contrast between the Eurocentric focus of the first two dimensions and the non-Eurocentric third and fourth dimension can be illustrated by placing the narrow definition of Jørgensen et al. (cf. supra) within this framework. In doing so, we find that their definition of effectiveness not only establishes their narrow focus on the Union’s ‘goals and objectives’ (i.e. the second dimension), but also explicitly excludes the actual implementation

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22 While our focus on the causal relation between EU coherence and effectiveness in ILO standard-setting at first sight seems to translate into the relation between the first and second dimension of effectiveness, we need to reiterate our explicit distinction between coherence and effectiveness. Based on the insights of the one voice debate, we treat these two concepts as separate entities, rather than two sides of the same coin.
of whatever outcome is achieved in the course of international decision-making procedures. Indeed, the success or failure of implementing these outcomes would relate to the effectiveness of the international institutions themselves (i.e. the fourth dimension) and, thus, goes beyond what is here revealed to be the Eurocentric focus of the narrow approach to EU effectiveness.

The Eurocentric focus of the narrow approach risks isolating the Union’s effectiveness from the international context in which the EU operates to achieve its goals, thereby potentially running counter to abductively inferred influence of the international context that is currently being explored in this research field. Specifically, the Eurocentrism contained within the narrow approach runs the risk of isolating our assessment of EU effectiveness from (1) the goals and objectives of the tripartite third parties and from (2) the ILO standard-setting procedure.

Firstly, a narrow focus on goal attainment risks isolating EU effectiveness from the goals and objectives of third parties, i.e. those of the tripartite members and the ILO Office. As several authors have recently started to explore, it stands to reason that the Union’s relative position vis-à-vis non-EU Member States and the social partners in the ‘international political constellation’ of a standard-setting procedure influences the Union’s effectiveness (Jørgensen, et al., 2011, p. 604; Oberthür & Rabitz, 2014, pp. 43-44; and A. R. Young, 2014). In this dissertation, the resulting constellation of these relative positions will be referred to as the ‘tripartite stage’ (cf. Chapter 2.2.3.). Furthermore, situating the narrow approach in the multi-dimensional framework for effectiveness highlights the potential of the ILO Office’s goals and objectives (i.e. the fourth dimension) to infringe upon the Union’s effectiveness (i.e. the second dimension). For example, Novitz (2009) has claimed that the divergent mandates and objectives of the EU (i.e. build a regional single market through economic freedoms) and the ILO Office (i.e. promote global social fairness through labor standards) create an inherent tension between these two organizations. While a case study of the standard-setting procedure on maritime labor has shown that the Union at times does let social rights trump its economic interests (Riddervold, 2010), we are here reminded to keep an eye out for the compatibility between the second and fourth dimension of effectiveness and its potential influence on the Union’s goal attainment in ILO standard-setting.

Secondly, the narrow focus on goal attainment risks isolating the assessment of EU effectiveness from the ILO standard-setting procedure the Union has to go through in order to achieve its goals, i.e. this approach bypasses the equally important process through which these objectives were or were not achieved. To illustrate this second isolation, take for example the assessment of political influence in complex decision-making by Bas Arts and Piet Verschuren (1999). These authors define political influence as ‘[…] the achievement of
(a part of) an actor’s goal in political decision-making, which is either caused by one’s own intervention or by the decision-makers’ anticipation.’ (p. 413) Crucially, from this ‘[…] definition it follows that goal-achievement and political influence do not coincide, as player A might achieve his goal due to the intervention of others, due to external events, or due to autonomous developments.’ (p. 413) Returning to the narrow approach, we can substitute the ‘political influence’ of Arts and Verschuren with ‘effectiveness’ and still retain their conclusion, i.e. while goal achievement is a necessary indicator for EU effectiveness, it only gives us a partial assessment of this concept. Importantly, this means that goal achievement does not tell us much about the precise nature of the Union’s effectiveness if we isolate it from the preceding standard-setting procedure through which the EU did or did not achieve its objectives.

While this dissertation falls in line with the broader field of research and subscribes to narrowly defining EU effectiveness in terms of goal attainment, we are nevertheless aware of the Eurocentric focus that underlines this approach and causes the potential risk of isolating our assessment of the Union’s effectiveness from the international context. In order to mediate this risk and keep sight of the tripartite third parties and the ILO standard-setting procedure itself, our use of the process-tracing method again shows its value as the methodological linchpin at the heart of this dissertation. As we explore the causal potential of EU coherence in relation to its effectiveness by tracing the ILO’s standard-setting procedures on maritime labor, work in fishing, and domestic work, this method forces us to establish in some detail the causal process that intervenes between these two concepts. As such, isolating EU effectiveness from the international context is simply not an option when making use of this method.

Finally, we turn to our operationalization of the second dimension of EU effectiveness in ILO standard-setting, which takes the form of a straightforward comparison between the Union’s self-proclaimed goals and objectives during a standard-setting procedure and the final provisions found in the adopted ILO instruments. However, while the latter instruments are easily accessible, detecting the Union’s goals and objectives is not as unambiguous at it would seem at first sight. For example, Jørgensen et al. (2011, p. 604) note that these objectives can be too broad for a meaningful assessment, they can lack clarity or only exist implicitly, and they can be partially contradictory. Therefore, the main challenge is to delineate ‘indicators’ (Jørgensen, 2013, p. 90) that allow us to detect as precisely as possible to the Union’s goals and objectives on all of the provisions that are under discussion during a standard-setting procedure.

Finding the right indicators to detect the Union’s goals and objectives first and foremost requires a good understanding of where to look for them in the ILO’s standard-setting
Research Design

Kissack has outlined the six different stages of the ILO’s double-discussion procedure and their potential to detect the EU’s goals and objectives (Kissack, 2011, pp. 653-654). Importantly, he points out that ‘[the second committee discussion] to negotiate the final text constitutes the fifth stage and [together with the first committee discussion (i.e. the fourth stage)] is the most important in the process [...]’ (p. 653) Given that the provisions of the adopted instruments are debated and finalized during these committee discussions, the most reliable and most specific indicators to detect the Union’s goals and objectives come in the form of the interventions, amendments, and subamendments that are expressed or introduced by the EU Member States and other representatives of the Union during the first and second committee discussion. Indeed, as we have seen before (cf. Chapter 1.3.2.), the Union’s positions in an ILO standard-setting procedure are coordinated by the EU Member States during on-the-spot meetings in Geneva. These meetings take place between eight and nine in the morning before the start of the committee sessions and, if necessary, over lunch (Interview No. 18 and 29). Despite the recent increase of preparatory coordination meetings in Brussels, the Union’s amendments on specific issues are still predominantly finalized during these on-the-spot coordination meetings, which, at times, leads EU representatives to run through the hallways of the Palais des Nations in order to submit the amendments before the deadline set by the ILO Office (Interview No. 18). As a result, these amendments are the most reliable and most specific indicators to detect the Union’s goals and objectives.

In comparison, indicators found in the other stages of the ILO standard-setting procedure are less or not at all reliable to detect the Union’s goals and objectives. Firstly, earlier stages of the procedure such as the agenda-setting discussion during GB sessions (i.e. the first stage) or the replies to the questionnaires by the ILO office (i.e. the third stage) can provide preliminary indications of the Union’s eventual goals and objectives, but at this point in the procedure internal European coordination process has not yet started and the Member States still express their initial, national positions (p. 653-654). Secondly, later stages of the procedure such as the adoption of the final instruments by the plenary session of the ILC (i.e. the sixth stage) don’t allow any indication of the Union’s goals and objectives, given that the final shape of the instrument is locked down at the end of the second committee discussion. After this point in the procedure, the tripartite members can only adopt or reject the instruments in their totality with a simple majority.

Having found our indicator for the Union’s goals and objectives in the form of the interventions, amendments, and subamendments that are expressed or introduced during the committee discussions, the second dimension of EU effectiveness (i.e. its goal attainment) can be operationalized most reliably by a straightforward comparison between these self-proclaimed goals and objectives and the final provisions found in the adopted ILO instruments. In addition, interventions made by the EU Member States during the plenary
discussion of the ILC that takes place just before the simple majority vote on the adoption of the instruments, might add some nuance by indicating the extent to which they feel (or purport to feel) they have attained their goals, albeit without overturning the findings of the more reliable comparison between their self-proclaimed goals and objectives and the final provisions of the adopted ILO instruments.

In comparison, later stages of the procedure such as the adoption of the final instruments by the plenary session of the ILC (i.e. the sixth stage) and the ratification of adopted Conventions provide even less reliable indicators for the second dimension of the Union’s effectiveness, given that they are generally more appropriate as indicators of the third and fourth dimension of effectiveness (cf. supra). Indeed, these stages cannot be assumed to have bearing on the second dimension of EU effectiveness, because they are prone to strategic voting and free riding behavior by the EU Member States. According to Kissack (2010, pp. 35-38), a side-effect of the ILO’s composite standard-setting procedure, wherein committees finalize the instruments by consensus and subsequently hand them over to the plenary sessions to adopt them by simple majority, is that EU Member States are able to place their domestic calculations central during the latter stages of this procedure, regardless of whether they achieved their goals and objectives during the committee discussions. Specifically, in case a Member States is confronted with domestic demands for non-cooperation, the ILO’s composite standard-setting procedure allows Member States to

‘[…] remove themselves from this domestic ‘rock’ and international ‘hard place’ [by cooperating] during drafting [i.e. fulfill its commitment to cooperation on the European and international level] and only [show] its non-cooperative side in the plenary [i.e. acquiesce to domestic demands for non-cooperation].’ (p. 36)

As a result, the adoption and ratification stages of the double-discussion procedure cannot be assumed to have bearing on the second dimension of EU effectiveness, which is most reliably indicated by a straightforward comparison between the Union’s self-proclaimed goals and objectives during a standard-setting procedure and the final provisions found in the adopted ILO instruments.

2.2.3. The International Context

Our conceptual equipment does not detect EU coherence and effectiveness in a vacuum, but rather does so within the international context that is found in the ILO standard-setting procedure. As we have seen in the introductory chapter of this dissertation, the influence of the international context was abductively inferred as the best explanation for some of the puzzling empirical observations in the research field on the Union in international institutions, which is presently leading this field to recalibrate its traditionally introverted focus and gradually adopt a more outward looking attitude (cf. Chapter 1.2.3.). While the
Recalibration of this field’s research focus has made great strides in a small amount of time, we have also noted that this evolution is showing some growing pains due to the relatively recent nature of systematically incorporating the international context. Specifically, scholars have yet to achieve a firm grasp of the large and unwieldy number of factors that suddenly come into focus when one attempts to integrate the international context into his or her analysis and – importantly – are currently still exploring how these factors interact to influence EU foreign policy in international institutions.

Recalling that this dissertation presents the incorporation of the international context as the best way forward for the one voice debate, we will now conceptually outline the context that is found in the ILO standard-setting procedure and in which we will detect EU coherence and effectiveness. Situating our dissertation in the exploratory efforts of the broader field of research, our goal here is to establish a basic outline of the double-discussion procedure, but not how its many facets influence the causal potential of EU coherence in relation to its effectiveness. The latter will have to avail itself by process-tracing of the three case studies in the subsequent chapters of this dissertation.

First and foremost, when attempting to grasp the complex nature of the international context, it is helpful to start by breaking it down into its most basic building blocks. In its most basic form, the international context can be conceptualized as two, interlinking dimensions that surround the Union as it manages the coordination and representation of its Member States: (1) the ‘broader political constellation’ or global environment and (2) the ‘formal and informal rules and procedures of the international institutions’ (Jørgensen, et al., 2011, pp. 614-615). While these two dimensions cannot be fully distinguished from each other when placing the Union within the international context, they do provide us with a suitable starting point to outline the context found in the ILO standard-setting procedure.

The formal and informal rules and procedures of the double-discussion procedure can be seen as the organizing principles for the discussions that take place during a standard-setting procedure. Notably, the tripartite structure of the ILO serves to ‘set the stage’ for the debates that take place between the governments and – unique for an international organization – the social partners. As we have seen, tripartism means that each of the ILO’s 185 members is represented by a composite delegation that consists of four delegates: two from the government, one from the workers, and one from the employers. These four delegates have independent voting rights, giving the national worker and employer representatives the freedom to coordinate themselves across national borders, thereby effectively creating an Employers’ Group, a Workers’ Group that operate separately from the governments. What is important about this, is the fact that the governments only hold half the total number of votes during the plenary vote on the adoption of conventions and recommendations, which
gives the Employers’ (one quarter of the votes) and Workers’ Group (one quarter of the votes) considerable sway over the adoption of the final instruments. As such, the tripartite structures serve as the organizing principle for the discussions that take place during a standard-setting procedure, notably by setting the tripartite stage on which the governments and the social partners discuss the adoption of an instrument.

On a related note, we have previously also established how the formal and informal rules and procedures of the double-discussion procedure influence our detection of EU coherence and effectiveness. In this regard, we have seen how the former is most reliable detected during the tripartite committee discussions, while the latter is most reliably detected by a straightforward comparison between the Union’s self-proclaimed goals and objectives during a standard-setting procedure and the final provisions found in the adopted ILO instruments.

The broader political constellation can be conceptualized as the goals and objectives that are pursued by the tripartite members during a double-discussion procedure. Based on these goals and objectives, the governments and the social partners take their positions on the stage that is set by the tripartite structure and, as such, determine the dynamic of the discussions that take place during a standard-setting procedure (cf. Figure 2.2 infra). Specifically, the relative positions of the tripartite members can be seen to determine the dynamic behind a procedure in two distinct ways. Firstly, their positions determine whether a discussion takes place on a divided or a united tripartite stage. A ‘divided stage’ is one where the positions of the tripartite members on the outer ends of the stage are far apart, while a ‘united stage’ is one where the positions of the members on the outer ends of the stage are close to each other. Secondly, their positions determine whether the discussion takes place on a conservative or a progressive stage. A ‘conservative stage’ is one where the majority of the tripartite members leans toward a conservative position (i.e. a non-binding instrument with flexible provisions and a limited scope), while a ‘progressive stage’ is one where the majority of the members leans toward a progressive position (i.e. a binding instrument with strong provisions and a broad scope). Lastly, in addition to these categories, the dynamic behind a procedure is not only determined by the positions of the tripartite members, but also by the involvement of the governments and the social partners. All three have to be involved in the discussion in order to speak of a ‘tripartite stage’, rather than a ‘bipartite stage’ in case one is absent from the proceedings.

23 Recently, other authors have similarly started to conceptualize this as the ‘international constellation of interests’ (Oberthür & Rabitz, 2014, pp. 43-44), the ‘opportunity structure’ (Groen & Niemann, 2013), or the ‘bargaining configuration’ (Conceição-Heldt & Meunier, 2014, pp. 971-975) in which the EU Member States and third parties take their positions relative toward one another.
With regards to this conceptualization of the tripartite dynamic, it should be stressed that the nature of the first two categories is relative. As such, ‘conservative’ and ‘progressive’ are not seen as fixed categories to pinpoint the position of a tripartite member compared to a single standard, but rather as relative categories to pinpoint the position of a member in relation to those of the other tripartite members during a specific discussion. Similarly, ‘divided’ and ‘united’ are also not seen as fixed categories, but rather as relative categories to pinpoint how far apart the positions of the tripartite members were vis-à-vis each other during a specific discussion. As a result, while the resulting dynamics on these stages can be compared, this means that comparing the nature of a tripartite member’s position across cases is not possible using these relative categories.

In addition, it should be noted that all three categories are subject to change during a standard-setting procedure, depending on the progression of the procedure and the specific issue that is under discussion. While the inherent motivation of the Workers’ Group for a binding instrument with strong provisions and a broad scope (i.e. a progressive position) and the Employers’ Group for a non-binding instrument with flexible provisions and a limited scope (i.e. a conservative position) leads us to expect them to routinely take their places on the outer ends of the stage and leave the governments to orient their positions in between, this typical dynamic is not set in stone. Indeed, as one official of the EU Delegation to the UN in Geneva expressed it, the relative positions of the governments and the social partners change ‘à géométrie variable’ depending on the progression of the procedure and the specific issue that is under discussion (Interview No. 19).

In summary, we have conceptualized the international context as an interaction between the formal rules and procedures found in the double-discussion procedure and the broader political constellation (cf. Figure 2.2 supra). While the ILO’s tripartite structure serves as the organizing principle that sets the stage for the discussions between the governments and the
social partners, it are the relative positions of these tripartite members that determine the dynamic that underlines a standard-setting procedure.\(^{24}\) We now turn to our exploration of this international context’s influence on the causal potential of EU coherence in relation to its effectiveness, specifically by process-tracing the former’s potential during the standard-setting procedures on maritime labor (cf. Chapter three), work in fishing (cf. Chapter four), and domestic work (cf. Chapter five).

\(^{24}\) Recently, Young also published his exploration of a similar interaction and its influence on EU effectiveness (A. R. Young, 2014).
3. The Standard-Setting Procedure on Maritime Labor

“The Shipowner and Seafarer members resolved that the emergence of the global labour market for seafarers has effectively transformed the shipping industry into the world’s first genuinely global industry, which requires a global response with a body of global standards.” – 2001 Joint Maritime Commission (International Labour Office, 2001a, p. 11)

“The “consensus” concept, by which I mean that the adopted instrument is the result of long and sometimes extremely difficult discussions and that it carries as a hallmark the inestimable advantage that its results have been created jointly by the three groups of Governments, Shipowners and Seafarers.” – Mr. Dierk Lindemann (Ship owners’ Vice-President of the 2004 Preparatory Technical Maritime Conference, Germany) (International Labour Office, 2006a, p. 5)

We now turn to our case study on the ILO standard-setting procedure on maritime labor. We will first outline the a-typical procedure that lead to the adoption of the 2006 MLC, before taking a closer look at the goal that underlined this procedure, the tripartite stage whereupon the social partners and governments took their positions, and the key issues that were central to the discussion on maritime labor. Subsequently, after having ‘set the stage’ of this standard-setting procedure, we will turn our focus to the EU and its Member States within this international context. Firstly, a quantitative bird’s-eye view will provide us with a preliminary impression of the tactical dimension of the Union’s representation. Secondly, a qualitative process-tracing of the discussions on the key issues will allow us to extend on this first impression and explore the causal potential of EU coherence in relation to its effectiveness by tracing its interaction with the international context found in the standard-setting procedure on maritime labor.

3.1. The Tripartite Standard-Setting Procedure

3.1.1. The Tripartite Standard-Setting Procedure

Compared to the traditional double-discussion procedure, ILO standard-setting on maritime labor standards has always followed an a-typical procedure, wherein the historically well-
developed sectoral representation of seafarers and ship owners regularly meet in commissions and conferences that are geared exclusively toward the development of standards for the maritime sector. The procedure on the 2006 MLC formally started when the 2001 Joint Maritime Commission (JMC) adopted a bipartite ‘Resolution concerning the review of relevant ILO maritime instruments’, also known as the ‘Geneva Accord’. In this Accord, ship owners and seafarers requested the GB to establish a High-level Tripartite Working Group (HLTWG) to start the development of a consolidated instrument on maritime labor standards (International Labour Office, 2001a, pp. 28-29). Moreover, the resolution also called upon the GB to convene a conference to discuss the outcomes of the HLTWG, which would eventually become the 2004 Preparatory Technical Maritime Conference (PTMC). Specifically, the HLTWG meetings would first develop a ‘recommended draft’ of the new instrument over the course of several sessions, which the PTMC would then consider and turn into a ‘draft convention’ to be submitted to the 2006 International Maritime Labor Conference (IMLC) (International Labour Office, 2005i, pp. 1-2).

Following the requests made in the Geneva Accord, the GB established the HLTWG during its March 2001 Session (International Labour Office, 2001c, p. 5), specifically establishing a Working Group ‘[…] with a composition of 12 Government representatives, 12 Shipowners’ representatives and 12 Seafarers’ representatives and of Government, Employers’ and Workers’ observers with the right to speak and participate in the meetings of the working group […] and stressing that representatives and observers should be knowledgeable and active in the enforcement of the standards to be adopted and be able to commit the necessary time to lend to the continuity of the process.’ (International Labour Office, 2001e, p. 3) Indeed, despite the limited number of representatives, the meetings of the HLTWG were nevertheless intended to build broad support and create a momentum among all governments for a procedure that was initiated by the social partners on a bipartite basis. During its first meeting, the Ship owners’ Chairperson reminded his fellow representatives of the HLTWG that ‘[…] it was now important to gain the support of the Government members of the Working Group. It would also be necessary to keep informed those Governments not present in the Working Group so that they too would understand and support this initiative.’ (International Labour Office, 2001b, p. 3)

The HLTWG was established by the GB to assist the ILO Office with the development of a consolidated instrument on maritime labor standards, in effect making it a replacement for the questionnaires that are sent out during traditional standard-setting procedures (International Labour Office, 2001b, p. 1). During its four meetings between December 2001 and January 2004, the Working Group considered and advised on questions raised and solutions offered by the ILO Office as the latter searched for the best way to go about
consolidating the existing maritime labor standards (cf. infra). This point was recalled by the Chairperson at the start of the fourth meeting in January 2004, when he remarked that: ‘The meeting was not a drafting exercise [for precise wording], but should allow the Office to produce a good basis for the PTMC, to be held later in the year.’ (International Labour Office, 2004d, p. 3) As such, the meetings of the HLTWG can be seen as an alternative to the questionnaires that are sent out by the ILO Office during a typical double-discussion procedure. This point was also made by Mr. Dierk Lindemann (Ship owners’ Vice-President of the 2004 PTMC, Germany) when commenting on the unique nature of this procedure (International Labour Office, 2004i, p. 9).

The first two meetings of the HLTWG in December 2001 and October 2002 intentionally focused on formal issues, rather than starting with the substantive issues that were to be consolidated in titles one through four (cf. Table 3.1 infra). Specifically, the initial focus of these meetings was on the simplified amendment procedure (Article XV) and the novel enforcement and compliance mechanisms (Title 5). According to Cleopatra Doumbia-Henry (2004, p. 329), this stemmed from the shared understanding between all representatives that the consolidation of the existing maritime labor standards would be a wasted exercise if no agreement could be found on the appropriate procedures and mechanisms to increase the enforcement and adaptability of the resulting instrument (cf. infra). As such, it was critical to first develop and agree on formal issues, before turning to the substance of the new Convention. For example, while the fifth title claimed a prominent place on the agenda during the entire procedure, the broad outlines of the compliance and enforcement mechanisms found in this title were already agreed upon during the early meetings of the HLTWG.

The third and fourth meeting of the HLTWG in July 2003 and January 2004 subsequently shifted their focus to the substantive issues found in titles one through four. In addition, this was accompanied by an extension of the initial consolidation exercise, with the ILO Office now also aiming to provide a more thorough update on specific maritime labor standards (International Labour Office, 2003b, p. 2).
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<thead>
<tr>
<th>Title No.</th>
<th>General area</th>
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<tbody>
<tr>
<td>1</td>
<td>Minimum requirements for seafarers to work on a ship</td>
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<tr>
<td>2</td>
<td>Conditions of employment</td>
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<tr>
<td>3</td>
<td>Accommodation, recreational facilities, food and catering</td>
</tr>
<tr>
<td>4</td>
<td>Health protection, medical care, welfare and social security protection</td>
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<tr>
<td>5</td>
<td>Compliance and enforcement</td>
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Table 3.1 – The titles of the regulations and the Code of the 2006 Maritime Labour Convention, each consisting of mandatory standards (Part A) and non-mandatory guidelines (Part B)

Additionally, the GB established a Tripartite Subgroup to assist the HLTWG with its work. The two meetings of this Subgroup in June 2002 and February 2003 closely followed the agenda of the HLTWG meetings. The first meeting mostly considered the structure, amendment procedure, and enforcement of the consolidated instrument (International Labour Office, 2002b), while the second meeting was called on to advise the HLTWG on ‘[…] the substantive part of the Convention, which was to cover the actual consolidation of existing maritime labour standards.’ (International Labour Office, 2003c, p. 1)

After the HLTWG meetings had finished developing a ‘recommended draft’ of the new instrument, the 2004 PTMC gathered to discuss and further develop this text into a ‘draft convention’ that would be submitted to the 2006 IMLC (International Labour Office, 2005i, pp. 1-2). Different from the limited number of representatives during the HLTWG meetings, this Conference constituted the first time the tripartite groups were fully represented. In addition, the mission was no longer to assist the ILO Office, but to thrash out a tripartite agreement on the final instrument. Considering its goal and extended membership, the 2004 PTMC can thus be compared to the first discussion in the traditional double-discussion procedure. However, different from the first discussion in the traditional procedure, the work of the PTMC was divided into three technical committees to debate different parts the recommended draft. The first committee was tasked with considering the preamble, the articles, the explanatory note, and – importantly – Title five on compliance and enforcement mechanisms (International Labour Office, 2004l), the second dealt with the relatively uncontroversial titles one through three (International Labour Office, 2004m), and finally the third committee discussed title four on, among other things, social security protection (International Labour Office, 2004n).

While the 2004 PTMC managed to achieve a ‘very high level of consensus’ when considering the recommended draft developed during the HLTWG sessions, the resulting draft convention still counted a number of issues that remained unresolved, either due to time constraints or ongoing differences between the tripartite members (International Labour Office, 2005i, pp. 1-2). These issues were put between brackets (referred to as ‘bracketed
text’) and were left the be considered by a follow-up meeting. Indeed, the 2004 PTMC adopted a resolution calling for a Tripartite Intersessional Meeting (TIM) on the Follow-up of the PTMC, to be held before the 2006 IMLC (International Labour Office, 2004j, p. 21). Seeing as this was the penultimate opportunity for the tripartite members to negotiate the draft convention, Chairperson Mr. Bruce Carlton (Government representative, United States) opened the Meeting by stating that its mandate was clear: ‘[P]roduce, in a tripartite manner, a finished piece of work for the consideration of the Conference in February 2006.’ (International Labour Office, 2005h, p. 2)

After the lengthy and atypical standard-setting procedure on the 2006 MLC, the IMLC gathered in February 2006 to finalize the Convention during the Committee of the Whole (hereinafter referred to as the ‘2006 Committee’) (International Labour Office, 2006e). While this was formally the only committee discussion during this atypical procedure (opposed to two committee discussions in a typical double-discussion procedure), the preparatory work of the HLTWG meetings and the ‘first discussion’ held during the 2004 PTMC and 2005 TIM had ensured that all major obstacles to the adoption of the new instrument had been cleared. Finally, during the final record vote on the adoption of the 2006 MLC, we find a near-unanimous consensus between the tripartite members in favor of adopting this instrument (International Labour Office, 2006a). The final record vote on the Convention shows 314 votes in favor, none against, and only four abstentions from the government delegates of Lebanon and the Bolivarian Republic of Venezuela. Respectively, these states abstained because of their financial situation and because of the reference to 1982 UN Convention on the Law of the Sea in the Preamble of the final instrument (pp. 1-2), rather than because of misgivings with the provisions found in the 2006 MLC. Indeed, despite their abstention, both states explicitly voiced their support of the provisions found in the final Convention. Given the outcome of the final record vote, it is unsurprising to find that all EU Member States and their national social partners voted in favor of adoption. However, we should reiterate that Kissack (2010, pp. 34-38) has nuanced the importance of coherent voting as a parameter for external EU coherence. Indeed, according to this author, the real test for the Union’s external coherence lies in its common representation during the tripartite committee discussions.

The 2006 MLC came into force on 20 August 2013, one year after it had received the necessary number of ratifications laid down in the third paragraph of Article VIII, i.e. 30 ILO members representing 33 percent of the world’s gross shipping tonnage (International Labour Office, 2006b, p. 6). Since then, the number of ratifications has continued to grow and, as of June 2014, the Convention has been ratified by 61 ILO members, which together
represent 80 percent of the world’s gross shipping tonnage.\textsuperscript{25} Among these ratifying members, we also find twenty EU Member States, which were requested to ‘make efforts’ to ratify the 2006 MLC before the end of 2010 in a 2007 Council Decision (Council of the European Union, 2007).

3.1.2. \textit{The Goal of the Procedure}

The goal of the standard-setting procedure on maritime labor was to consolidate the existing body of standards into a single instrument and, as such, establish a ‘fourth pillar’ of the international regulatory regime for quality shipping, which would stand alongside the three pillars the International Maritime Organization (IMO) had already put in place (International Labour Office, 2005a, p. 5). While the ILO had built an extensive body of maritime labor standards throughout its long history, the whole of these conventions and recommendations was not greater than the sum of its parts and, consequently, was perceived to be no longer up to the task of providing an integrated and global response to the modern challenges faced by the shipping industry. Specifically, it was perceived ‘[…] that for all their merits, these existing standards remained unevenly ratified, difficult to promote as a coherent ensemble and highly resistant to timely revision due to lack of appropriate procedures.’ (Politakis, 2012, p. 3) As such, the end goal of the standard-setting procedure on maritime labor was to consolidate this existing body of standards in order to create a single instrument that could be better enforced and more easily amended to meet future needs.

The standard-setting procedure on maritime labor formally started during the 2001 JMC (International Labour Office, 2001a). During the Commission’s meeting, the ship owner and seafarer members came to a bipartite understanding ‘[resolving] that the emergence of the global labour market for seafarers has effectively transformed the shipping industry into the world’s first genuinely global industry, \textit{which requires a global response with a body of global standards.}’ (emphasis added) (International Labour Office, 2001a, p. 11) Indeed, the effects of post-Cold War globalization were considered to have overtaken the existing body of maritime labor standards and to have corroded the latter’s ability to effectively regulate the working conditions in this industry. The central concern of the ship owners and seafarers ‘[…] was that [the existing instruments] had so far failed to translate into real changes in seafarers’ working conditions on a satisfactory scale.’ (Bollé, 2006, p. 138)

Setting out to provide an integrated and global response to the challenges brought by post-Cold War globalization, the bipartite agreement between the social partners first and foremost focused on overcoming these challenges by consolidating the existing standards into a single instrument, rather than discarding and replacing their content altogether. The

ship owners and seafarer members of the 2001 JMC explicitly ‘[…]’ indicated that the aim was to consolidate the provisions of existing instruments and not to abandon their contents. [Agreeing] that the term “consolidation” best described what they sought to achieve.’ (International Labour Office, 2001a, p. 12) Indeed, throughout the standard-setting procedure on maritime labor the focus would be on consolidating the existing body of standards that were adopted by the ILO, while ‘[…] modifications of [these] standards [were] essentially […] restricted to updating matters of detail that were not considered to give rise to controversy or to resolving inconsistencies among the Conventions concerned.’ (emphasis added) (quoted from (Tortell, et al., 2009, p. 115)).

However, in addition to consolidating the existing body of maritime labor standards into a fourth pillar of the international regulatory regime for quality shipping, the challenges posed by post-Cold War globalization needed to be met by adopting a new approach on how to enforce and amend the provisions of the new Convention. This is clearly seen in the key objectives that were set out by the tripartite membership at the beginning of the standard-setting procedure (Doumbia-Henry, 2004):

- ‘[…] incorporate, in so far as possible, the substance of all relevant maritime labour standards with any necessary updating;
- be easily updateable to keep pace with developments in the maritime sector;
- be drafted in such a way as to secure the widest possible acceptability;
- place emphasis on the means of enforcing its provisions in order to establish a “level playing field”; and
- be structured in such a way as to facilitate the achievement of the above objectives.’ (p. 321)

These objectives spell out that, in addition to consolidating the existing maritime labor standards, a new approach to enforcing and amending the resulting instrument was envisioned from the get-go. Importantly, to deal with the impact of globalization on this sector, this consolidation exercise would be accompanied by a simplified amendment procedure (Article XV) and new compliance and enforcement mechanisms (Title 5). As a result, the novelty of the new Convention mainly rests with its novel approach to maritime labor standards, rather than the substance of the instrument.

3.1.3. The Tripartite Stage

Turning to the tripartite stage whereupon the standard-setting procedure on maritime labor took place, we will now outline the positions of the tripartite members relative toward one another during the discussions. Given the aypical nature of this procedure, an overview of how they positioned themselves vis-à-vis each other while debating the provisions of this
instrument comes not only from the opening and closing statements during the 2006 Committee and the plenary discussion during the 2006 IMLC, but also from their interventions during previous meetings like the 2001 JMC, the HLTWG sessions, the 2004 PTMC, and the 2005 TIM. As we will see when tracing the double-discussion procedure on the key issues, the relative positions of the governments and the social partners toward one another are subject to variation depending the specific issue under discussion. However, this overview of the tripartite stage provides the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

First off, a bipartite alliance between the Seafarers’ and Ship owners’ groups initiated the standard-setting procedure on maritime labor during the 2001 JMC. Together, they adopted the Geneva Accord and called for the consolidation of the existing maritime labor standards in a new Convention (International Labour Office, 2001a, pp. 28-29). In the words of Ms. Birgit Solling Olsen (Chairperson of the 2001 JMC, ILO Office), this alliance came together to provide the impetus for this procedure because ‘[…] both groups recognized and expressed the need for modernization of [the existing maritime] instruments to ensure their continued relevance to the needs of the industry and for all seafarers.’ (p. 2) However, while this alliance initiated the standard-setting procedure on maritime labor and subsequently played an important role in driving it forward, the governments were also actively involved in the procedure, resulting in a strong tripartite dynamic.

It is not a coincidence that this standard-setting procedure was initiated by an alliance between the social partners. Since its founding in 1919, the ILO has dealt with the maritime sector through a separate and a typical standard-setting procedure that exists specifically for this sector. Compared to the traditional double-discussion procedure, the maritime procedure starts with initiatives taken by the JMC, rather than the ILO Office, and ends with a meeting of the IMLC, rather than the ILC. Firstly, the JMC is a bipartite body wherein national ship owner and seafarer representatives regularly meet (about every five years) to discuss maritime issues and advise the GB on these issues, as it did when initiating this standard-setting procedure with the Geneva Accord. Secondly, the IMLC is held separately from the regular ILC (about every ten years) and is singularly focused on maritime labor standards. An important consequence of having a separate standard-setting ‘machinery’ for the maritime sector with such a long pedigree, is that the sectoral representation of ship owners (through the International Shipping Federation (ISF)) and seafarers (through the International Transport Workers’ Federation (ITF)) is well developed in Geneva (Interview No. 35 and 40).26 This sets it apart from most standard-setting procedures, wherein the

26 An important side effect of the shipping sector’s well developed representation was the exclusion of standards on work in fishing. Early on during the HLTWG meetings, the tripartite representatives agreed to exclude provisions on fishing vessels entirely from the Convention (International Labour Office, 2002b, pp. 25-
representation of the social partners is managed either exclusively or in large part by the International Organisation of Employers (IOE) and the International Trade Union Confederation (ITUC). Taking all of this together, the regular contacts between ISF and ITF representatives within a standard-setting machinery that exists specifically for their sector forms the background for the alliance between these social partners that initiated the standard-setting procedure on the 2006 MLC and subsequently played an important role in driving it forward.

Taking a closer look at how the social partners situated themselves vis-à-vis the goal and purpose of the standard-setting procedure on maritime labor, we find that they took similar positions in this regard. The Seafarers’ Group saw the consolidated maritime labor instrument as an opportunity to secure a ‘bill of rights for seafarers’ that would improve working conditions across the shipping sector (International Labour Office, 2001b, pp. 3-4). To make sure this bill of rights would be meaningful, seafarers stressed it should be widely ratified, strongly enforced, and include a novel amendment procedure to cope with the changes brought to the sector by post-Cold War globalization. However, while this group accepted that compromises would have to be made to achieve this, the Workers’ Group went into the 2006 Committee of the Whole with the clear reminder that ‘the purpose of the new Convention was to improve the current situation, not to make legitimate the status quo.’ (International Labour Office, 2006e, p. 5)

The Ship owners’ Group agreed on the necessity of creating an instrument that would be widely ratified and strongly enforced by the governments (International Labour Office, 2001b, p. 3). The ability of the latter to ratify and enforce the instrument would become their focal point and continue to guide the Ship owners’ Group throughout the standard-setting procedure on maritime labor, ‘because only with such a widely ratified instrument will the shipowners benefit by having a level playing field across the world.’ (International Labour Office, 2004k, p. 4). At the start of the 2006 Committee of the Whole, the Employer Vice-Chairperson reiterated that ‘[his group continues] to be guided by the principle that the highest achievable common standards should be sought, consistent with ensuring that the Convention received universal acceptance and was widely ratified and effectively enforced worldwide. The group’s prime test during the present Conference would therefore be to determine whether provisions would encourage or discourage ratification.’ (emphasis added) (International Labour Office, 2006e, p. 4)

27 While other factors were also in play (e.g. the unique nature of the fishing sector that set it apart from shipping), a spokesperson for the ISF related this decision to an issue of representation, commenting that ‘[his association did not represent employers in the fishing industry.’ (p. 26) As a consequence, the opportunity for a separate standard-setting procedure on work in the fishing sector was created and, not long afterwards, seized upon by the ILO Office.
As a result, the tripartite stage for the standard-setting procedure on maritime labor was united from start to finish, at least in a general sense. Looking at the self-proclaimed objectives of the social partners, it is clear that not only were they both convinced of the need for a new Convention, but they had also made a similar analysis of how to move forward with the consolidation of the existing body of maritime labor instruments, i.e. ensure that the new instrument would be ratified, enforced, and easily amended. While agreements still had to be found on how to precisely balance specific provisions (cf. infra), this fundamental agreement allowed the alliance between the social partners to play an important role in driving the standard-setting procedure forward. Indeed, during the Closing Remarks at the end of the 2006 Committee, this ‘strong alliance’ and its role within the procedure was acknowledged by the governments (International Labour Office, 2006e, p. 22).

However, while this alliance initiated and drove the standard-setting procedure on maritime labor forward, the government representatives were also actively involved, which resulted in a strong tripartite dynamic that underscored the procedure from start to finish. In this regard, speaking before the 2001 JMC, ILO Director-General Mr. Juan Somavia highlighted that ‘truly global’ nature of the shipping sector that ties together port and flag states from all over the world (International Labour Office, 2001a, p. 3). As the Worker Vice-Chairperson commented at the start of the 2006 Committee of the Whole, ‘[…] the positive statements of Government delegates were very encouraging. It was after all the Governments that held the real power in their hands, since they were the ones that would ratify the Convention and deliver the rights provided therein.’ (emphasis added) (International Labour Office, 2006e, p. 8) Indeed, given the strong emphasis on overcoming the patchy ratifications and enforcement of the existing body of maritime labor standards (cf. supra), the government representatives needed to be actively involved during the procedure and on board with the final outcome. Ms. Cleopatra Doumbia-Henry (Representative of the Secretary-General of the PTMC, ILO Office) outlined this dynamic at the start of the 2004 PTMC:

‘Members will be cooperating in the preparation of an international instrument which each Government representative here must be able to confidently recommend to his or her country for implementation in its entirety and for early ratification. It must also be an international instrument which will convince the Seafarer representatives that their members will be covered by decent conditions in all areas of their work, not just on paper but in fact. At the same time, these must be conditions of work which the Shipowner representatives are convinced that their members can reasonably deliver and can do so in the knowledge that those conditions will be applied equally; again, not on paper, but throughout what has been described as “the world’s first genuinely global industry”.’ (emphasis added) (International Labour Office, 2004i, p. 4)
For Mr. Dierk Lindemann’s ‘consensus concept’ (cf. supra) to work, the alliance between the social partners was keenly aware that the governments needed to be brought on board following their bipartite Geneva Accord. Already during the first meeting of the HLTWG, the Chairperson of the Ship owners noted that ‘[their group together with the] Seafarers had reached conclusions on what needed to be done, but it was now important to gain the support of the Government members of the Working Group.’ (International Labour Office, 2001b, p. 3) Later on in the procedure, Mr. Brian Orrell (Seafarer Vice-Chairperson of PTMC Committee No. 1, the United Kingdom) reiterated that ‘[…] we must try to get as many Governments involved as we possibly can: we must try to get Governments to take ownership of this “bill of rights” for seafarers.’ (International Labour Office, 2004k, p. 5) Later on during the procedure, the social partners would continue to leave the initiative to the government representatives during the discussion on some of the key issues that stood out in this regard. Notably, during the discussion on the compliance and enforcement mechanisms, the social partners would repeatedly ask the governments for their positions or even explicitly state that they would amend their own positions according to the governmental preferences.

Against this background, the EU and its Member States were actively involved in the standard-setting procedure on maritime labor, which is commonly seen as a signposts for the intensification of the relation between the Union and the ILO since the turn of the century. In line with the Commission’s traditional role of safeguarding the *acquis communautaire* in ILO standard-setting procedures, a mandate from the Council required Member States to cooperate with the Commission to ensure the complementarity between the final provisions of the 2006 MLC and the *acquis* (European Commission, 2005). This was an especially important task within this standard-setting procedure, as the Convention ‘[…] touch[ed] upon an impressive number of EC Directives and Regulations, concerned with areas of direct competence as well as competence shared with member states.’ (Tortell, et al., 2009, p. 119) Moreover, the Council’s decision also signaled a more active and progressive involvement of the EU and its Member States as a distinct group of governments. Specifically, during this procedure, the EU actively attempted to upload its high norms and standards into the instrument in order to ‘[…] gain the full effect of what is hoped to be the positive result of the MLC in creating a global level playing field, by ensuring that all flag states offer the same social and labour protection to seafarers employed on ships registered in their countries.’ (p. 125) As an important collection of flag and port states, the EU Member States had both a self-interest in achieving this and the means to do so. Authors like Riddervold have been puzzled by the Union’s strong advocacy of strict compliance and enforcement mechanisms, noting that these are set to entail high costs for its own Member States and therefore seemingly fly in the face of its economic *raison d’être* (Riddervold, 2010). However, after analyzing the EU’s interventions, she concluded that the economic gains
from a level playing field go some way to explaining this puzzle and, importantly, are complemented by a genuine advocacy of rights for seafarers, the latter at times even trumping material interests.

However, it is important to note that the EU Member States were internally divided at the start of the standard-setting procedure on maritime labor. While common EU positions were successfully coordinated by the time the Convention was finalized during the 2006 Committee, the Member States started the procedure divided between those with strong national legislation (e.g. the Nordic states, Germany, and the United Kingdom) and those with limited national legislation (e.g. Cyprus, Greece, and Malta) on maritime labor and, moreover, with several of them principally opposed to coordinating a common EU position (e.g. Denmark, Sweden, and the United Kingdom) (Riddervold & Sjursen, 2012, pp. 43-44). Nevertheless, the Commission managed to overcome the internal divisions between the Member States during a number of coordination meetings that started in 2003 with 25 Member States (Riddervold, 2010, p. 583).

Importantly, although beyond the scope of this case study, the EU has played an active role in the follow-up after the adoption of the 2006 MLC (Tortell, et al., 2009, pp. 122-125). In terms of ratification, the Council adopted a decision that authorized the Member States to ‘make efforts’ to ratify the 2006 MLC before the end of 2010 (Council of the European Union, 2007). In addition, the Commission has taken the lead in an extensive reassessment of the Union’s regulatory social framework for seafarers (European Commission, 2007). Since the standard-setting procedure on maritime labor, the Union has continued to play a similar role in the follow-up of all subsequently adopted ILO standards, which has been referred to as ‘closing the circle’ in terms of the Brussels-based institutions being involved in preparing, adopting, and implementing new ILO standards (Interview No. 28 and 40).

In summary, the standard-setting procedure on maritime labor took place on a united tripartite stage, whereupon a strong alliance between the social partners initiated the procedure with their bipartite Geneva Accord and subsequently drove the process forward. The unity between the social partners derived from their shared conviction that a new instrument was necessary and their shared analysis on how to move forward in this regard (i.e. consolidate the existing instruments, with attention to the enforcement and amendment of the resulting Convention). As such, the alliance between the social partners played an important role during the procedure by creating an united tripartite stage, although agreements on specific issues still needed to be found. Despite this bipartite alliance, the governments were also actively involved in the procedure and thereby created a strong tripartite dynamic. In this regard, the social-partners repeatedly stressed the need for the
governments to take an active role in the discussion, given their crucial role in terms of the eventual enforcement of the instrument.

3.1.4. The Key Issues

As per the 2001 Geneva Accord between Ship owners and Seafarers, the focus of the standard-setting procedure on maritime labor standards rested squarely on consolidating the existing body of maritime instruments, instead of creating new standards or making modifications beyond some necessary updates (International Labour Office, 2001a, pp. 28-29). While the standard-setting procedure on work in fishing would later adopt a similar focus, at the time this atypical approach set the procedure on maritime labor apart from its predecessors. The Secretary-general of the 2004 PTCM, Mr. Kari Tapiola (ILO Office), highlighted this by stating that the ILO's ultimate goal of global social justice typically includes the creation and adoption of new standards, while in this standard-setting procedure social justice would be pursued by revisiting existing standards and finding a new approach to better translate them into practice (International Labour Office, 2004i, pp. 3-4).

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27 Despite similarly revisiting existing standards, the standard-setting procedures on maritime labor and work in fishing evolved in different directions and saw the discussion revolve around different sets of key issues. Notably, the latter procedure focused much more on modifying and updating the content of the outdated standards on the fishing sector, while the consolidation of these standards followed a traditional approach and resulted in a convention supplemented by a recommendation (cf. Chapter four).
<table>
<thead>
<tr>
<th></th>
<th>Recommended draft&lt;sup&gt;28&lt;/sup&gt;</th>
<th>Draft Convention&lt;sup&gt;29&lt;/sup&gt;</th>
<th>Final instrument&lt;sup&gt;30&lt;/sup&gt;</th>
<th>Issue</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Art. II</td>
<td>Art. II</td>
<td>Art. II</td>
<td>Definitions and scope of application</td>
</tr>
<tr>
<td>2</td>
<td>Art. VI</td>
<td>Art. VI</td>
<td>Art. VI</td>
<td>Structure of the instrument</td>
</tr>
<tr>
<td>3</td>
<td>Art. XV</td>
<td>Art. XV</td>
<td>Art. XV</td>
<td>Simplified amendment procedure</td>
</tr>
<tr>
<td>4</td>
<td>Regulation 4.5</td>
<td>Regulation 4.5</td>
<td>Regulation 4.5</td>
<td>Social security</td>
</tr>
<tr>
<td>5</td>
<td>Art. V, Title 5</td>
<td>Art. V, Title 5</td>
<td>Art. V, Title 5</td>
<td>Compliance and enforcement</td>
</tr>
</tbody>
</table>

Table 3.2 – The key issues during the standard-setting procedure on the Maritime Labour Convention, 2006

<sup>28</sup> Numbering based on (International Labour Office, 2004c).
<sup>29</sup> Numbering based on (International Labour Office, 2005e).
<sup>30</sup> Numbering based on (International Labour Office, 2006b).
As a consequence of its atypical approach to ILO standard-setting, the key issues providing a representative cross-section of the discussion during this procedure situated themselves mostly on the formal level, rather than on the strictly substantive level. First off, recalling the focus on consolidating the existing maritime labor standards, it is not surprising to find that (1) the scope of application (including definitions) and (2) the structure of the new instrument were among the issues that took center stage during the discussion. In addition, issues related to adapting the new standards to the effects of the post-Cold War globalization on the shipping sector also figured prominently during the discussion, i.e. (3) the simplified amendment procedure and (5) a new set of compliance and enforcement mechanisms. While the broad outlines of the latter two issues were intentionally discussed early on during the procedure and largely agreed upon during the HLTWG meetings and their related Tripartite Subgroups, the discussion on their final form would nevertheless continue to dominate the discussions for the remainder of the procedure.

However, while the focus of this procedure was on the consolidation of existing maritime labor instruments and the ‘[…] modifications of [these] standards [were] essentially […] restricted to updating matters of detail that were not considered to give rise to controversy or to resolving inconsistencies among the Conventions concerned’ (quoted from Tortell, et al., 2009, p. 115)), an additional key issue is found in (4) the applicability of social security protection. While the first three substantive titles of the Convention were relatively uncontroversial, this part of title four proved controversial during the discussion as the ILO Office and the tripartite members set out to modify this issue more thoroughly than the others.

Taken together, these five issues provide a representative cross-section of the standard-setting procedure on maritime labor. Based on their central importance for the adoption of the consolidated Convention, the discussions on these issues provide us with an insight into the broader dynamic between the tripartite members and, moreover, allows us to explore the causal potential of external EU coherence in relation to effectiveness within this standard-setting procedure.

3.2. A Bird’s-Eye View of EU Representation

Before turning to a qualitative process-tracing of the causal relation between EU coherence and effectiveness in the standard-setting procedure on maritime labor, we first take a bird’s-eye view of the Union’s representation. Based on a quantitative overview of the interventions by EU Member States as they are reported in the record of proceedings of the 2004 PTMC, 2005 TIM, and 2006 Committee, this bird’s-eye view serves to provide us with a first impression of how the Union and its Member States were represented during this procedure and, moreover, eventually allows us to compare its evolution across the case studies included in this dissertation. Importantly, while this quantitative overview can give some preliminary
indications, it does not allow us to detect whether the independent interventions of EU Member States were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other Member States.

3.2.1. The 2004 Preparatory Technical Maritime Conference

During the three technical committees of the 2004 PTMC, EU representation was virtually non-existent. The Dutch EU Presidency formally only spoke once on behalf of the EU Member States (International Labour Office, 2004l, p. 45) and a representative of the Commission making one other intervention (International Labour Office, 2004n, p. 47). In Table 3.3 (cf. infra), the first intervention is included in the column titled ‘European Union’. When representing the Union, the Netherlands formally spoke on behalf of the ‘government members of the EU present in the Committee’. This phrasing was used to clarify that these interventions were made on behalf of the EU Member States present during the technical committees of the 2004 PTMC, but not those that were absent (i.e. Czech Republic, Hungary, Poland, and Slovakia) or the seafarer and ship owner representatives of these states.\textsuperscript{31} In addition to this meager EU representation, it should be noted that the Netherlands at one point during the third Committee ‘[…] confirmed that the proposed amendment had been put forward by the named member States, and was not a coordinated proposal of the Member States of the European Union.’ (p. 38) This statement further highlights the virtually non-existent EU representation during the 2004 PTMC and indicates ongoing and at times difficult coordination process between the Union’s Member States (Riddervold & Sjursen, 2012, p. 44). Moreover, the limited EU representation stands in stark contrast with the 349 independent interventions that were made by the Union’s Member States during the three technical committees of the 2004 PTMC. These interventions are included in the column titled ‘Independent’ in Table 3.3 (cf. infra), which includes all the interventions that are reported as being made by the EU Member States made on their own behalf.

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Belgium</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Cyprus</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Czech Republic (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
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</tbody>
</table>

\textsuperscript{31} The ‘government members of the EU present during the [first] Committee’ were listed to include Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Portugal, Slovenia, Spain, Sweden, and the United Kingdom (International Labour Office, 2004l, p. 45). While it is uncertain whether this list was the same in the second and third committee, where the Union was not formally represented, our quantitative overview reveals that the Czech Republic, Hungary, Poland, and Slovakia did not intervene in these other committees.
<table>
<thead>
<tr>
<th>Country</th>
<th>#1</th>
<th>#2</th>
<th>#3</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
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<td>33</td>
<td>0</td>
<td>128</td>
</tr>
<tr>
<td>Estonia</td>
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<td>0</td>
<td>10</td>
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<tr>
<td>France</td>
<td>37</td>
<td>0</td>
<td>0</td>
<td>37</td>
</tr>
<tr>
<td>Germany</td>
<td>30</td>
<td>0</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>Greece</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Hungary (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Italy</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Latvia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Malta</td>
<td>18</td>
<td>0</td>
<td>0</td>
<td>18</td>
</tr>
<tr>
<td>Netherlands (Rotating President)</td>
<td>31</td>
<td>0</td>
<td>1</td>
<td>32</td>
</tr>
<tr>
<td>Poland (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Portugal</td>
<td>0</td>
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<td>0</td>
<td>0</td>
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<tr>
<td>Slovakia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Slovenia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>9</td>
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<td>Sweden</td>
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<td>9</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>81</td>
<td>0</td>
<td>0</td>
<td>81</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>349</td>
<td>33</td>
<td>1</td>
<td>383</td>
</tr>
</tbody>
</table>

Table 3.3 – Interventions by EU Member States during the three committees of the 2004 Preparatory Technical Maritime Conference

Interventions made by EU Member States in ‘Other configurations’ (cf. Table 3.3 supra), i.e. EU Member States speaking on behalf of other EU and/or non-EU Member States in configurations other than the Union, were also virtually non-existent. However, a pronounced exception comes from Denmark speaking 33 times on behalf of other configurations. The bulk of these interventions (30) came from its function as Chairperson of the Government Group, representing the latter’s position or informing the first technical committee of ongoing deliberations within this group. Additionally, Denmark intervened three times for an amendment that was introduced by a coalition between Finland, the

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32 Denmark functioned as the Chairperson of the Government Group in the first technical committee of the 2004 PTMC, where this group was also by far most active. In the second and third technical committees, the Government Group was seldom represented and had non-EU Member States as its spokesperson.
3.2.2. The 2005 Tripartite Intersessional Meeting

During the 2005 TIM, the EU was represented by the Netherlands and Germany and, thus, not by Luxembourg as the then-holder of the Rotating EU Presidency (International Labour Office, 2005b). In Table 3.4 (cf. infra), these interventions are included in the column titled ‘European Union’. When representing the Union, the Netherlands and Germany formally spoke on behalf of the ‘governments of the EU Member States present at the Meeting’ (five times by the Netherlands) or, in addition, also on behalf of the ‘acceding States present at the Meeting’ and Norway (six times by the Netherlands, once by Germany). In addition, two interventions were made by the Netherlands on behalf of the ‘majority of EU Member States’ and non-EU Member State Norway. These phrasings were used to clarify that these interventions were made on behalf of the EU Member States present during the 2005 TIM, but not those that were absent or the seafarer and ship owner representatives of these states.33

In addition, the EU Member States also intervened independently during the 2005 TIM. These interventions are included in the column titled ‘Independent’ in Table 3.4 (cf. infra), which includes all the interventions that are reported as being made by the EU Member States made on their own behalf. Notably, the United Kingdom (21), the Netherlands (13), Denmark (eleven), Cyprus (nine), Greece (nine), Sweden (six), Germany (five), Malta (five), France (three), Estonia (once), Italy (once), and Portugal (once) intervened on their own behalf. In contrast to the many independent interventions, the column titled ‘Other configurations’, i.e. EU Member States speaking on behalf of other EU and/or non-EU Member States in configurations other than the Union, stays empty during the 2005 TIM (cf. Table 3.4 infra). However, it should be noted that the Government Group, chaired by China and including the EU Member States, was actively involved during the proceedings of this Meeting.

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Belgium</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cyprus</td>
<td>9</td>
<td>0</td>
<td>0</td>
<td>9</td>
</tr>
<tr>
<td>Czech Republic</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Denmark</td>
<td>11</td>
<td>0</td>
<td>0</td>
<td>11</td>
</tr>
<tr>
<td>Estonia</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

33 A list of participants of the 2005 TIM is not available. Nevertheless, one can infer that the landlocked states who were not present during the 2006 Committee, were also not present during this Meeting.
France  3  0  0  3  
Germany  5  0  1  6  
Greece  9  0  0  9  
Hungary  0  0  0  0  
Ireland  0  0  0  0  
Italy  1  0  0  1  
Latvia  0  0  0  0  
Lithuania  0  0  0  0  
Luxembourg  0  0  0  0  
( Rotating  President)  
Malta  5  0  0  5  
Netherlands  13  0  13  26  
Poland  0  0  0  0  
Portugal  1  0  0  1  
Slovakia  0  0  0  0  
Slovenia  0  0  0  0  
Spain  0  0  0  0  
Sweden  6  0  0  6  
United Kingdom  21  0  0  21  
Total  85  0  14  99  

Table 3.4 – Interventions by EU Member States during the 2005 Tripartite Intersessional Meeting

3.2.3. The 2006 Committee on the Whole

During the 2006 Committee of the Whole, the EU was represented by the United Kingdom and, thus, not by Austria as the then-holder of the Rotating EU Presidency or by any of the Union’s other Member States (International Labour Office, 2006e). As a landlocked state, Austria chose to delegate its responsibilities in the standard-setting procedure on maritime labor to another EU Member State (Interview No. 28). In Table 3.5 (cf. infra), these interventions are included in the column titled ‘European Union’. When representing the Union, the United Kingdom either spoke on behalf of the ‘Committee Member States of the European Union’ or on behalf of the ‘Austrian Presidency of the European Union on behalf of the Government members of the Committee Member States of the European Union’. These phrasings were used to clarify that these interventions were made on behalf of the EU Member States present during the 2006 Committee, but not those that were absent (i.e. the Czech Republic, Hungary, and Slovakia) or the seafarer and ship owner representatives of these states.34 In addition, of the sixteen times the United Kingdom formally spoke on behalf

34 The ‘Committee Member States of the European Union’ were listed to include Austria, Belgium, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovenia, Spain, Sweden, and the United Kingdom (International Labour Office, 2006e, p. 44). Of the non-Committee Member States of the EU, the Czech Republic and Slovakia are indeed
of the EU Member States present during the 2006 Committee, nine times it also spoke on behalf of non-EU Member States Iceland and Norway and on behalf of soon-to-be EU Member States Bulgaria and Romania. *Pour la petite histoire*, Liberia was included twice in these interventions, albeit only covering one specific amendment.

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria (Rotating President)</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Belgium</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Cyprus</td>
<td>20</td>
<td>0</td>
<td>0</td>
<td>20</td>
</tr>
<tr>
<td>Czech Republic (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Denmark</td>
<td>25</td>
<td>0</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>Estonia</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>2</td>
</tr>
<tr>
<td>Finland</td>
<td>1</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>France</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>16</td>
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<tr>
<td>Germany</td>
<td>16</td>
<td>1</td>
<td>0</td>
<td>17</td>
</tr>
<tr>
<td>Greece</td>
<td>25</td>
<td>3 (1 on behalf of the Core EU Group)</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>Hungary (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Ireland</td>
<td>3</td>
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<td>3</td>
</tr>
<tr>
<td>Italy</td>
<td>2</td>
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<tr>
<td>Latvia</td>
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<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Lithuania</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Luxembourg</td>
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<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Malta</td>
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<td>0</td>
<td>6</td>
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<tr>
<td>Netherlands</td>
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<td>0</td>
<td>5</td>
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<tr>
<td>Poland</td>
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<tr>
<td>Portugal</td>
<td>5</td>
<td>0</td>
<td>0</td>
<td>5</td>
</tr>
<tr>
<td>Slovakia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Slovenia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>11</td>
<td>1</td>
<td>0</td>
<td>12</td>
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<tr>
<td>Sweden</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>41</td>
<td>11 (8 on behalf of the Core EU Group)</td>
<td>16</td>
<td>68</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>187</td>
<td>17</td>
<td>16</td>
<td>220</td>
</tr>
</tbody>
</table>

completely absent from the record of committee proceedings. However, Hungary is sometimes included as part of the Core EU Group.
In addition to formal EU representation, a small, but substantial number of interventions (seventeen) by EU Member States were made in ‘Other configurations’ (cf. Table 3.5 supra), which refers to EU Member States speaking on behalf of other EU and/or non-EU Member States in configurations other than the Union. Looking at this second type of interventions, two conclusions can be drawn. Firstly, we find that a small number of EU Member States stood out as the representatives for a broader group of states. Notably, the United Kingdom (eleven), Greece (three), Germany (one), the Netherlands (one), and Spain (one) regularly intervened on behalf of other EU and/or non-EU Member States.

Secondly, while these other configurations mostly signify small groups of states speaking on behalf of each other for a limited number of times, the record of proceedings also reveals the existence of a larger and relatively stable coalition of (mostly) EU Member States which recurred throughout the 2006 committee discussion. We have dubbed this the ‘Core EU Group’, because despite its overlap with EU representation, it is not reported as such. Table 3.6 (cf. infra) focuses on this Core EU Group and breaks it down into its representatives and its members. In addition to acting as the formal representative of the EU Member States, the United Kingdom also introduced amendments and spoke on behalf of the Core EU Group. These interventions were not reported in the record of proceedings as having been made on behalf of the Committee Member States of the EU, but the sponsoring Member States were nevertheless nearly identical. Compared to the latter, the Core EU Group similarly included non-EU Member States Iceland and Norway and soon-to-be EU Member States Bulgaria and Romania. The Czech Republic and Slovakia were again excluded and – an interesting difference – therein joined by Latvia. In total, the Core EU Group introduced nine amendments. While this coalition was stable throughout its nine interventions (eight by the United Kingdom, one by Greece), Hungary was interestingly only included six times. Moreover, two additional amendments sponsored by this Core EU Group were not explicitly introduced by any country, but simply reported as having been adopted. The coalition sponsoring these two additional amendments was identical, although Hungary was again not included one time.

During the 2006 Committee of the Whole, these small groups of states included Germany speaking on behalf of Australia (once); Greece speaking on behalf of Cyprus (once), and on behalf of Denmark and the United Kingdom (once); the Netherlands speaking on behalf of Luxembourg and the United Kingdom (once); Spain speaking on behalf of Argentina, Chile, Cuba, Ecuador, Mexico, and the Bolivarian Republic of Venezuela (once); and the United Kingdom speaking on behalf of the Netherlands (three, with an additional intervention of these two EU Member States where the spokesperson was not reported) (International Labour Office, 2006e). It should also be noted that non-EU Member State Norway spoke on behalf of Sweden (once), and on behalf of Germany (twice); and non-EU Member State the Russian Federation spoke on behalf of Estonia and Latvia (once).
Curiously, while this relatively stable and recurring Core EU Group shows a strong, albeit not identical overlap with EU representation in terms of membership (i.e. mostly EU Member States) and representatives (i.e. mostly the United Kingdom), the record of proceedings does not report this group as an instance of EU representation. How can we explain this? When asked about the Core EU Group, a Commission official points to the then-reporting by the ILO Office to explain this distinction, dismissing the suggestion that it referred to two separate modes of EU representation (Interview No. 41). At the time, general statements could be reported on behalf of self-proclaimed groups even when not all of its members were present, while amendments were reported strictly on the basis of their signatories. Given that not all EU Member States were present during the 2006 Committee, the introduction of amendments could thus not be reported on behalf of the Union. This explains the different reporting between EU representation and the interventions on behalf of what we have dubbed the Core EU Group. For all intents and purposes, this group can thus be seen as an instance of EU representation, even though it is not reported as such.

<table>
<thead>
<tr>
<th></th>
<th>Representative</th>
<th>Member</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria (Rotating President)</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Belgium</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Bulgaria (non-EU Member State)</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Cyprus</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Denmark</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Estonia</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>France</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Germany</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Greece</td>
<td>1</td>
<td>10</td>
<td>11</td>
</tr>
<tr>
<td>Iceland (non-EU Member State)</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Ireland</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Italy</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Luxembourg</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Malta</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Norway (non-EU Member State)</td>
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<td>11</td>
</tr>
<tr>
<td>Poland</td>
<td>0</td>
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</tr>
<tr>
<td>Portugal</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
<tr>
<td>Romania (non-EU Member State)</td>
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</tr>
<tr>
<td>Slovenia</td>
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<td>11</td>
</tr>
<tr>
<td>Spain</td>
<td>0</td>
<td>11</td>
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</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>11</td>
<td>11</td>
</tr>
</tbody>
</table>
### Table 3.6 – The changing, but relatively stable and recurrent Core EU Group during the 2006 Committee on the Whole (descending on ‘Total’)

<table>
<thead>
<tr>
<th></th>
<th>8</th>
<th>3</th>
<th>11</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>United Kingdom</strong></td>
<td>8</td>
<td>3</td>
<td>11</td>
</tr>
<tr>
<td><strong>Hungary</strong> (not present)</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td><strong>Czech Republic</strong> (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td><strong>Latvia</strong> (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td><strong>Slovakia</strong> (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
</tbody>
</table>

In addition, the EU Member States also intervened independently during the 2006 Committee. These interventions are included in the column titled ‘Independent’ in Table 3.5 (cf. supra), which includes all the interventions the EU Member States made on their own behalf. Notably, the United Kingdom (41), Denmark (25), Greece (25), Cyprus (20), France (16), Germany (16), Spain (eleven), Malta (six), Portugal (five), the Netherlands (four), Ireland (three), Sweden (three), Austria (two), Belgium (two), Estonia (two), Italy (two), Finland (one), Lithuania (one), Luxembourg (one), and Poland (one) intervened on their own behalf. While these numbers are substantial for a number of EU Member States, it should be noted that for nearly all of them their presence in EU coalitions (i.e. through EU representation or as part of the Core EU Group) outweighs their number of independent interventions. Only with the United Kingdom is this not the case. However, as the Union’s primary representative, the record of proceedings often reported this Member State as intervening individually, while it was actually clarifying the amendments introduced on behalf of the EU or the Core EU Group. Keeping this in mind, a comparison between EU representation and independent interventions by the EU Member States strengthens the finding that the focus was on the former, albeit complemented by a significant number of independent interventions.

Additionally, the Chairperson of the 2006 Committee opened a general discussion on five amendments sponsored by the Core EU Group. These discussions were meant to test the water on specific provisions without formally taking up an amendment, which would happen at a later stage depending on the outcome of the general discussion (International Labour Office, 2006e, p. 14). Compared to the Committee Member States of the EU, the Core EU Group sponsoring these amendments additionally included non-EU Member States Iceland and Norway and the soon-to-be EU Member States Bulgaria and Romania. The Czech Republic, Hungary, and Slovakia were still excluded and were therein joined by Latvia. Given their unique nature, these amendments are not included in Table 3.5 or 3.6 (cf. supra), although they further strengthen the focus on EU representation during the 2006

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36 The amendments that were sponsored by the Core EU Group and which were introduced for general discussion, were listed to have been sponsored by Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden, and the United Kingdom.
Committee. Additionally, the Chairperson also opened general discussions on amendments sponsored by smaller coalitions in which EU Member States took part as co-sponsors. Again, these are not included in the tables above.

In conclusion, this bird’s-eye view has given us a first impression of the EU’s representation during the standard-setting procedure on maritime labor. The Union and its Member States focused their representation on ‘EU coalitions’, i.e. through formal EU representation and the Core EU Group. While these two are reported differently in the records of proceedings, both can be counted as EU representation. As such, when we combine the 16 interventions formally made on behalf of the Committee Member States of the EU with the eleven times most EU Member States partook in the Core EU Group, most of them were involved in 27 instances of EU representation. However, it should be noted that the EU Member States also made a substantial number of independent interventions by speaking on their own behalf. In addition, this overview showed that governments were often represented in large governmental coalitions, notably the Government Group during the first technical committee of the 2004 PTMC and the 2005 TIM.

Finally, it should be reiterated that this bird’s-eye view only gives us a preliminary impression of EU representation. While this quantitative overview can give some preliminary indications, it does not allow us to detect whether the independent interventions were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other EU Member States. In order to detect the nature of these interventions, we now turn to a qualitative analysis of the EU’s representation on the key issues in this standard-setting procedure.

### 3.3. The Causal Potential of EU Coherence in Relation to its Effectiveness

#### 3.3.1. The Definitions and Scope of Application

The provisions on the definitions and scope of application of the 2006 MLC are included in Article II of the final instrument and are further refined in specific provisions of the third and fifth title. This Convention has been described as the ‘mammoth result of a mammoth undertaking’, which primarily refers to the large number of existing maritime labor standards that were consolidated into this single instrument (Tortell, et al., 2009, p. 113). However, equally gargantuan as the body of existing instruments it consolidates, is the scope of

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37 General discussions on amendments co-sponsored by EU Member States were opened on amendments by Finland and the Russian Federation (two); the Netherlands and the Russian Federation (one); Liberia, the Netherlands, and the United Kingdom (two); the Netherlands and the United Kingdom (one); Norway, Portugal, and Sweden (one); and Argentina, Costa Rica, Cuba, Mexico, Panama, Spain, the Bolivarian Republic of Venezuela (one).
application of the final instrument. While built-in flexibility clauses allow the member states some discretion in terms of implementation, broad coverage in terms of rights is offered to a large number of seafarers working on the most diverse vessels imaginable. This coverage rests on the definitions of ‘ship’, ‘seafarer’, and ‘ship owner’ that are intentionally broad and inclusive in Article II of the final instrument (Doumbia-Henry, Devlin, & McConnell, 2006). As such, the discussion on these definitions and their resulting impact on the scope of the final instrument was central to the standard-setting procedure and figured prominently on the agenda from start to finish. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The definitions and scope of application of the Convention were already part of the discussion during the HLTWG meetings and their related Tripartite Subgroups, wherein this issue was first discussed during the 2002 Tripartite Subgroup (International Labour Office, 2002b, pp. 24-27). The tripartite dynamic that would underline the discussion on this issue during the 2004 PTMC, the 2005 TIM, and the 2006 Committee was already apparent during these early meetings. For example, once the issue of domestic and international voyages was brought up, the social partners took opposite positions that defined the outer ends of the tripartite stage and left the governments navigating their own positions in between (International Labour Office, 2002a, pp. 20-21). Specifically, the Ship owners’ Group was in favor of limiting the scope of application by excluding domestic voyages in order to make it ratifiable to as many governments as possible, while the Seafarers’ Group strongly opposed such an exemption in order to retain the rights for as many seafarers as possible. In this regard, the Seafarers’ group ramped up the rhetoric by stating that these exemptions would create an ‘institutionalized maritime apartheid’ (p. 20). This tripartite dynamic would continue to underline the discussion on the definitions and scope of application throughout the standard-setting procedure and would increasingly place the governments in the role of bridge builders between the social partners (cf. infra).

Against this background, the EU Member States played an important role in establishing a broad scope of application of the instrument. During the 2003 Tripartite Subgroup, a small drafting committee on the definition of ‘seafarer’ was established after it became clear that this was a key issue in relation to the scope of application and the social partners disagreed considerably (International Labour Office, 2003c, pp. 10-12). This committee consisted of the social partners and the (volunteering) governments of Cyprus, the Netherlands, and the United Kingdom. The latter reported on the recommendations of the committee, which are found in subparagraph one (f) and paragraph two of the recommended draft (cf. Box 3.1

38 As mentioned before during the introduction to this case study, the tripartite representatives to the HLTWG meetings quickly agreed to exclude provisions on fishing vessels entirely from the Convention (International Labour Office, 2002b, pp. 25-27).
While allowing for flexibility in specific parts of the Convention, this definition established that the scope of the instrument would broadly include all seafarers, which is in line with the goal of the EU Member States. Indeed, it has been noted that the EU Member States ‘[…] insisted on the broad coverage in order to avoid unjustified exclusions that could negatively affect the global level playing field.’ (Tortell, et al., 2009, p. 127) Despite continued discussion on this broad approach and possible exemptions during the remainder of the standard-setting procedure, these paragraphs would ultimately be included in the final provisions of the 2006 MLC.

**Article II – Definitions and scope of application**

1. For the purpose of this Convention and unless provided otherwise in particular provisions:
   (e) **requirements of this Convention**
   (f) the term *seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies; (working definition, modified C.185, modified C.180 + C.164; C.166; C.178 + C.179 + C.73A2/1)

2. Except as expressly provided otherwise, this Convention applies to all seafarers.

4. This Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities (C.7, C.8, C.15, C.16, C.22, C.23, C.58) other than:
   (a) [ships of less than ( ) gross tons]
   (d) oil rigs and drilling platforms [when not engaged in navigation]. (modified C.147A1/4(c))

6. [A Member may, [in] [after] consultation with [representatives of] the shipowners’ and seafarers’ organizations concerned [in its territory], exclude from the scope of application of this Convention ships that do not undertake international voyages, provided that the fundamental rights of seafarers referred to in Article III [and seafarers’ employment and social rights referred to in Article IV, paragraphs 1 to 4] are protected by national laws and regulations. (HLTWG, 3 W. proposal)]

Box 3.1 – The recommended draft of the HLTWG on the definitions and the scope of application (abridged, underline in original)

After the HLTWG meetings had delivered their ‘recommended draft’, wherein the provisions on the definitions and the scope of application were included in Article II (International Labour Office, 2004c, pp. 2-4), the 2004 PTMC took over to turn this text into a ‘draft Convention’, which would then be submitted to the 2006 IMLC (International
Labour Office, 2005i, pp. 1-2). As the ILO Office noted in its commentary to the recommended draft, the HLTWG meetings and their related Tripartite Subgroups had resulted in agreements on nearly all aspects of Article two on the definitions and scope of application, but a tripartite agreement still needed to be found on several important issues (International Labour Office, 2004b, pp. 7-9). Notably, the broad definition of ‘seafarer’ was not yet fully accepted and, more importantly, the possibility of using gross tonnage and the nature of voyages (i.e. domestic or international) as parameters to exempt certain vessels from the scope of application were still contentious and unresolved issues.

During the first Committee of the 2004 PTMC, the discussion on Article two on the definitions and the scope of application focused on the possibility of using gross tonnage (subparagraph four (a)) and the nature of voyages (i.e. domestic or international) (paragraph six) as parameters to exempt certain vessels from the scope of application (cf. Box 3.1 supra) (International Labour Office, 2004l, pp. 3-11). In addition, an agreement was found on the definition of ‘requirements of this Convention’ (subparagraph one (e)) and on deleting the provision on oil rigs and drilling platforms (subparagraph four (d)). Importantly, the entire discussion on the definitions and scope of application followed a dynamic similar to the one established during the HLTWG meetings. While the Ship owners’ Group favored exemptions to limit the scope of the instrument and make it ratifiable to as many governments as possible, the Seafarers’ Group opposed exemptions in order to retain the rights for as many seafarers as possible. The government members (often represented by Denmark, speaking on behalf of the Government Group) found themselves navigating between the opposite positions taken by the social partners and increasingly stepped in to find a compromise. In this respect, the EU Member States played an important role.

Firstly, during the discussion on subparagraph four (a) on the possibility of using gross tonnage as a parameter to exempt certain vessels from the scope of application, the social partners defined the opposite sides of the tripartite stage (pp. 4-6). While the Ship owners’ Group argued to exempt vessels below 500 gross tons in order to maximize the ratifiability of the Convention, the Seafarers’ Group objected to this parameter, stating that ‘[…] the rights of seafarers should not be related to the size of the ship they work on.’ (p. 4) In between those opposite positions, the governments were divided between on one side a number of governments from (predominantly) the Asia-Pacific region (i.e. China, Argentina, Indonesia, Japan, Pakistan, the Russian Federation, Singapore, Tunisia, and the Republic of Korea) which came out in support of the 500 gross tons proposed by the Ship owners’ Group and, on the other side, a number of governments from (predominantly) the European region (i.e. non-EU Member State Brazil, Denmark, France, Germany, the Netherlands, non-EU Member State Norway, Sweden, and the United Kingdom) which took a position closer, but not identical to the one by the Seafarers’ Group. Specifically, the United Kingdom
suggested introducing gross tonnage limits in parts of titles three and five of the Convention, thereby offering a compromise by narrowing the scope of possible exemptions. However, following continued opposition by the Ship owners’ Group to this idea, consultations within the Government Group resulted in another approach, introduced by Denmark, to add a ‘flexibility clause’, which would have possible exemptions from the Convention start at 500 gross tons, but gradually reduce this figure and ultimately abolish the option altogether. The social partners stated that they would consider this proposal and the issue was not further discussed during the 2004 PTMC and moved to the 2005 TIM.

Secondly, during the discussion on the sixth paragraph on the possibility of using the nature of voyages (i.e. domestic or international) as a parameter to exempt certain vessels from the scope of application, the social partners again defined the opposite sides of the tripartite stage (pp. 9-11). While the Ship owners’ Group preferred to exclude ships that did not undertake an international voyage, the Seafarers’ Group objected to restricting the scope of application as such, partly because of the difficulties to define what constituted an ‘international voyage’. After Denmark, speaking on behalf of the Government Group, indicated that most government members would appreciate this exemption to be kept in place, the Seafarers’ Group suggested that paragraph six might benefit from the flexibility clause previously introduced in subparagraph four (a). A Working Party debated this proposal and saw the tripartite membership agree in principle on taking this approach. However, since no agreement could be found on the specific criteria to invoke the flexibility clause the issue was nevertheless moved to the 2005 TIM.

Presenting the report of the first Committee of the 2004 PTMC, Reporter Mr. Bro-Mathew Shinguadja (Government representative, Namibia) reiterated that no agreement could be found on subparagraph four (a) and paragraph six, both of which would consequently be included on the agenda of the 2005 TIM as ‘unresolved issues’ (International Labour Office, 2004k, p. 3). Indeed, Ship owner Vice-President Mr. Dierk Lindemann (Ship owner representative, Germany) and Seafarer Vice-President Mr. Brian Orrell (Seafarer representative, the United Kingdom) in their closing remarks both highlighted the scope of application as a fundamental issue that remained unresolved at this point in the procedure (International Labour Office, 2004j, p. 16).

During the 2005 TIM, the tripartite dynamic underlying the discussion during the 2004 PTMC became even more pronounced and placed a select number of governments in a Working Group to bridge the divide between the social partners (International Labour Office, 2005h, pp. 3-8). As the Ship owners’ and Seafarers’ groups continued to reiterate their position on opposite ends of the tripartite stage (the latter again pulling out all the rhetorical stops by warning for ‘institutionalized “maritime apartheid”’ (p. 4)), a small,
governmental Working Group (i.e. China, Greece, Japan, Norway, the Philippines, the United Kingdom, and the United States) was tasked with drafting a proposal for discussion. The United Kingdom reported on the ‘package’ that came out of this Working Group, which suggested introducing ‘except as expressly provided otherwise’ at the start of paragraph four, thereby making room to move the exemptions based on gross tonnage and the nature of the voyage to titles three and five, and deleting paragraph six (cf. Box 3.2 infra). To some extent, this package is similar to the compromise that the United Kingdom had previously suggested on its own behalf during the 2004 PTMC. While the social partners did not fully support this package (especially the Seafarers’ Group expressed disappointment), it was nevertheless considered a suitable basis for discussion and was sent to the Drafting Committee to be included as a provisional part of the draft Convention.

Article II – Definitions and scope of application

1. For the purpose of this Convention and unless provided otherwise in particular provisions, the term:
   (f) seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;

2. Except as expressly provided otherwise, this Convention applies to all seafarers.

4. Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned (C.7, C.8, C.15, C.16, C.22, C.23, C.58), ordinarily engaged in commercial activities (modified C.180) other than:
   (a) ships engaged in fishing or in similar pursuits (modified C.147); and
   (b) ships of traditional build such as dhows and junks. (modified C.180A4)

Standard A3.1 – Accommodation and recreational facilities

20. Each Member may, after consultation with the shipowners’ and seafarers’ organizations concerned, exempt ships of less than [200] gross tonnage where it is reasonable to do so, in relation to the requirements of the provisions specified below, taking account of the size of the ship and the number of persons on board:
   (a) paragraphs 7(b), 11(d) and 13; and
   (b) paragraph 9(f) and (h) to (l), with respect to floor area only.

Regulation 5.1.3 – Maritime labour certificate and declaration of maritime labour compliance

1. This Regulation applies to ships of:
Maritime Labor

(a) 500 gross tonnage or over, engaged in international voyages; and
(b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.

For the purpose of this Regulation, “international voyage” means a voyage from a country to a port outside such a country.

Box 3.2 – The draft convention of the 2004 PTMC and 2005 TIM on the definitions and the scope of application (abridged)

During the 2006 Committee of the Whole, the provisions on the definitions and scope of application were still included under Article II, but additionally specific provisions under the third and fifth title also dealt with this issue (cf. Box 3.2 supra) (International Labour Office, 2005e, pp. 2-4,44,76). The majority of Article two was adopted either without any changes at all or else with minor amendments that served to implement the final details in the provisions on the definitions and scope of application (International Labour Office, 2006e, pp. 16-28). More importantly, the outstanding issues that dominated the previous discussions during the 2004 PTMC and the 2005 TIM were settled elsewhere in the Committee. Specifically, paragraph 20 of Standard A3.1 on accommodation and recreational facilities (p. 69) and paragraph one of Regulation 5.1.3 on the maritime labor certificate and declaration of maritime labor compliance (pp. 100-101) translated the package on possible exemptions that was adopted by the governmental Working Group during the 2005 TIM into the Convention. Both paragraphs were adopted without amendment.

Against this background, the EU Member States intervened coherently in the secondary discussion that finalized the provisions of Article two. While the Member States also continued to intervene independently during the discussion, the United Kingdom introduced three amendments on behalf of the Core EU Group. All three amendments were withdrawn or fell in favor of a competing proposal. Nevertheless, this does not mean the Union was not effective within this secondary discussion. Its first amendment was effectively reintroduced later during the discussion (p. 18) and the second fell only after it had influenced the outcome of the Drafting Committee (p. 24). Only the third amendment was withdrawn after opposition from the social partners (p. 25). Moreover, we need to reiterate that these were minor discussions that came at the back-end of a long procedure in which the more substantial issues had already been settled.

Article II – Definitions and scope of application

1. For the purpose of this Convention and unless provided otherwise in particular provisions, the term:
2. Except as expressly provided otherwise, this Convention applies to all seafarers.

3. In the event of doubt as to whether any categories of persons are to be regarded as seafarers for the purpose of this Convention, the question shall be determined by the competent authority in each Member after consultation with the shipowners’ and seafarers’ organizations concerned with this question.

4. Except as expressly provided otherwise, this Convention applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Convention does not apply to warships or naval auxiliaries.

5. In the event of doubt as to whether this Convention applies to a ship or particular category of ships, the question shall be determined by the competent authority in each Member after consultation with the shipowners’ and seafarers’ organizations concerned.

6. Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners’ and seafarers’ organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.

7. Any determinations made by a Member under paragraph 3 or 5 or 6 of this Article shall be communicated to the Director-General of the International Labour Office, who shall notify the Members of the Organization.

8. Unless expressly provided otherwise, a reference to this Convention constitutes at the same time a reference to the Regulations and the Code.
Box 3.3 – The final provisions on the definitions and scope of application in the 2006 MLC (abridged)

**Issue Conclusion on the Definitions and Scope of Application**

In the final Convention, the provisions on the definitions and the scope of application are included in Article II (cf. Box 3.3 supra) (International Labour Office, 2006b, pp. 2-4). In terms of rights, the final outcome offers broad coverage to a large number of seafarers working on the most diverse vessels imaginable, while certain exemptions are included in the third and fifth title to allow states some flexibility on the implementation of these rights. The discussion on this issue figured prominently on the agenda throughout the entire standard-setting procedure and played itself out on a divided tripartite stage. Specifically, the social partners disagreed significantly on the definitions and the scope of application, leading the governments to step in and suggest compromises.

Against this background, we detected that a number of EU Member States were actively involved in the proceedings, wherein they started by intervening independently, but consistently during the 2004 PTMC and 2005 TIM and ended by intervening coherently as the Core EU Group during the 2006 Committee. As such, they were present in a tripartite dynamic that saw the social partners take opposing positions and left the governments navigating their own positions in between those outer ends of the tripartite stage. Importantly, the United Kingdom and several other EU Member States played a leading role in the governmental efforts to bridge the divide between the positions of the social partners on this issue. Specifically, they were highly involved in the discussion in the first Committee of the 2004 PTMC and in the governmental Working Group of the 2005 TIM that served to develop a possible compromise. In addition, during the 2006 Committee, the amendments the United Kingdom introduced on behalf of the Core EU Group helped to finalize the provisions of Article II.

Having process-traced the discussion on this issue, we find that the EU Member States were effective in achieving their goal of creating an instrument with a broad scope of application. We have seen how it were the EU Member States that first introduced the broad definition of ‘seafarer’ which would ultimately be included in the final instrument. Additionally, in the discussion on possible parameters for exemptions to this broad coverage, the EU Member States effectively limited the scope of these exemptions. As such, we find that the EU Member States did not only effectively attain their goals, but moreover that they were leading players in the governmental efforts to find a compromise between the opposing positions of the social partners. We have seen that the compromise that was implemented in the final instrument stemmed directly from an approach that the United Kingdom originally introduced during the 2004 PTMC (i.e. move the exemptions to titles three and five) and, as part of a governmental Working Group, recommended to the social partners as a package during the 2005 TIM.
3.3.2. **The Structure of the Instrument**

The consolidated 2006 MLC has an atypical structure compared to the traditional ILO instruments. Rather than a mandatory Convention supplemented by a non-mandatory Recommendation, the existing body of maritime labor standards was consolidated into a single instrument using a layered structure that was borrowed from the IMO. Importantly, this structure was instrumental to consolidate and retain the vast scope of the existing maritime labor standards, while in principle making it easier for governments to ratify these provisions. This is achieved with a structure that combines mandatory and non-mandatory elements (cf. Table 3.7 infra). Specifically, the structure of the final instrument lays down ‘the core rights and principles and the basic obligations of Members ratifying the Convention’ in the mandatory Articles and Regulations, while ‘the details for the implementation’ are divided between the mandatory Part A (Standards) and non-mandatory Part B (Guidelines) of the Code.

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<td>- Guidelines</td>
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Table 3.7 – The atypical, layered structure of the 2006 MLC

In practical terms, this structure allows for some flexibility by making the instrument ‘firm on rights and obligations, but flexible on their implementation.’ (Bollé, 2006, p. 140; Doumbia-Henry, 2004, p. 323; and Politakis, 2012, p. 4) In addition, the Convention includes a ‘substantial equivalence’ clause that adds further flexibility for ratifying states, without undermining labor protection for seafarers. In summary, this structure ‘[…] combines rights and principles with specific standard and guidance as to how to implement these standards.’ (Bollé, 2006, p. 139) Against the background of the discussion on this issue, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The discussion on the structure of the instrument first started during the 2001 JMC and was intentionally discussed early on during the standard-setting procedure, particularly during the first meetings of the HLTWG and its related Tripartite Subgroups. Apart from superficial changes to the terminology and refining the precise relation between the mandatory and non-mandatory parts of the Convention, an early agreement reached between the members did not undergo significant changes and, as such, provided the necessary framework for all subsequent discussions on other issues (Doumbia-Henry, 2004, p. 323 and International Labour Office, 2005a, p. 10). After the discussion shifted to more substantial issues during
the 2003 Tripartite Subgroup (International Labour Office, 2003c, p. 1), the structure of the instrument figured much less prominently on the agenda. The issue was settled in the first Committee of the 2004 PTMC and subsequently not included in the ‘unresolved issues’ on the agenda of the 2005 TIM (International Labour Office, 2005i). Eventually, Article VI of the final instrument was adopted without amendment during the 2006 IMLC (International Labour Office, 2006e, pp. 28-29).

During the 2001 JMC, the social partners agreed that an a-typical structure was needed to consolidate the existing body of maritime labor standards. After the Ship owners’ Group had lamented that ‘[…] governments were suffering from regulatory overload so the traditional approach of developing specific standards to address specific problems was not workable’ (International Labour Office, 2001e, p. 10), the Seafarers’ Group ‘[…] agreed that the boldest way forward, a single instrument, was also the best approach.’ (emphasis added) (p. 10) Moreover, the Ship owners’ Group already introduced a possible structure for this single instrument, which notably included an embryonic version of the layered structure that combined mandatory and non-mandatory provisions (p. 43).

During the HLTWG meetings and their related Tripartite Subgroups, an agreement was quickly reached on a more refined version of this structure (International Labour Office, 2002b, p. 22) and the exact terminology (International Labour Office, 2002a, p. 7). Underlying the discussion between the tripartite members was the choice between two different approaches on how to the balance the mandatory and non-mandatory parts of the Convention. A number of governments highlighted and expressed their interest in adopting an approach similar to the one found in the IMO’s International Convention for the Prevention of Pollution from Ships (MARPOL), which allows states a large degree of discretion to pick and choose applicable provisions. However, this approach met with significant opposition from the Seafarers’ Group and a large majority of governments preferred (or did not oppose) the approach found in the IMO’s International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), which makes a clearer and uniform distinction between a mandatory part A and a non-mandatory part B. Among others, Denmark and the United Kingdom expressed their support for the latter approach, which was eventually adopted (International Labour Office, 2002a, pp. 6-7).

As the ILO Office noted in its commentary to the recommended draft, the HLTWG meetings and their related Tripartite Subgroups resulted in a consensus on the layered structure of the instrument, notably deciding to adopt the STCW approach over the MARPOL approach. Equally important, the HLTWG meetings had made headway on the ‘flexibility in implementation’ aspect of Article VI (International Labour Office, 2004b, pp. 12-13). Firstly, the fact that member states needed to give ‘due consideration’ (first suggested
by a government member as a replacement for ‘full consideration’ during the 2003 HLTWG (International Labour Office, 2003b) to the guidelines in part B of the Code had proven to be an elegant and constructive clarification of the relation between the mandatory and non-mandatory layers of the structure. Secondly, the third paragraph of Article VI allowed member states to take measures ‘substantially equivalent’ (first suggested by the Ship owners’ Group during the 2001 HLTWG (International Labour Office, 2001b, p. 11)) to the mandatory provisions found in the Convention. However, the precise definition of this concept had not yet been settled in the recommended draft and was left for the 2004 PTMC.

**Article VI – Regulations and Parts A and B of the Code**

1. The Regulations and the provisions of Part A of the Code are mandatory for Members. The provisions of Part B of the Code are not mandatory.
2. Each Member undertakes to respect the principles and rights set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.
3. A Member which is not in a position to implement the principles and rights in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A of the Code through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.
4. [Subject to any directions that may be given in the Code with respect to particular provisions, a law, regulation, collective agreement or other implementing measure shall, for the purpose of paragraph 3, be considered to be substantially equivalent to a provision of this Convention if:
   (a) it is conducive to the full achievement of the general object or purpose of the provision concerned; and
   (b) in all material respects, it complies with the specific requirements of the provision or has effects that are equivalent to those resulting from such compliance.]

Box 3.4 – The recommended draft of the HLTWG on the structure of the instrument (underline in original)
After the HLTWG meetings had delivered their ‘recommended draft’, wherein the provisions on the structure of the instrument were included in Article VI (International Labour Office, 2004c, p. 6), the 2004 PTMC took over to turn this text into a ‘draft Convention’, which would then be submitted to the 2006 IMLC (International Labour Office, 2005i, pp. 1-2). During the first technical committee of the 2004 PTMC, the discussion on Article VI focused on two alternative definitions of ‘substantial equivalence’ that were presented to the tripartite members (cf. Box 3.4 supra) (International Labour Office, 2004l, pp. 15-18). While the first definition was the stricter of the two and came from the Committee of Experts on the Application of Conventions and Recommendations (CEACR), the second was the more general result of consultations between the ILO Office, interested governments, and the social partners, which notably stated that member states needed to ‘satisfy themselves’ that their national rules and legislation are indeed substantially equivalent to part A of the Code. As the Seafarers’ Group (first alternative) and the Ship owners’ Group (second alternative) preferred different definitions, the United States intervened to take the second alternative as a starting point, but extensively amended its precise wording. This led to a legal and semantic discussion in which the advice of the Legal Advisor was sought, after which the Seafarers’ Group noted a ‘considerable level of support’ (p. 18) for the second definition and called for further consultations which led to an agreement on a heavily amended version of this definition. Against this background, several EU Member States (i.e. Denmark, Germany, and Greece) intervened independently and consistently sided with the suggestions made by the United States based on the second definition.

**Article VI – Regulations and Parts A and B of the Code**

1. The Regulations and the provisions of Part A of the Code are mandatory. The provisions of Part B of the Code are not mandatory.
2. Each Member undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.
3. A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.
4. For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:
   (a) it is conducive to the full achievement of the general object and purpose of the
The discussion on the atypical, layered structure of the instrument was settled during the first technical committee of the 2004 PTMC and the relevant provisions were included under Article VI of the draft Convention (cf. Box 3.5 supra) (International Labour Office, 2005e, p. 5). Subsequently this issue was not included as an ‘unresolved issues’ on the agenda of the 2005 TIM (International Labour Office, 2005i) and the relevant provisions were adopted without amendment during the 2006 Committee (International Labour Office, 2006e, pp. 28-29).

**Issue Conclusion on the Structure of the Instruments**

In the final Convention, the provisions on the structure of the instrument are included as Article VI (cf. Box 3.5 supra) (International Labour Office, 2006b, p. 5). The final shape of the Convention was settled during the first technical committee of the 2004 PTMC, although most of the major decisions regarding this issue were already made during the meetings of the HLTWG and its related Tripartite Subgroup. While the social partners agreed on the need for a layered structure to consolidate the existing maritime labor standards, they differed on how to give substance to their shared commitment to an instrument that would be ‘firm on rights and obligations, but flexible on their implementation.’ (Bollé, 2006, p. 140) Notably, this resulted in different opinions on which approach to adopt (i.e. the STCW vs. the MARPOL approach) and the precise definition of what constituted ‘substantially equivalent’ measures. On both issues, it was the governmental majority that tilted the balance by expressing their support for the STCW approach or by finding a compromise through heavily amending the definition of substantial equivalence.

Against this background, we detected that the EU Member States intervened independently to take positions on this issue that were consistent with one another. Common positions were not represented on behalf of the Union, given that internal coordination efforts only started at the end of the HLTWG meetings and, moreover, the limited number of government representatives during these meetings would have hindered coherent representation. Furthermore, it should be noted that the independent positions by the EU Member States were always embedded within the governmental majority’s position, without additionally pursuing distinctly European goals. Having process-traced the standard-setting procedure on the structure of the instrument, we find that the EU Member States effectively sided with the governmental majority’s position that was ultimately adopted in the final instrument. However, it is important to note that the Member States did not command a
central place in the discussion. Rather than leading the discussion, the EU Member States reacted to the positions taken by others.

3.3.3. **The Simplified Amendment Procedure**

The simplified amendment procedure of the 2006 MLC is stipulated in Article XV on amendments to the Code. In addition, it is closely related to Article XIV on amendments of this Convention (i.e. the regular procedure) and Article VIII on the entry into force of the Convention. The need to include a simplified amendment procedure stemmed from the central concern underlying the whole of this standard-setting procedure, namely ‘[…] that [the existing body of standards] had so far failed to translate into real changes in seafarers’ working conditions on a satisfactory scale.’ (Bollé, 2006, p. 138) In part, this problem was blamed on the absence of an adequate legal mechanism to keep these instruments up-to-date and adapt them in a timely fashion to the rapid changes the maritime transport sector was undergoing under the pressure of globalization. With this in mind, creating an easily updatable instrument became one of the key objectives of the standard-setting procedure on maritime labor (Doumbia-Henry, 2004, p. 321). The final result was a ‘marriage of the old and the new’ (p. 326), wherein the traditional amendment procedure for the mandatory parts of the Convention (cf. Article XIV) was complemented with a simplified procedure for the non-mandatory parts (cf. Article XV). While the amendments introduced through the latter procedure still need to be submitted to the ILC for final approval, an important innovation is that they require only ‘tacit acceptance’, i.e. no formal opposition by an ILO member state, and as such do not need to go through the entire ratification procedure (p. 327). Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The simplified amendment procedure was already part of the discussion during the HLTWG meetings and their related Tripartite Subgroups, wherein this issue was first raised and principally agreed upon during the 2001 HLTWG (International Labour Office, 2001b, p. 24). During subsequent meetings, the tripartite members built on their ‘full agreement’ on the need for such a procedure to safeguard the future relevance of the Convention, while discussing its applicability to the mandatory and non-mandatory parts of the consolidated instrument and a range of technical issues (International Labour Office, 2002b, pp. 18-21; International Labour Office, 2002a, pp. 17-20; International Labour Office, 2003c, pp. 6-8; and International Labour Office, 2003b, pp. 22-29). Against this background, the EU Member States intervened independently and consistently supported identical or similar positions. Notably, during the 2002 HLTWG Denmark, France, Greece, Italy, Malta, and the United Kingdom all intervened to limit the applicability of the simplified amendment procedure to non-mandatory provisions (International Labour Office, 2002a, pp. 17-20). Additionally, it should be noted that these positions were in line with the broader governmental presence during these meetings.
Article VIII – Entry into force

3. It shall come into force 12 months after the date on which there have been registered ratifications by at least (10) (25) Members with a total share in the world’s gross tonnage of ships of (25 (50) per cent.

Article XIV – Amendments of this Convention

5. The amendments shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the case may be, by (five) (12) Members with a total share in world shipping tonnage of (12.5) (25) per cent.

Article XV – Amendments to the Code

2. An amendment to the Code may be proposed to the Director-General by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed or be supported by at least (10) governments that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

7. An amendment adopted by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than (one-third) of the Members which have ratified the Convention and represent not less than (50 per cent) of the world’s gross tonnage of ships. (STCW modified)

Box 3.6 – The recommended draft of the HLTWG on the simplified amendment procedure (abridged)

After the HLTWG meetings had delivered their ‘recommended draft’, wherein the provisions on the simplified amendment procedure were included in Article XV (cf. Box 3.6 supra) (International Labour Office, 2004c, pp. 7,10-12), the 2004 PTMC took over to turn this text into a ‘draft Convention’, which would then be submitted to the 2006 IMLC (International Labour Office, 2005i, pp. 1-2). As the ILO Office noted in its commentary to the recommended draft, ‘[t]here was a general agreement in the High-Level Group on the concept itself and on the main elements of the amendment procedure proposed.’ (International Labour Office, 2004b, p. 18). However, no agreement had been found on the
final, but critically important thresholds (i.e. percentage of ratifying states and percentage of (world’s) gross tonnage), which would decide how easily this simplified procedure could be used to introduce and adopt amendments to the Convention.

During the first Committee of the 2004 PTMC, the discussion on Article XV on amendments to the Code focused on the precise thresholds for introducing (paragraph two) and adopting (paragraph seven) amendments using the simplified procedure (cf. Box 3.6 supra) (International Labour Office, 2004i, pp. 22-23). In addition, the threshold for adopting amendments through the traditional procedure (paragraph one of Article XIV) and the relation of these provisions to the threshold for the Convention to enter into force (paragraph three of Article VIII) are also briefly discussed. While this focused discussion reveals that the HLTWG meetings and their related Tripartite Subgroups had found an agreement on the practicalities of the simplified amendment procedure, the exact thresholds in Article XV on amendments to the Code were still of key importance to decide the ease with which this procedure could be used to keep the Convention up-to-date in the future.

During the 2004 PTMC, the brief discussions on these thresholds all played out following a similar tripartite dynamic before being postponed to a later meeting. The social partners first introduced the thresholds to which they had agreed during informal and bipartite consultations, after which Denmark, speaking on behalf of the Government Group, stated that the governments should be given the opportunity to hold their own consultations on the proposed thresholds before continuing the discussion. Against this background, the EU Member States did not intervene independently and were represented as part of the Government Group.

Presenting the report of the first Committee of the 2004 PTMC, Reporter Mr. Bro-Mathew Shingudja (Government representative, Namibia) reiterated that ‘[…] the Committee was not able to agree on the number of registered ratifications, and the percentage of the total share of world shipping tonnage necessary for the Convention to enter into force, as covered in Article VIII, or to amend the Convention and the Code, as provided for in Articles XIV and XV.’ (International Labour Office, 2004k, p. 3) As such, these thresholds were slated to be included on the agenda of the 2005 TIM as ‘unresolved issues’.

During the 2005 TIM, the social partners reiterated their agreement on the thresholds found in paragraph five of Article XIV on the regular amendment procedure and paragraphs two and seven of Article XV on the simplified amendment procedure (International Labour Office, 2005h, pp. 9-10). However, while a bipartite agreement existed on the number of members that were needed to adopt an amendment through the simplified procedure (paragraph seven), the social partners disagreed whether an additional requirement in terms of the world’s gross tonnage should be added to this paragraph. At any rate, the Government
Group again preferred to postpone the discussion on these paragraphs in order to allow them to consult on the precise thresholds proposed by the social partners. Against this background, the EU Member States again did not intervene independently and were represented as part of the Government Group.

**Article VIII – Entry into force**

3. This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least [ ] Members with a total share in the world [ ] gross tonnage of ships of [ ] per cent.

**Article XIV – Amendments of this Convention**

4. An amendment shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the case may be, by [ ] Members with a total share in the [ ] gross tonnage of ships of [ ] per cent.

9. Members which subsequently ratify this Convention shall be bound by all amendments entering into force which were adopted before their ratifications of the Convention were registered, unless any such amendment provides otherwise.

**Article XV – Amendments to the Code**

2. An amendment to the Code may be proposed to the Director-General by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed or be supported by at least [ ] governments that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

7. An amendment approved by the General Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than [ ] of the Members which have ratified the Convention and which represent not less than [ ] of the [ ] gross tonnage of ships. (modified STCW)

12. After entry into force of an amendment, the Convention may only be ratified in its
During the 2006 Committee of the Whole, the provisions on the simplified amendment procedure were still included under Article XV (cf. Box 3.7 supra) (International Labour Office, 2005e, pp. 6,9,11). A Working Party discussed the thresholds found in Article VIII on the entry into force of the Convention, Article XIV on amendments of this Convention (i.e. the regular procedure), and Article XV on amendments to the Code (i.e. the simplified procedure) (International Labour Office, 2006e, pp. 32-34). In addition, the relation between paragraph nine of Article XIV and paragraph twelve of Article XV was also discussed during this Working Party. The outcome of this Working Party was presented by the United States, speaking in its capacity as Chairperson, as a ‘package deal’ (p. 32) that balanced the interests of the tripartite members. For example, paragraph seven of Article XV constituted a compromise between the social partners by retaining a threshold in terms of gross tonnage as a requirement for the adoption of amendments through the simplified procedure, but now calculated the threshold based on the gross tonnage of the ratifying members, instead of the world’s gross tonnage. The social partners expressed their full support for the outcome of the Working Party, while China, speaking on behalf of the Government Group, ‘[…] said that the proposed text had the unanimous support of the Government Group […]’ (p. 34) Against this background, the EU Member States again did not intervene independently and were represented as part of the unanimous Government Group.

### Article VIII – Entry into force

3. This Convention shall come into force 12 months after the date on which there have been registered ratifications by at least 30 Members with a total share in the world gross tonnage of ships of 33 per cent.

### Article XIV – Amendments of this Convention

1. Amendments to any of the provisions of this Convention may be adopted by the General Conference of the International Labour Organization in the framework of article 19 of the Constitution of the International Labour Organisation and the rules and procedures of the Organization for the adoption of Conventions. Amendments to the Code may also be adopted following the procedures in Article XV.

4. An amendment shall be deemed to have been accepted on the date when there have been registered ratifications, of the amendment or of the Convention as amended, as the
case may be, by at least 30 Members with a total share in the world gross tonnage of ships of at least 33 per cent.

9. Any Member whose ratification of this Convention is registered after the adoption of the amendment but before the date referred to in paragraph 4 of this Article may, in a declaration accompanying the instrument of ratification, specify that its ratification relates to the Convention without the amendment concerned. In the case of a ratification with such a declaration, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered. Where an instrument of ratification is not accompanied by such a declaration, or where the ratification is registered on or after the date referred to in paragraph 4, the Convention shall come into force for the Member concerned 12 months after the date on which the ratification was registered and, upon its entry into force in accordance with paragraph 7 of this Article, the amendment shall be binding on the Member concerned unless the amendment provides otherwise.

Article XV – Amendments to the Code

1. The Code may be amended either by the procedure set out in Article XIV or, unless expressly provided otherwise, in accordance with the procedure set out in the present Article.

2. An amendment to the Code may be proposed to the Director-General of the International Labour Office by the government of any Member of the Organization or by the group of Shipowner representatives or the group of Seafarer representatives who have been appointed to the Committee referred to in Article XIII. An amendment proposed by a government must have been proposed by, or be supported by, at least five governments of Members that have ratified the Convention or by the group of Shipowner or Seafarer representatives referred to in this paragraph.

7. An amendment approved by the Conference shall be deemed to have been accepted unless, by the end of the prescribed period, formal expressions of disagreement have been received by the Director-General from more than 40 per cent of the Members which have ratified the Convention and which represent not less than 40 per cent of the gross tonnage of the ships of the Members which have ratified the Convention.

12. After entry into force of an amendment, the Convention may only be ratified in its amended form.
Box 3.8 – The final provisions on the simplified amendment procedure in the 2006 MLC (abridged)

**Issue Conclusion on the Simplified Amendment Procedure**

In the final Convention, the provisions on the simplified amendment procedure are included in Article XV (cf. Box 3.8 supra) (International Labour Office, 2006b, pp. 6,8-11). The concept itself and the main elements of this procedure were intentionally discussed and put in place early on during the standard-setting procedure, although the critically important thresholds for its use would remain a topic of discussion throughout the entire procedure.

The tripartite members all agreed that a simplified amendment procedure was necessary to keep the resulting Convention up-to-date, specifically by creating the possibility to adapt its provisions in a timely fashion without going through the regular amendment procedure. However, while the social partners mostly agreed on the precise thresholds and presented the outcome of their bipartite consultations as joint-amendments during the 2004 PTMC and the 2005 TIM, a tripartite Working Party including the Government Group was needed to settle the final details during the 2006 Committee.

Against this background, we detected that the EU Member States were indirectly involved as part of the Government Group. While several Member States intervened independently and consistently during the HLTWG meetings and their related Tripartite Subgroups, governmental representation during the 2004 PTMC, 2005 TIM, and 2006 Committee was almost exclusively handled by the chairpersons of the Government Group. As such, we infer the consistency from the EU Member States from the unanimous support of the latter group for the final outcome.

Having process-traced the discussion on this issue, we find that, in terms of effectiveness, the Union’s goal attainment can be inferred by comparing the final provisions with the concerns Denmark expressed during the 2002 Tripartite Subgroup (International Labour Office, 2002b, p. 20) and the positions of several EU Member States on the applicability of the procedure (International Labour Office, 2002a, pp. 17-20). However, while this comparison reveals that the final outcome is in line with the concerns and positions expressed by the EU Member States, it should be noted that the EU Member States were part of the Government Group for most of the standard-setting procedure and, therefore, their goals were not distinctly European. Indeed, most governments and, to a large extent, even the social partners were in agreement on most of the final provisions from an early point in the discussion, leading the discussion to focus on specific thresholds.

3.3.4. **Social Security**

Social security standards are included in Article IV of the 2006 MLC and are given substance in the mandatory Standard and non-mandatory Guideline of Regulation 4.5, which aim “t”o
ensure that measures are taken with a view to providing seafarers with access to social security protection.’ (cf. Box 3.11 infra) (International Labour Office, 2006b, p. 70) While this standard-setting procedure mainly focused on consolidating the existing body of maritime standards into a single instrument and modifications were mostly restricted to uncontroversial drafting issues, social security stands out as the exception that proves the rule. Already during the HLTWG meetings, the complexity of this issue became apparent and gained an increasingly prominent place on the agenda as the governments and social partners got involved in a contentious discussion on a substantive overhaul of the existing international standards. Summing up the central problem, the ILO Office noted that the discussion on social security fundamentally

‘[…] related to developing an acceptable text to address the very complex problem of seafarers working on foreign-flag ships, who may not be eligible for protection under the social security system of the flag State and whose country of residence or nationality may also not provide social security protection.’ (International Labour Office, 2004b, p. 32)

Crucially, this could give rise to a ‘gap in coverage’ and thereby undermine the ILO’s goals of extending decent work to all seafarers and ensure a level playing field for maritime labor. As such, it was critical for the tripartite membership to (1) strike the right balance on the responsibility of the ship’s flag state, the seafarer’s country of residence, and the ship owner and, related to the first point, (2) differentiate between short-term and long-term social protection. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

Social security standards were already part of the discussion during the HLTWG meetings and their associated Tripartite Subgroups, especially after the focus of the standard-setting procedure moved away from formal issues and shifted to the substantive part of the Convention (International Labour Office, 2003c, p. 1). While the first few HLTWG meetings had touched upon the issue, the discussion on social security standards for seafarers began in earnest during the 2003 Tripartite Subgroup and crystallized in Working Party B of the 2004 HLTGW, which received a mandate ‘[…] to give clear indications on social security to the Office for a revised draft to be submitted to the PTMC in September 2004.’ (International Labour Office, 2004d, p. 13) Discussing how to balance the responsibility to provide long-term social security, the Ship Owners’ Group (preferring that the primary responsibility lies with the seafarers’ country of residence) and the Seafarers’ Group (preferring a shared responsibility to provide social security, while the primary responsibility for inspection lies with the flag state and the ship owner) took opposing positions and thereby created a divided tripartite stage (pp. 14-15). The Government Group sided with the
Ship owners’ Group and stated that long-term social security should be provided by the seafarers’ country of residence, although adding that the flag state should share part of the responsibility and require all seafarers to be covered.

At the end of the 2004 HLTWG, ‘[t]he difference between the Seafarers’ and Ship owners’ groups as to the approach and content of the text on long-term social security protection seemed so far apart that it was decided that they could not be reconciled in this Working Party.’ (p. 16) Indeed, given the seemingly unbridgeable positions between the social partners, it was decided that the ILO Office would use its own draft, a proposal by the Ship owners’ Group (which did not provide a role for the flag state) (p. 36), and a compromise introduced by France (which provided the flag state with a supervisory role) (p. 37) to draft a new version of the text and submit it as the HLTWG’s ‘recommended draft’ to the 2004 PTMC.

### Regulation 4.5 – Social security

**Purpose:** To ensure that measures are taken with a view to providing seafarers with access to social security protection

1. Members shall ensure that all seafarers and, to the extent provided for in their national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution of the International Labour Organization.

2. Members undertake to take steps, according to their national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.

3. Members shall ensure that seafarers, who are subject to their social security legislation, and, to the extent provided for in their national law, their dependants are entitled to benefit from social security protection not less favourable than that enjoyed by shoreworkers.

### Standard A4.5 – Social security

**Guideline B4.5 – Social security**

5. In principle all seafarers serving on a ship that flies the flag of a Member, should be able to benefit from the same branches of social security protection as seafarers resident and insured in the territory of that Member. Each Member should seek to take steps to implement this principle according to its national circumstances and as far as practicable.

Box 3.9 – The recommended draft of the HLTWG on social security (abridged)
After the HLTWG meetings had delivered their ‘recommended draft’, wherein the provisions on social security were included in Regulation 4.5 (cf. Box 3.9 supra) (International Labour Office, 2004c, pp. 72-74), the 2004 PTMC took over to turn this text into a ‘draft Convention’, which would then be submitted to the 2006 IMLC (International Labour Office, 2005i, pp. 1-2). As the ILO Office noted in its commentary to the recommended draft, the discussions during the HLTWG meetings had resulted in an agreement to include long-term social security in Regulation 4.5 of the recommended draft and move shorter-term protection to other regulations, but no agreement was found on its precise content (International Labour Office, 2004b, p. 32).

During the 2004 PTMC, the fourth title of the recommended draft was discussed in the third technical committee, including a lengthy debate on the long-term social security standards found in Regulation 4.5 (International Labour Office, 2004n, pp. 32-51). At the start of the discussion, the Ship owners’ and Seafarers’ groups outlined their position on the issue. While agreeing that the primary responsibility should be carried by the country of residence, disagreement remained on the extent to which the flag state should share responsibility for long-term social security.

Several EU Member States intervened independently to stress the need for a clearer division of responsibilities than was found in the recommended draft (i.e. Denmark and the Netherlands). However, the start of the discussion already hinted that the Member States were internally divided on the issue of social security, with some intervening to oppose a too extensive role for flag states (i.e. Cyprus and Malta) and others suggesting the responsibilities of the flag state should be further extended, albeit without questioning the primary responsibility of the country of residence (i.e. France and the United Kingdom). This inconsistency goes back to different economic interests of these EU Member States and the discrepancies in their national legislation, which are hard to resolve given that the Member States hold exclusive competence in terms of social security. Indeed, at the start of the third Committee of the 2004 PTMC, Germany ‘[…] stressed the magnitude of the work before the Committee in attempting to regulate social protection at a global level, since harmonization had not even been possible in this area for the European Union.’ (emphasis added) (International Labour Office, 2004n, p. 2) However, despite the exclusive competence of the EU Member States, the ACE of the Community was nevertheless relevant for this discussion (Tortell, et al., 2009, p. 122). Specifically, the provisions on equal treatment and non-discrimination for workers across national borders are relevant for workers in the maritime sector.

The discussion on the mandatory Standard A4.5 on social security was characterized by an active involvement of the EU Member States and process-tracing this discussion provides us with two clear insights (International Labour Office, 2004n, pp. 35-49). Firstly, the
interventions by the EU Member States, either independently or in small coalitions, proved to be ineffective when challenging the ‘delicate balance’ (p. 36) that had been achieved in the recommended draft and was most prominently preferred by the Seafarers’ Group, while the Ship owners’ group was generally more open to adjustments. The Netherlands started the discussion by introducing an amendment that would redraft the first five paragraphs of the Standard and ‘[…] set out clearly the responsibilities of the flag State and the State of residence, in terms of which State had responsibility for which social security benefits.’ (p. 35) While general support was expressed by a number of governments (including EU Member States Cyprus, Denmark, Finland, France, Malta, and the United Kingdom) and the Ship owners’ Group ‘appreciated the delineation of responsibilities’ (p. 36) as a step forward, the Seafarers’ Group preferred the recommended draft because of the ‘delicate balance’ (p. 36) found therein and because it placed more extensive responsibilities on the flag state. After some discussion, a Drafting Committee decided to revert the text back to the recommended draft.

However, not satisfied with reverting back to the outcome of the HLTWG, Denmark, speaking on behalf of Finland, the Netherlands, non-EU Member State Norway, Poland, and the United Kingdom, immediately introduced a new amendment that would again set out a clearer division of responsibilities, but retained the more extensive responsibilities of the flag state found in the recommended draft. Despite several attempts to come to a compromise through subamending the original amendment, France and Denmark, speaking on behalf of the sponsors of the amendment, ultimately decided to withdraw the amendment in the face of continued disagreement. Finally, France introduced an amendment that specifically sought to replace the fifth paragraph in order to ‘[…] further clarify the text, and ensure that a flag State could not evade responsibility for ships flying its flag.’ (p. 45) This amendment again failed to be adopted, although this time it was the Ship owners’ Group and not the Seafarers’ Group that opposed the amendment.

Secondly, the involvement of the EU Member States in the discussion on Standard A4.5 reveals that the ongoing coordination process had not yet managed to fully overcome the internal differences between the Member States, although aided by the Commission they did look out for the Union’s critical interests. On each of the three amendments just mentioned (respectively introduced by the Netherlands, Denmark, and France), other EU Member States expressed positions that revealed substantial inconsistencies between the Union’s members.39 For example, after Denmark introduced an amendment that retained more extensive responsibilities for the flag state, it is interesting to note that the Netherlands explicitly ‘[…] confirmed that the proposed amendment had been put forward by the named

39 In addition to the main amendments introduced by EU Member States, a number of smaller amendments were introduced by Sweden (ineffective) (pp. 34-35) and Denmark (effective) (pp. 48-49).
Member States, and was not a coordinated proposal of the Member States of the European Union. (p. 38) Moreover, after France introduced an amendment that would lock in the responsibilities of the flag state, several Member States expressed doubts on how the amendment would work in practice (i.e. Italy, Cyprus, Denmark, Spain) or outright opposed it (i.e. Malta) (p. 46).

However, despite this substantial inconsistency between the EU Member States, aided by the Commission they did look out for the Union’s critical interests. At the start of the discussion on Regulation 4.5 on social security, the Netherlands announced that the EU Member States intended to submit a proposal later in the discussion, which was ‘[…] related to the relationship between the Convention and regional legal instruments, such as the EU “coordination law”’. (p. 34) Later during the discussion, this took the form of an amendment for a new paragraph introduced by Belgium, Denmark, Germany, Greece and the Netherlands, which notably introduced provisions for REIOs in the Convention (p. 44) (cf. Box 3.10 infra).\(^4\) Still later during the discussion, the Commission pointed out some further details needed to be settled and that ‘[…] the Member States of the European Union intended to propose a change to Standard A4.5 with the aim of avoiding conflict between the Convention and European Community law on the coordination of social security schemes.’ (p. 47)

During the discussion on the non-mandatory Guideline B4.5 on social security, paragraph five proved to be the most contentious issue and would ultimately be sent to the 2005 TIM as an ‘unresolved issue’ (International Labour Office, 2004n, pp. 49-50). Unsurprisingly, this paragraph (cf. Box 3.9 supra) deals with the extent to which the flag state is responsible to provide social security, specifically the principle of providing equal security between seafarers working on ships flying its flag and those residing within its borders. As it had announced at the start of the discussion, Denmark introduced an amendment ‘[…] to clarify that, while the long term benefits were mainly the responsibility of the country of the seafarer’s residence, responsibility for accidents at work and occupational diseases rested with the flag State.’ (p. 33) This amendment received qualified support from the social partners, but it quickly became apparent that the Seafarers’ and Ship owners’ groups disagreed on this principle. The former suggested moving paragraph five from the non-mandatory guideline to the mandatory standard, but this encountered resistance from the Ship owners, stating that this would hurt the instrument’s chances of being ratified. A number of governments supported

\(^4\) As we will see, the REIO concept is also used in the ILO instruments on work in fishing (cf. Chapter four) and domestic workers (cf. Chapter five). However, other recent instruments like the UN Convention on the Rights of Persons with Disabilities make use of the slightly different Regional Integration Organization (RIO) concept. Having spoken to EU diplomats about these concepts, we find that dropping ‘economic’ is thought to better reflect the current nature of the Union, although it remains somewhat of a cosmetic difference from a legal point of view (Interview No. 18 and 19).
this criticism, including EU Member States Germany, the United Kingdom and Denmark. At the start of the discussion, Cyprus had also opposed to moving this paragraph to the mandatory standard, because ‘[…] it would be unsuited to countries such as his, a major flag State, in which social security systems are contributory, and therefore do not provide benefits to individuals who have not made contributions.’ (p. 34) Unable to come to a decision, paragraph five of Guideline B4.5 was moved to the next meeting as an ‘unresolved issue’.

Presenting the report of the third Committee of the 2004 PTMC, Reporter Ms. Fatma Abd Elhamid (Government representative, Egypt) announced that title four was successfully examined by the Committee (International Labour Office, 2004k, pp. 9-10). However, ‘[social security] was one of the most difficult [issues] due to a variety of responsibilities, the specific global nature of seafarers’ work, the status of those working on foreign ships and those who are not entitled to social security in force in the flag State.’ (p. 10) Indeed, although the 2004 PTMC technical committee did achieve a consensus on the principle of social security and its inclusion in the new maritime labor instrument, disagreement on the specifics led the issue to be included among the ‘unresolved issues’ of the 2005 TIM (International Labour Office, 2005i). Specifically, the fifth paragraph of Guideline B4.5 (cf. Box 3.9 supra) was highlighted for further discussion.

During the 2005 TIM, the Ship owners’ Group ‘[…] announced that a new text had been agreed by the two social partners on this issue.’ (International Labour Office, 2005h, p. 11) The debate on this new draft was relatively short, revolving mostly around the precise wording without challenging the substance of the bipartite deal struck by the social partners (cf. Box 3.10 infra). Notably, the new paragraph places some of the responsibility on the flag states. A number of EU Member States (i.e. France, the Netherlands, the United Kingdom, Germany, and Cyprus) individually brought up minor issues with the precise wording, but also expressed their full support for the compromise struck between the social partners (pp. 11-12).

**Regulation 4.5 – Social security**

*Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection*

1. Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution of the International Labour Organisation.
2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively
comprehensive social security protection for seafarers.

3. Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers.

Standard A4.5 – Social security
Guideline B4.5 – Social security

5. Each Member which has national seafarers, non-national seafarers or both serving on ships that fly its flag should provide the social security protection in the Convention as applicable, and should periodically review the branches of social security protection in paragraph 1 of Standard A4.5 with a view to identifying any additional branches appropriate for the seafarers concerned.

Box 3.10 – The draft convention of the 2004 PTMC and 2005 TIM on social security (abridged)

During the 2006 Committee of the Whole, the provisions on social security were included in Regulation 4.5 (cf. Box 3.10 supra) (International Labour Office, 2005e, pp. 70-72). The discussion on social security standards was not reopened and Regulation 4.5 was adopted without amendment (International Labour Office, 2006e, p. 87). Importantly, earlier during the Committee the Employers’ Group advised against revisiting this issue, stating that ‘[…] any reopening of the discussion on Regulation 4.5 regarding social security would have grave consequences.’ (p. 30) This statement highlights the bipartite deal struck by the social partners in the run-up to the 2005 TIM, which came at the back-end of a lengthy and difficult discussion on a complex issue and, as such, would be difficult to renegotiate so close to the finish line of the standard-setting procedure. Eventually, in the closing remarks of the 2006 Committee, we find satisfied opinions on the final text expressed by the whole of the tripartite membership (pp. 121-122). Both the Employers’ and the Workers’ Group expressed satisfaction with the consensus reached on the final instrument, including the United Kingdom, who expressed satisfaction on behalf of ‘[…] what he believed were the sentiments of a great many European countries […]’ (p. 122)

Regulation 4.5 – Social security

Purpose: To ensure that measures are taken with a view to providing seafarers with access to social security protection

1. Each Member shall ensure that all seafarers and, to the extent provided for in its national law, their dependants have access to social security protection in accordance with the Code without prejudice however to any more favourable conditions referred to in paragraph 8 of article 19 of the Constitution.
2. Each Member undertakes to take steps, according to its national circumstances, individually and through international cooperation, to achieve progressively comprehensive social security protection for seafarers.

3. Each Member shall ensure that seafarers who are subject to its social security legislation, and, to the extent provided for in its national law, their dependants, are entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers.

**Standard A4.5 – Social security**

**Guideline B4.5 – Social security**

5. Each Member which has national seafarers, non-national seafarers or both serving on ships that fly its flag should provide the social security protection in the Convention as applicable, and should periodically review the branches of social security protection in Standard A4.5, paragraph 1, with a view to identifying any additional branches appropriate for the seafarers concerned.

Box 3.11 – The final provisions on social security in the 2006 MLC (abridged)

**Issue Conclusion on Social Security**

In the final Convention, the provisions on social security are included in Regulation 4.5 (cf. Box 3.11 supra) (International Labour Office, 2006b, pp. 70-72). Having process-traced the discussion on social security, we detected that the EU Member States were actively involved in the proceedings, wherein they intervened independently or, to a lesser extent, in small coalitions to introduce amendments to resolve outstanding issues. During the discussion on how to balance the responsibilities for providing and ensuring social protection for seafarers (notably the flag state’s role therein), a substantial inconsistency between the Member States can be noted during the HLTWG meetings and the 2004 PTMC. However, it should be noted that the EU Member States and the Commission nevertheless did make consistent interventions in order to safeguard the compatibility between the 2006 MLC and the *acquis communautaire*.

In terms of effectiveness, we find that the EU Member States failed to have the majority of their amendments adopted and, as such, were ineffective in achieving their goals. Interestingly, different coalitions and Member States intervening independently introduced amendments that sought to strike a different balance on the flag state’s role in providing and ensuring social security for seafarers, but all of these were nevertheless ineffective. For example, during the 2004 PTMC the Danish amendment included a much smaller role for the flag state than the French amendment, but both ran into opposition from either on or the other social partner. However, it should again be noted that the EU Member States and the Commission were effective in safeguarding the compatibility between the 2006 MLC and the *acquis*, notably by introducing a clause for REIOs in the Convention. Moreover, it should
also be noted that a number of EU Member States intervened to express their full support for the deal between the social partners that was introduced during the 2005 TIM, while no Member States intervened to oppose this bipartite package. The discussion on social security was not reopened during the 2006 Committee.

As such, we seemingly find a strong covariance between inconsistency and ineffectiveness (on the responsibilities of the flag state, regardless of their position) and a strong covariance between consistency and effectiveness (on the compatibility of the 2006 MLC and the acquis) within the discussion on social security. However, more important than the nature of the Union’s representation is the emerging bipartite deal between the social partners. As different coalitions and Member States intervening independently attempted to introduce amendments to the provisional deal found in the recommended draft, they ran into sensitivities on one or the other side of the tripartite spectrum. Returning to our example, during the 2004 PTMC the Danish amendment ran into opposition from the Seafarers’ Group, while the French amendment was opposed by the Ship owners’ Group. These two groups would eventually settle the precise balance on a bipartite basis and introduce it as a package during the 2005 TIM, at which point the governments (including the EU Member States) expressed their support and the issue was resolved.

3.3.5. Compliance and Enforcement

The compliance and enforcement mechanisms of the 2006 MLC are found in the fifth title, which derives its legal foundation from Article V and provides a detailed overview of flag state responsibilities (Regulation 5.1.), port state responsibilities (Regulation 5.2.), and labor-supplying responsibilities (Regulation 5.3.). By placing these mechanisms on the same level of importance as the substantive regulations under titles one through four and, moreover, making them an inseparable part of the Convention, the tripartite membership highlighted the crucial importance of compliance and enforcement for the success of this Convention. Indeed, given the patchy record of the existing body of maritime labor standards on this front (Bollé, 2006, p. 138), the governments and the social partners all agreed that, for the 2006 MLC to become a success and translate its ambitious standards into practice, it was crucial to create a new and effective approach to ensure compliance with and enforcement of the standards contained in its first four titles. Indeed, it has been noted that after the entry into force of the 2006 MLC on 20 August 2013, the enforcement of its standards remains the key indicator to evaluate its success or failure (Piniella, Silos, & Bernal, 2013). Against this background, it has been established that despite their internal division at the outset of the procedure on maritime labor, the EU Member States aimed to benefit from the creation of a global level playing field by introducing high standards in the 2006 MLC. As such, the compliance and enforcement mechanisms found in the fifth title of this Convention were of particular interest to them, as these mechanisms were responsible for ensuring that flag, port,
and labor-supplying states would all band together to make this level playing field a global reality.

In order to ensure compliance with and enforcement of the maritime labor standards in this Convention, traditional compliance and enforcement mechanisms found in existing ILO instruments were combined with novel mechanisms borrowed from IMO instruments, albeit adapting the latter to the tripartite structure. However, while the tripartite members agreed to the need for and importance of effective compliance and enforcement mechanisms early on during the standard-setting procedure (e.g. already at the end of the 2001 HLTWG an outline of the future elements of the fifth title was drawn up (International Labour Office, 2001b, pp. 23-24)), the precise content and functioning of these mechanisms was a contentious issue that would dominate the standard-setting procedure from beginning to end. For example, at the start of the 2005 TIM, the Ship owners’ Group felt it necessary to warn the meeting that: ‘If no broad consensus could be reached on outstanding issues, especially on the enforcement component of Title 5, the definition of seafarers, and on the scope of application, there would be little prospect of the International Labour Conference in February 2006 being be (sic) a success.’ (emphasis added) (International Labour Office, 2005h, p. 2) In turn, the Seafarers’ Group at this late stage of the procedure deplored ‘[…] that the Shipowners and many Governments seemed to have moved away from what was originally agreed.’ (p. 3) Together with the amount of time and effort that was invested in discussing this issue during the procedure, it is clear that the most crucial aspect of the 2006 MLC was also the most contentious issue during the standard-setting procedure. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The compliance and enforcement mechanisms figured prominently on the agenda of the HLTWG meetings and their related Tripartite Subgroups, as the tripartite members agreed that ‘[…] it would have been useless to have continued with the exercise of consolidation in the absence of consensus on the question of compliance and enforcement (and also on the simplified amendment procedure).’ (Doumbia-Henry, 2004, p. 329) As such, some preliminary thoughts on the future provisions of the fifth title were already summed up at the end of the 2001 HLTWG (International Labour Office, 2001b, pp. 23-24), after which the discussion on these issues started in earnest during the 2002 Tripartite Subgroup and, from there on out, remained at the front and center of the discussion for the remainder of the standard-setting procedure (International Labour Office, 2002b, pp. 2-15). The broad outlines of the fifth title, notably including the certification system (Regulation 5.1.3) and the ‘no more favorable treatment’-clause (paragraph seven of Article V), were either taken from existing ILO standards or borrowed from IMO instruments and were already put in place during these early HLTWG meetings, although the specifics of these and other provisions of the fifth title would continue to dominate the agenda until the end of the standard-setting
procedure. Against this background, it should be noted that the ‘no more favorable
treatment’-clause was previously part of Directive 1999/95/EC (European Parliament &
Council of the European Union, 1999) (for additional European legislation on port state

With regards to the 2006 MLC’s goal to effectively create and enforce a global level playing
field for the maritime sector, it is important to highlight the central importance of the ‘no
more favorable treatment’-clause. This clause is found in paragraph seven of Article V, which
states that:

‘Each Member shall implement its responsibilities under this Convention in such a way
as to ensure that the ships that fly the flag of any State that has not ratified this
Convention do not receive more favourable treatment than the ships that fly the flag of any
State that has ratified it.’ (emphasis added) (International Labour Office, 2006b, p. 5)

The ‘no more favorable treatment’-clause is of key importance to ensure a global level
playing field for the maritime sector and was thus a natural part of the broad outlines the
tripartite representatives of the HLTWG agreed upon before fleshing out the content of
titles one through four (Doumbia-Henry, 2004, p. 332). To illustrate is importance for the
enforcement of the 2006 MLC, take for example the system of certification that was also
outlined during the HLTWG meetings. The mandatory certification regime entails that ships
registered under a ratifying flag state need to carry a certificate evidencing it meets the
standards set out in the 2006 MLC and a declaration detailing what those standards are under
the flag state’s national law and the measures taken by the ship owner to be in compliance
(Tortell, et al., 2009, p. 116). Importantly, the certificate constitutes prima facie proof that the
ship is in compliance with the standards set out in the 2006 MLC and should be accepted as
such by the port state inspectors, while ships registered under non-ratifying flag states will
still be inspected by the grace of the ‘no more favorable treatment’-clause. As such, the
maritime labor certificate is said to be ‘driving’ the ratification process of the 2006 MLC,
seeing as registering ships under ratifying flag states creates distinct advantages for the ship
owners. As one ILO Official put it: ‘The idea is that you want your ship to flying the flag of a
flag state that has ratified the Convention, which is the only way the certificate has any
meaning. If you have it, the idea is that if someone comes on board [to inspect the ship] and
there are no apparent problems, you show the certificate and they leave you alone.’
(Interview No. 35). However, it is obvious that this mechanism of certification can only
function when the 2006 MLC succeeds in creating a global level playing field, hence the key
importance of the ‘no more favorable treatment’-clause.
Returning to the HLTWG meetings and their related Tripartite Subgroups, the tripartite dynamic during these meetings was initially characterized by a discussion that played out between the social partners and independent governments, but increasingly the latter would complement their independent interventions with gathering behind a spokesperson for the Government Group, who would relay the outcome of intra-governmental consultations to the social partners. While it should be recalled that these meetings were focused on providing the ILO Office with input as it went through a number of preliminary drafts, this ‘bloc’ dynamic would continue and spill over into subsequent phases of the standard-setting procedure (cf. infra). Against this background, the EU Member States intervened independently and were actively involved in these early discussions. Along with the tripartite consensus, the Member States intervened in support of strong compliance and enforcement mechanisms, although some inconsistencies on the specifics of the provisions of the fifth title reveal the internal division that was previously highlighted by Riddervold (2010, p. 589). For example, during the 2002 HLTWG, Cyprus and Denmark found themselves in opposing camps when discussing if the maritime labor certificate should certify only procedures for compliance or actual compliance (International Labour Office, 2002a, pp. 9-10).

**Title 5 – Compliance and enforcement**

3. [The provisions of Part A of the Code in this Title may be amended only in accordance with the procedure set out in Article XIV. Part B and the appendices to Part A may also be amended in accordance with Article XV.]

**Regulation 5.1.1 – General principles**

2. Members shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.

**Regulation 5.1.4 – Inspection and enforcement**

*Standard A5.1.4 – Inspection and enforcement*

7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:
(a) to board a ship that flies the Member’s flag;
(b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
(c) [to require that deficiencies are remedied and, where they have grounds to believe that a deficiency constitutes a significant danger to seafarers’ health or safety or security, to prohibit, subject to any right of appeal to a judicial or administrative authority, a ship from leaving port until necessary measures are taken. (modified C.178A5/2)] [to require that non-compliance is remedied and, where they have grounds to believe that a case of non-compliance constitutes a serious breach of seafarers’ rights as provided for in this Convention, or represents a danger to seafarers’ health or safety or security, to prohibit, subject to any right of appeal to a judicial or administrative authority, a ship from leaving port until necessary actions are taken. (modified C.178A5/2)]

8. Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings (C.178A7/2) when the breach of the standard does not endanger the safety or health or security of the seafarers concerned and where there is no prior history of similar violations. A record shall be kept of such exercises of discretion.

Guideline B5.1.4 – Inspection and enforcement

11. The annual report published by the competent authority should also contain:
(d) statistics on all seafarers subject to its national laws and regulations;

Standard A5.2.1 – Inspections in port

4. Where, following a more detailed inspection the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall:
(a) forthwith bring the deficiencies and the measures needed to rectify them to the attention of the master of the ship and notify the nearest maritime, consular or diplomatic representative of the flag State accordingly;
(b) invite (a representative of the flag State to be present, if possible, (modified C.147A4/2)) (the competent authority of that State to send a representative to discuss the matter) and request the flag State to reply to the notification within a prescribed deadline;
(c) provide the competent authorities of the next port of call with relevant information; and
(d) bring the deficiencies and the measures needed to rectify them to the attention of the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection is carried out.

Box 3.12 – The recommended draft of the HLTWG on compliance and enforcement (abridged, underline in original)
After the HLTWG meetings had delivered their ‘recommended draft’, wherein the provisions on compliance and enforcement were included in Title 5 (International Labour Office, 2004c, pp. 75-94), the 2004 PTMC took over to turn this text into a ‘draft Convention’, which would then be submitted to the 2006 IMLC (International Labour Office, 2005i, pp. 1-2). During the 2004 PTMC, the first technical committee extensively discussed the provisions on flag and port state responsibilities found in Title five (International Labour Office, 2004l, pp. 23-45). Despite the broad scope of the discussion, the workload for the Committee was somewhat lightened by focusing on the bracketed or ‘immature’ text of the recommended draft, which were the provisions that needed particular attention from the tripartite membership as they consolidated the draft Convention. The discussion continued the tripartite ‘bloc’ dynamic that started during the HLTWG meetings and largely played itself out between the social partners and Denmark, the latter speaking on behalf of all or most governments as the Chair of the Government Group. While individual governments also intervened during the discussion, Denmark functioned as the central spokesperson that relayed the outcome of the intra-governmental consultations to the social partners. A typical example of this dynamic is found in the discussion on the third paragraph on the applicability of the simplified amendment procedure to the provisions in Title five (cf. Box 3.12 supra). After the Ship owners’ (in favor of retaining the third paragraph, thus limiting the simplified amendment procedure to part B of the Code in this title) and Seafarers’ groups (in favor of deleting the third paragraph, thus retaining the extended scope of the simplified amendment procedure) had expressed their positions, Denmark relayed the government’s preference to retain the paragraph. The discussion was subsequently postponed. While the social partners took positions further and closer from each other on the tripartite stage depending on the provision under discussion, this example illustrates the basic dynamic in which all three groups were represented as more or less coherent blocs.

Given the heavy workload of the first technical committee and the mature framework for the fifth title that had been established during the HLTWG meetings and their related Tripartite Subgroups, the committee discussion on compliance and enforcement mechanisms was built around a large number of concise, fast-paced discussions that followed the same tripartite dynamic and generally resulted in small, but relevant changes to the recommended draft. This was reflected in the report of the Committee, in which Reporter Mr. Bro-Mathew Shinguadja (Government representative, Namibia) noted that despite the remaining ‘interesting challenges’ and unresolved issues in need of further debate, incremental progress had been made and had mostly resulted in ‘limited changes’ (International Labour Office, 2004k, pp. 3-4).

However, certain provisions received extended attention and give us a more in-depth view of the tripartite dynamic at work. For example, the discussion on subparagraph seven (c) of
Standard A5.1.4 illustrates the opportunity of individual governments to influence the discussion when the social partners disagreed and the Government Group was unable to reach a common position (International Labour Office, 2004l, pp. 38-41). Denmark, speaking on behalf of the Government Group, started this discussion on the role of flag state inspectors by indicating that the governments had not come to an agreement among each other, specifically being unable to decide between the two alternatives presented in the recommended draft (cf. Box 3.12 supra). The Ship owners’ Group preferred the more limited first alternative, notably stating the Convention was not a bill of rights for seafarers, while the Seafarers’ Group called on the governments to give serious consideration to the more extensive second alternative. Confronted with a stalemate between the social partners and the divided governments, this divide was overcome based on a compromise introduced by Malta, which suggested starting from the more extensive second alternative, but toning it down on several aspects. After some further changes, the social partners and the other governments could all agree to this solution, illustrating how an individual government could still play a pivotal role within this ‘bloc’ dynamic.

Against this background, the EU Member States were mostly represented along with all other governments by Denmark, speaking as the Chair of the Government Group, and additionally also intervened independently during the discussion. These interventions were almost always consistent, although during the above mentioned discussion on subparagraph seven (c) of Standard A5.1.4 the Member States reflected the broader divide within the Government Group by supporting different alternatives. Specifically, Spain and the United Kingdom supporting the second alternative, while Denmark expressed a preference for the first (pp. 39-40). On the whole, the EU Member States were not involved in the discussion as a distinct group, although the Netherlands did make one minor intervention on behalf of the EU Member States present in the Committee (p. 45), and were indistinguishable from the broader Government Group. Nevertheless, a close reading of the 2004 PTMC record of proceedings does reveal some indications that the EU Member States were not passive bystanders, but actively involved in the discussion. For example, we have already seen that it was a compromise introduced by EU Member State Malta that helped solve the difficult discussion on subparagraph seven (c) of Standard A5.1.4.

Although the first Committee of the 2004 PTMC did achieve incremental progress on the fifth title on compliance and enforcement mechanisms, several challenges were left outstanding and were included as ‘unresolved issues’ on the agenda of the 2005 TIM (International Labour Office, 2005i). Given the heavy workload on Title five, the first Committee had also not been able to complete the discussion on all compliance and enforcement provisions, which were subsequently also moved to the 2005 TIM.
During the 2005 TIM, the tripartite dynamic of the discussion continued to play itself out between the social partners and the Government Group, although the latter was now represented by China instead of Denmark (International Labour Office, 2005h, pp. 12-26). Increasingly, we also find that the social partners were keenly aware that it would ultimately be up to the governments to put the compliance and enforcement mechanisms of Title five to use, resulting in them explicitly asking the Government Group for its stance. For example, as the discussion on the third paragraph on applicability of the simplified amendment procedure continued (cf. supra), both the Ship owners’ and Seafarers’ groups stated that they would follow the final decision of the Government Group (p. 12). After China, speaking on behalf of said Group, spoke out in favor of deleting the third paragraph (thus expanding the simplified amendment procedure to part A of the Code under the fifth title), the decision was made to indeed delete the third paragraph.

Against this background, the EU Member States were again mostly represented along with all other governments by China, speaking as the Chair of the Government Group, and additionally also intervened independently during the discussion. These interventions were always consistent with one another. As such, the EU Member States were again not involved in the discussion as a distinct group and, generally, were indistinguishable from the broader Government Group. However, a close reading of the record of proceedings of the 2005 TIM also reveals evidence of the EU Member States playing an important role within the broader Government Group. For example, during the discussion on paragraph 17 of Standard A5.1.3 on withdrawing the maritime labor certificate, the position of the Government Group originated from a governmental Working Group consisting of the Bahamas, Greece, the Netherlands, and the United Kingdom (pp. 13-14). After the latter explained the resulting position of the Government Group, this was the text that was adopted in the draft Convention, albeit after part of it was moved from the Guidelines to the Standards. Elsewhere in the 2005 TIM, more indications can be found of the important role played by the EU Member States, such as the United Kingdom reporting on consultations that took place within a Tripartite Drafting Group (p. 17) or China, speaking on behalf of the Government Group, indicating the ‘serious concerns’ of the EU Member States on the first paragraph of Standard A5.2.1 on port inspections (p. 19).

**Regulation 5.1.1 – General principles**

2. Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention. (based on C178A2)
Standard A5.1.4 – Inspection and enforcement

7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:
(a) to board a ship that flies the Member’s flag;
(b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
(c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights), or represent a significant danger to seafarers’ safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

9. Inspectors shall have the discretion to give warnings and advice instead of instituting or recommending proceedings (C.178A7/2) when the breach of the standard does not endanger the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches. A record shall be kept of such exercises of discretion.

Guideline B5.1.4 – Inspection and enforcement

10. The annual report published by the competent authority should contain:
(d) statistics on all seafarers subject to its national laws and regulations;

Standard A5.2.1 – Inspections in port

4. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall:
(a) forthwith bring the deficiencies and the measures needed to rectify them to the attention of the master of the ship and notify the nearest maritime, consular or diplomatic representative of the flag State accordingly and request the flag State to reply to the notification within a prescribed deadline;
(b) provide the competent authorities of the next port of call with relevant information; and
(c) bring the deficiencies and the measures needed to rectify them to the attention of the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection is carried out.
During the 2006 Committee, most provisions on compliance and enforcement, which were again included in the fifth title (International Labour Office, 2005e, pp. 73-91), were adopted with little or no discussion between the tripartite members (International Labour Office, 2006e, pp. 88-120). This is especially true for the discussion on labor-supplying responsibilities (Regulation 5.3.), which was integrally adopted without amendment (p. 120). However, the discussion on flag state (Regulation 5.1.) and port state (Regulation 5.2.) responsibilities did see some extended debates on a select number of amendments.

Before turning to the discussions on these two regulations, we take a look at the General Discussion on the fifth title that opened the debate (pp. 88-90). The Employer and Worker Vice-Chairpersons respectively expressed their support of and satisfaction with the provisions found in the fifth title and, importantly, the former stated that ‘[i]t was mainly addressed to governments, as they would have to implement the instrument.’ (p. 88) Following earlier indications during the 2004 PTMC and the 2005 TIM, this was an explicit acknowledgement that on compliance and enforcement the governments were expected to lead the discussion. Subsequently, the Government Group as a whole and a number of individual governments took the lead during this general discussion, highlighting a number of issues that needed fine-tuning. Importantly, this included an intervention by the United Kingdom, presumably speaking on behalf of the EU Member States, in which ‘three main areas of concern’ (p. 89) were defined (cf. infra). As such, the Union for the first time during the discussion on compliance and enforcement can be distinguished in the record of proceedings from the broader Government Group.

Most provisions of Regulation 5.1. on flag state responsibilities were adopted with little or no discussion between the tripartite members, who were largely in agreement after all the time and effort that had been invested in the fifth title during the previous years (International Labour Office, 2006e, pp. 90-114). However, four amendments serve as exceptions, highlighting issues on which there still existed genuine disagreement. Firstly, amendment D.26 sponsored by the Workers’ Group proposed to include ‘and social security protection’ in paragraph two of Regulation 5.1.1 (cf. Box 3.13 supra) (pp. 90-97). This amendment would require flag states to inspect whether all seafarers on board vessels flying their flag enjoy social security coverage. While this was a matter of inspection and did not require flag states to provide such coverage themselves, this amendment was sensitive because of its potential to reopen the discussion on the agreement that had just been reached on Regulation 4.5 on social security (cf. Chapter 3.3.4.). Indeed, it quickly became clear that the Employers’ Group and ‘a majority of Governments’ were opposed to reopening the discussion for this reason. Nevertheless, the Workers’ Group stressed the flag states’ responsibility in these matters and pressed on by formally introducing the amendment. This resulted in the only instance during the 2006 Committee where a vote (by show of hands)
had to settle the discussion, its outcome defeating the amendment. The EU Member States intervened independently during the discussion on this amendment and, interestingly, continuously took opposing sides. While Denmark, Greece, the United Kingdom, Malta, Germany and Cyprus did not support the amendment, France, Spain and Portugal were in favor of extending the flag states’ responsibilities in terms of inspection. This resulted in the clearest instance of inconsistent EU representation during the 2006 Committee.

Secondly, amendment D.27 sponsored by the Workers’ Group intended to add a new paragraph after the fifth paragraph of Regulation 5.1.1 and gave rise to an extended discussion (pp. 97-100). The new paragraph explicitly gave seafarers the right to find legal recourse with the port state where their ship was docked. This started a technical discussion on the legal venues available to seafarers and the compatibility of the 2006 MLC with other international instruments, which ultimately ended in broad support for a compromise suggested by the representative of the Secretary-General. Interestingly, the United Kingdom, speaking on behalf of the EU Member States, Bulgaria, Iceland, Norway, and Romania, first stated that their common position was against the amendment, but later retracted this by saying that: ‘After consultations, however, the Government members of the Committee Member States of the European Union had been unable to find a resolution to this difficulty and did not share a common position.’ (p. 99) Indeed, following this statement a number of EU Member States intervened independently and accepted the compromise proposal. However, it should be noted that despite the EU Member States not finding a common position, there is no apparent inconsistency between their independent interventions. At most we see the United Kingdom outright opposing the amendment, while Cyprus, Denmark, and Malta try and succeed to introduce a subamendment.

Thirdly and fourthly, there was significant debate on two paragraphs that had been highlighted by the United Kingdom, presumably speaking on behalf of the EU Member States, as ‘main areas of concern’ (p. 89) during the General Discussion (cf. supra), following amendments introduced by either the United Kingdom, speaking on behalf of the EU Member States, Bulgaria, Iceland, Norway, and Romania (i.e. amendment D.23 to delete the second sentence of paragraph nine of Standard A5.1.4) (pp. 108-111) or the Netherlands and the United Kingdom (i.e. amendment D.24 to delete subparagraph ten (d) of Guideline B.5.1.4) (pp. 111-114) (cf. Box 3.13 supra). Amendment D.23 was formally not adopted, but did serve as the basis for the Drafting Committee’s compromise that took into account the opposition voiced by the Workers’ Group. The Employers’ Group and most governments were in favor of the original amendment, but could also agree to the compromise. Amendment D.24 was also formally not adopted to make way for a compromise suggested by the Drafting Committee. Here the final outcome was further removed from the original amendment, particularly because a compromise suggested by Denmark between the
Employers’ Group (in favor of the amendment) and the Workers’ Group (opposed to the amendment) served as the basis for the Drafting Committee’s text. It is also interesting to note that while the Netherlands and the United Kingdom received support from several EU Member States, France opposed their amendment. While this inconsistency takes place on a minor issue, it does add to the more high profile cases of inconsistency found elsewhere in the discussion on the fifth title.

Most provisions of Regulation 5.2. on port state responsibilities were adopted with little or no discussion between the tripartite members (International Labour Office, 2006e, pp. 114-120). However, the extended discussion on amendment D.41 on the fourth paragraph of Standard A5.2.1 serves as a notable exception (cf. Box 3.13 supra) (pp. 114-118). During the general discussion on the fifth title, his paragraph on port state inspection was highlighted by the United Kingdom, presumably speaking on behalf of the EU Member States, as the last of the ‘main areas of concern’ (p. 89) it had highlighted during the General Discussion. Amendment D.41 was introduced by the United Kingdom, speaking on behalf of the EU Member States, Bulgaria, Iceland, Norway, and Romania, and sought to amend the reporting requirement which would place an excessive burden on governments and unbalance the practical implementation and enforcement of the Convention. The amendment was supported by the Employer’s Group and a considerable number of government, but the Workers’ Group voiced its opposition against amending a previously agreed upon and delicately balanced paragraph. After some discussion, an informal Working Group was created, which accepted the concerns underlying the original amendment, but balanced these with the wishes of the social partners. The resulting outcome was supported by the both the Employers’ and Workers’ groups, which shifted the balance on the tripartite stage. Indeed, while the United Kingdom, speaking on behalf of the EU Member States, noted that this compromise ‘differed significantly’ from amendment D.41 and would not address the burden placed on the governments, it nevertheless reluctantly supported the outcome of the Working Group when faced with the bipartite support for this compromise.

### Title 5 – Compliance and enforcement

4. The provisions of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or a legal venue.

### Regulation 5.1.1 – General principles
2. Each Member shall establish an effective system for the inspection and certification of maritime labour conditions, in accordance with Regulations 5.1.3 and 5.1.4 ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in this Convention.

*Standard A5.1.4 – Inspection and enforcement*

7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:
   (a) to board a ship that flies the Member’s flag;
   (b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and
   (c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Convention (including seafarers’ rights), or represent a significant danger to seafarers’ safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

9. Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Convention that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

*Guideline B5.1.4 – Inspection and enforcement*

10. The annual report published by the competent authority of each Member, in respect of ships that fly its flag, should contain:
    (d) statistics on all seafarers subject to its national laws and regulations;

*Standard A5.2.1 – Inspections in port*

4. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Convention, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, or if they relate to a complaint made in accordance with paragraph 3 of this Standard, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers’ and shipowners’ organizations in the Member in which the inspection is carried out, and may:
   (a) notify a representative of the flag State;
(b) provide the competent authorities of the next port of call with the relevant information.

Box 3.14 – The final provisions on compliance and enforcement in the 2006 MLC (abridged)

Issue Conclusion on Compliance and Enforcement

In the final Convention, the provisions on compliance and enforcement are included in the fifth title (cf. Box 3.14 supra) (International Labour Office, 2006b, pp. 73-90). The broad outlines of these provisions were intentionally discussed and put in place early on during the standard-setting procedure, although their final shape would remain a topic of discussion throughout the entire procedure. The tripartite members all agreed that developing effective enforcement mechanisms was critical for the success or the failure of the Convention, but the discussion was nevertheless contentious as the tripartite ‘blocs’ differed on how to give substance to many of these mechanisms. As such, throughout the procedure the social partners opposed each other’s position and created a divided tripartite stage, on which the government representatives found themselves taking up the middle ground and increasingly gathering themselves in a Government Group to influence the outcome of the discussion.

Against this background, we detected that the representation of the EU Member States was embedded within the broader Government Group during most of the standard-setting procedure. Starting during the HLTWG meetings and spilling over into the 2004 PTCM and 2005 TIM, the discussion on compliance and enforcement mechanisms was characterized by a tripartite bloc dynamic, wherein the governments were represented by a spokesperson for the Government Group, who relayed the outcomes of intra-governmental consultations to the social partners. While this makes it difficult to assess the Union’s external coherence, the record of proceedings do allow us to draw two conclusions on the EU’s representation and involvement in the discussion. Firstly, during the 2004 PTCM and – especially – during the 2005 TIM we find indicators that the EU Member States played an active role within the Government Group, thereby often making an impact on the outcome of the discussion. Secondly, from the independent interventions by EU Member States we can infer that the positions of the EU Member States were mostly consistent with each other, although on one occasion the Member States took inconsistent positions on an issue the broader Government Group had similarly not been able to agree on.

During the 2006 Committee, the tripartite bloc dynamic moved to the background and, as a result, it becomes possible to distinguish the position of the Union from the broader Government Group. Having process-traced the discussion during this Committee, we find that the United Kingdom formally intervened on behalf of the EU Member States, Bulgaria, Iceland, Norway, and Romania, to coherently introduce and defend amendments on their ‘areas of concern’, while elsewhere in the committee discussion the independent interventions by EU Member States reveal major and minor inconsistencies between their
positions when reacting to amendments introduced by third parties. Nevertheless, despite the inconsistencies in the representation of independent EU Member States, common positions of the Union were never challenged by antagonistic interventions.

In terms of effectiveness, the tripartite bloc dynamic similarly clouds our assessment of the EU’s goal attainment during the discussion on compliance and enforcement. Nevertheless, the Union’s strong advocacy of strict compliance and enforcement mechanisms is reflected throughout the fifth title of the final Convention. In this regard, the inclusion of the ‘no more favorable treatment’-clause should be noted, as this clause originated from the acquis communautaire. In addition to its role within the Government Group throughout most of the procedure, we find that, during the 2006 Committee, the Union was mostly effective in introducing amendments as a distinct group, albeit after going through Working Groups. However, it is important to recall that these came at the back end of a discussion that intentionally started early on during the standard-setting procedure and put in place the framework for the fifth title long before the final committee discussion.

3.4. Case Conclusion
The goal of the standard-setting procedure on maritime labor was to consolidate the existing body of standards into a single instrument and, as such, establish a ‘fourth pillar’ of the international regulatory regime for quality shipping, which would stand alongside the three pillars the IMO had already put in place. Consolidating the existing maritime labor standards into a single instrument would make them better equipped to tackle the modern-day challenges that are brought by globalization. Furthermore, in order to deal with the fast-changing nature this sector, this consolidation exercise would be accompanied by a new approach to enforcing and amending the resulting instrument. As a result, the novelty of the new Convention mainly rests with its novel approach to existing maritime labor standards, rather than the substance of the standards it consolidates. Following an atypical, but comparable standard-setting procedure, wherein the well-developed sectoral representation of the maritime profession worked through a separate standard-setting ‘machinery’ that is geared specifically toward their sector, the 2006 MLC was adopted with near-unanimous support from the tripartite members. Following its adoption during the 2006 IMLC, the Convention entered into force in August 2013 and its ratifying parties currently cover more than eight percent of the world’s gross shipping tonnage.

The standard-setting procedure on maritime labor took place on a relatively united tripartite stage, whereupon a strong alliance between the social partners initiated the procedure with their bipartite Geneva Accord and subsequently drove the process forward. The unity between the social partners derived from their shared conviction that a new instrument was necessary and their shared analysis on how to move forward in this regard (i.e. consolidate the existing instruments, with attention to the enforcement and amendment of the resulting
Convention). As such, the structural alliance between the social partners played an important role during the procedure by creating a relatively united tripartite stage, although it should be stressed that agreements on specific issues still needed to be found and at times lead to extended discussions. Despite this bipartite alliance, the governments were also actively involved in the procedure and thereby created a strong tripartite dynamic. In this regard, the social partners repeatedly stressed the need for the governments to take an active role in the discussion, given their crucial role in terms of the eventual enforcement of the instrument.

Turning to our detection of external EU coherence, the bird’s-eye view gave us a first impression of the tactical dimension of the Union’s representation during the standard-setting procedure on maritime labor. This quantitative overview indicated that, during the 2006 tripartite committee discussion, the interventions by the EU Member States were mostly focused on representing common positions through ‘EU coalitions’, i.e. on behalf of the Union or on behalf of what we have dubbed the Core EU Group (27 times in total for most EU Member States). Both types of interventions were almost exclusively handled by the United Kingdom and, thus, not by the landlocked Austrian EU Presidency, which had delegated its responsibilities in this regard. When compared to the number of independent interventions (187) and the remaining interventions in other configurations (6), we find that the EU Member States also made a substantial number of interventions wherein they spoke on their own behalf. However, while these numbers are substantial for a number of EU Member States, it should be noted that for nearly all of them their presence in EU coalitions outweighs their number of independent interventions.

Comparing these numbers with those of the Union’s representation during the 2004 PTMC or ‘first committee discussion’ of this atypical procedure, we found that the EU Member States gradually shifted the focus of their representation toward EU coalitions. At this point in the procedure, the internal European coordination process had only recently started and a comparison between common positions on behalf of the Union (1), independent interventions (349), and interventions in other configurations (33) is clear enough in this regard. However, our overview additionally indicated that during the first technical committee of the 2004 PTMC Denmark functioned as the spokesperson for the Government Group (30), wherein the EU Member States were included alongside most or all other governments. Indeed, almost all of the EU Member States’ 33 interventions in other configurations during the 2004 PTMC were as part of this Government Group.

Having process-traced the standard-setting procedure on maritime labor, we can now extend on the first impression the bird’s-eye view provided on the Union’s representation during this procedure. Firstly, focusing on the tactical dimension, Table 3.8 below categorizes the
Union’s representation on all five key issues as either coherent, incoherent, consistent, or inconsistent.

<table>
<thead>
<tr>
<th>Symbiotic MS position(s)</th>
<th>Common EU position</th>
<th>Independent MS position(s)</th>
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<tr>
<td></td>
<td>Definitions and scope of application</td>
<td>Structure of the instrument, Simplified amendment procedure</td>
</tr>
<tr>
<td>Antagonistic MS position(s)</td>
<td>Compliance and enforcement</td>
<td>Social security</td>
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Table 3.8 – The external coherence of EU representation during the standard-setting procedure on maritime labor

In terms of the distinction between Member States representing common or independent positions, the Table above shows that no common EU positions was represented during the discussion on three of the five key issues that we traced, i.e. the structure of the instrument, and the simplified amendment procedure, while the United Kingdom took over from the landlocked Austrian EU Presidency during the 2006 committee to represent common positions on the definitions and scope of application (on behalf of the Core EU Group) and compliance and enforcement (on behalf of the Union). With regards to the three issues on which no common EU position was expressed, it is important to note that the final outcome of the discussions on the structure of the instrument and social security was settled during the 2004 PTMC, at which point in the procedure the internal European coordination process had not yet taken its full effect. Indeed, the absence of common positions on issues that were settled during the 2004 PTMC and the fact that common positions were only detected during the 2006 Committee both confirm our bird’s-eye view impression that the Member States shifted to EU representation at a late stage in the procedure.

In addition, process-tracing the discussion on the simplified amendment provided us with a clear example of the role played by the Government Group during the standard-setting procedure on maritime labor and, moreover, its effect on EU representation. To reiterate, the governments held extensive internal consultations during this procedure, resulting in a Chairperson representing unanimous or majority positions on behalf of the Government Group. During the discussion on the simplified amendment procedure, the governmental representation of both EU and non-EU Member States was handled almost exclusively by a spokesperson of the Government Group, which crowded out a separate position on behalf of the Union. Indeed, despite the fact that these provisions were still discussed during the 2006 Committee, the absence of a common EU position is related to the Government Group’s continued handling of governmental representation. An additional indication of this ‘crowding out’ can be found in the discussion on compliance and enforcement, wherein the
Union only represented a common position after the Government Group had receded to the background after playing a central role during the 2004 PTMC. While the internal goings-on of the consultations within the Government Group are not easily read from the source material, we have nevertheless encountered strong indications that the EU Member States often played an important role within this group. Firstly, Denmark served as its Chairperson during the first technical committee of the 2004 PTMC, wherein this group was most actively involved in the proceedings. Secondly, some of the consultations that decided on the final outcome of specific provisions on the definitions and scope of application and compliance and enforcement mechanisms were heavily influenced by the EU Member States, either because the outcome resembled an earlier proposal from a Member State (on the scope of exemptions during the former discussion) or because the Working Group was mostly made up of volunteering EU Member States (on the withdrawal of the maritime labor certificate during the latter discussion).

In terms of the distinction between the Member States representing symbiotic or antagonistic positions, Table 3.8 shows that their independent interventions and interventions in other configurations were symbiotic with the common EU position on the definitions and scope of application and symbiotic with each other on the structure of the instrument and the simplified amendment procedure. During the latter discussion, these consistent interventions were not expressed individually, but were detected part of the unanimous Government Group. However, the Table above also reveals two instances wherein one or more EU Member States expressed positions that were antagonistic during the discussions on social security and compliance and enforcement. In this regard, two qualifications should be made. Firstly, due to the broad nature of the discussion on these issues (compliance and enforcement refers to the entire fifth title of the 2006 MLC), the independent interventions of the Member States were in fact simultaneously consistent and inconsistent when discussing different parts of the same issue. For example, during the discussion on social security, the independent interventions by the EU Member States were for the most part inconsistent with each other, but under the guidance of the Commission they managed at the same time to consistently argue in favor of including provisions for REIOs. As such, while substantial inconsistency of the EU Member States can clearly be detected during the discussion on these issues, some consistent interventions can also be detected. Secondly, the antagonism during the discussion on compliance and enforcement was not aimed at the common EU position, but rather played itself out elsewhere in the discussion between independent interventions by Member States. As such, while the EU representation on this issue is categorized as ‘incoherent’ (cf. Table 3.8 supra), it should in fact be categorized as ‘coherent, albeit supplemented by inconsistent positions’. 
Taken together, our detection of the tactical dimension of EU representation is nuanced and subject to qualifications. To a large extent, it is possible to confirm our bird’s-eye view impression that the Union’s representation shifted toward common positions in the final stage of the procedure (i.e. coherence). Common EU positions were only detected during the 2006 Committee, while several key issues on which no common position was expressed were already settled during the 2004 PTMC, before the internal European coordination process could take full effect and result in coherent representation on behalf of the Union. In addition, interventions on behalf of the Government Group at times crowded out separate positions on behalf of the Union. This is in line with the findings by Riddervold, who found that the Commission was able to overcome the initial division between the EU Member States by the time the Convention was finalized during the 2006 Committee (Riddervold, 2010, p. 583). However, we have also detected substantial inconsistencies between the independent interventions by EU Member States. While the antagonistic positions of several Member States were never aimed at the common EU position (i.e. incoherence) and this antagonism was most substantial during the 2004 PTMC, in the case of compliance and enforcement it continued on specific provisions of this issue during the 2006 Committee. As such, our bird’s-eye view impression and Riddervold’s findings on the Union’s shift toward coherent representation need to be slightly qualified, albeit without negating the basic evolution of EU representation during the procedure on maritime labor.

Secondly, focusing on the substantive dimension of EU representation, tracing the discussions on the five key issues has shown that the Union’s common positions were in favor of broad definitions and an inclusive scope of application for the 2006 MLC, while also strongly advocating for strict compliance and enforcement mechanisms. In addition, it also regularly aimed to ensure compliance with the *acquis communautaire* by uploading parts of it into the Convention (e.g. the no more favorable treatment-clause in the provisions on compliance and enforcement) and having several provisions adjusted (e.g. the REIO-clause in the provisions on social security). However, it should be reiterated that the EU Member States were internally divided on several issues during the standard-setting procedure on maritime labor and that even at a late stage the Commission’s coordination efforts had not fully brought them on the same page. For example, the discussion on compliance and enforcement during the 2006 Committee shows that the EU Member States never fully agreed on the precise role the flag state should play in this regard.

Turning to our detection of EU effectiveness in terms of goal attainment, process-tracing the key issues of the standard-setting procedure on maritime labor reveals that the Union attained its goals on almost all of the five key issues, thereby notably broadening the definitions and scope of application of the 2006 MLC, while also effectively advocating strong compliance and enforcement mechanisms. However, while the final Convention has
been deemed fully compatible with the *acquis communautaire* by a Council Decision, the Member States seemingly failed to attain its self-proclaimed goals during the discussion on social security. Even though the EU Member States managed to introduce a REIO-clause to these provisions, all other amendments introduced independently or in small coalitions on the flag state’s role in providing and ensuring social security for seafarers failed to be adopted. We will return to this later on, given that the substantial inconsistency of the latter interventions means that Member States on one or the other side of the discussion nevertheless must have seen their position reflected in the final outcome, despite the fact that none of their amendments were adopted.

As we have seen during our conceptualization of EU effectiveness, detecting the Union’s goal attainment tells us little when it is done in isolation from the international context. Indeed, once we incorporate the international context in our analysis, we are able to paint a more fine-grained image of EU representation by relating its substantive dimension to the positions of third parties and, as such, pinpoint the relative nature of the goals the Union did or did not attain. To briefly reiterate, the standard-setting procedure on maritime labor took place on a relatively united tripartite stage, whereupon a strong alliance between the social partners initiated the procedure with their bipartite Geneva Accord and subsequently drove the process forward, although it should be stressed that agreements on specific issues still needed to be found and at times lead to extended discussions. Despite this bipartite alliance, the governments were also actively involved in the procedure and thereby created a strong tripartite dynamic. As we have seen, governmental representation was often handled by a Chairperson representing unanimous or majority positions on behalf of a Government Group. While we should again stress that the positions of the governments and the social partners varied depending on the issue under discussion, these general positions provided the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

Against this background, relating the substantive dimension of EU representation to the positions of third parties reveals that the EU Member States generally took a progressive position on the tripartite stage, wherein they were joined by the majority of governments and the social partners. Indeed, while agreements on specific issues still needed to be found and at times lead to extended discussions, both the bipartite alliance between the social partners as the majority of governments fundamentally supported the adoption of a binding instrument with strong compliance and enforcement mechanisms. Within this context, the Union’s common positions in favor of broad definitions and an inclusive scope of application for the 2006 MLC and in favor of strict compliance and enforcement mechanisms found the EU Member States on the same page as most of their tripartite
partners. Nevertheless, given the internal division of the EU Member States, any statements on the relative position of ‘the’ Union need to be qualified to some extent.

Having situated the substantive dimension of EU representation and, thus, the nature of the goals the Union did or did not attain within the international context of the standard-setting procedure on maritime labor, we now turn to the causal potential of EU coherence in relation to its effectiveness. Based on our process-tracing of the discussion on the five key issues, we find that it is difficult to draw clear conclusions on their precise relation. For one, the Union’s representation only shifted toward common positions at a fairly late stage of the procedure (and even then with some qualifications), after their contours or even the final outcome of several issues had already been decided. In addition, the EU Member States were indistinguishably embedded within the Government Group during the discussion on several issues. Together, this impairs our ability to draw clear conclusions on the causal potential of EU coherence in relation to its effectiveness.

Nevertheless, based on our process-tracing of the five key issues of the standard-setting procedure on maritime labor, we have found some preliminary indications on how the causal potential of EU coherence is influenced by the relatively united tripartite stage that characterizes this procedure. Firstly, we have found preliminary indications that such a stage might constrain the causal potential of the Union’s coherence, thereby creating doubts that it can function as a sufficient condition for effectiveness in this context. For example, we have seen how during the discussion on social security the EU Members consistently and effectively introduced a REIO-clause, but simultaneously also inconsistently and ineffectively intervened to influence the precise responsibilities that would be conferred to the flag state. While this seemingly points toward a strong covariance between inconsistency and ineffectiveness (on the responsibilities of the flag state) and between consistency and effectiveness (on the compatibility between the 2006 MLC and the acquis), a close tracing of the discussion has revealed that the provisions on flag state responsibilities were first and foremost decided by the emerging bipartite deal between the social partners. Indeed, the Seafarers’ and the Ship owners’ groups settled the precise balance between them during bipartite consultations and presented their compromise as a package during the 2005 TIM, thereby leaving the governments (including the EU Member States) little room to maneuver or influence the final provisions. While this is only a preliminary indication, it is doubtful that EU coherence would have been a sufficient condition for the Union to further amend this compromise between the social partners.

Secondly, we have found that the Union attained almost all of its self-proclaimed goals despite not being coherently represented until a late stage in the procedure, thereby strongly indicating that EU coherence is not a necessary condition for effectiveness on a relatively
united tripartite stage. For example, during the discussion on the prerogatives of inspectors onboard ships (part of the discussion on compliance and enforcement), Malta effectively introduced a compromise after the social partners and the governments were unable to agree on the final details of this provision. Similarly, small Working Parties consisting of only a few representatives (often including EU Member States among them) were formed to settle the final thresholds for the use of the simplified amendment procedure and the precise scope for exemptions. These examples indicate that an international context characterized by a relatively united tripartite stage offers opportunities for governments representing their position independently or in small coalitions to decide the final provisions of the Convention, albeit provided that their suggestions are in line with the compromise the tripartite stage was already converging on. In addition, it should also be reiterated that we have found strong indications that the EU Member States played an important role in shaping the Government Group’s positions during intra-governmental consultations, which can be seen an alternative, indirect route for them to have attained their goals.

In summary, by relating our detection of EU coherence and effectiveness to the international context found in the a-typical standard-setting procedure on maritime labor, we have found strong indications that that external coherence is not a necessary condition for the Union to attain its goals within the favorable context found in this procedure. Given that the goals and objectives of the Union were in line with the majority position on the relatively united tripartite stage, achieving them did not necessarily require the Union to represent its position in full force. Either during the tripartite committee discussions or indirectly through shaping the Government Group’s position, this stage offered opportunities for governments representing their position independently or in small coalitions to decide the final provisions of the Convention, albeit provided that their suggestions are in line with the compromise the tripartite stage was already converging on. In addition, we have found preliminary indications that EU coherence is not a sufficient condition for the Union to attain its goals in this context, given that bipartite compromises between the social partners can leave the governments (including the EU Member States) little room to maneuver or influence the final provisions. Comparing these preliminary indications with our findings of the next two case studies will help to further explore and clarify this in the general conclusions.
4. The Standard-Setting Procedure on Work in Fishing

‘The group noted that the current situation had arisen because the Convention had failed to meet the quorum by a single vote. Otherwise, it would have been adopted.’ – Workers’ Group (International Labour Office, 2007g, p. 82)

‘We all know that in 2005 the second discussion on the Work in Fishing Convention ended in disillusion. What appeared to be an “accident at work” – no quorum – was in fact an accumulation of disappointments.’ – Mr. Ment Van Der Zwan (Employer representative, Netherlands) (International Labour Office, 2007e, p. 48)

We now turn to our case study on the ILO standard-setting procedure on work in fishing. We will first outline the double-discussion and single-discussion procedures that lead to the adoption of the 2007 Work in Fishing Convention and Recommendation, before taking a closer look at the goal that underlied this procedure, the tripartite stage whereupon the social partners and governments took their positions, and the key issues that were central to the discussion on work in fishing. Subsequently, after having ‘set the stage’ of this standard-setting procedure, we will turn our focus to the EU and its Member States within this international context. Firstly, a quantitative bird’s-eye view will provide us with a preliminary impression of the tactical dimension of the Union’s representation. Secondly, a qualitative process-tracing of the discussions on the key issues will allow us to extend on this first impression and explore the causal potential of EU coherence in relation to its effectiveness by tracing its interaction with the international context found in the standard-setting procedure on work in fishing.

4.1. The Tripartite Standard-Setting Procedure

4.1.1. The Tripartite Standard-Setting Procedure
The standard-setting procedure on work in fishing was launched during the GB’s March 2002 session, wherein its members decided to place it on the agenda of the 2004 ILC as a comprehensive standard, i.e. a convention supplemented by a recommendation (International Labour Office, 2002c, p. II/1). Although the decision to exclude standards on the fishing sector from the procedure on maritime labor had created an opportunity for the
ILO Office to take an initiative in this direction (cf. Chapter three), the decision by the GB still came as a surprise to the ILO Office, ‘because you’d think: why do this in parallel with the MLC?’ (Interview No. 39)

Taking a look at the GB’s March 2002 discussion, we find that this sectoral standard-setting procedure was the first priority of the Workers’ Group, while the Employers’ Group initially expressed its support for the other, non-standard-setting items under consideration (International Labour Office, 2002c, p. I/2). The government delegates broadly supported the inclusion of this item on the agenda, albeit often implicitly by giving priority to dealing with the existing standards the WPPRS had slated for revision. Indeed, the winning argument for many governments was that ‘[t]he item on the fishing sector was based on the work of the Working Group on Revision of Standards, and was essentially a question of revision.’ (p. I/6) Rather than a standard-setting item that would create a new set of standards, the convention and recommendation on work in the fishing sector would revise and replace the existing, but poorly ratified standards specifically concerned with this sector (cf. infra). After consultations, the Employers’ Group agreed with the majority and expressed its support to place the standard-setting item on work in the fishing sector on the agenda of the 2004 ILC (p. II/1).

Once the GB had decided to place a comprehensive standard on work in fishing on the agenda of the 2004 ILC, the double-discussion procedure followed its traditional path. First off, the ILO Office drafted an initial report outlining the issue and sent it to the governments, along with a questionnaire asking them for their feedback on various issues (International Labour Office, 2003a). The replies to this questionnaire (included in (International Labour Office, 2004a)) were then used by the ILO Office to draft a preliminary text of the convention and recommendation, which served as the basis for the first discussion during the 2004 Committee on the Fishing Sector (hereinafter ‘the 2004 Committee’). Based on this first discussion, a new report and questionnaire were drafted by the ILO Office and sent to the governments for feedback (International Labour Office, 2004g). The replies to this second questionnaire (included in (International Labour Office, 2005j)) were then used by the ILO Office to draft a second preliminary text of convention and recommendation, which served as the basis for the second and final discussion during the 2005 Committee on the Fishing Sector (hereinafter ‘the 2005 Committee’).

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41 The comprehensive standard on work in the fishing sector was explicitly supported by the United Arab Emirates, Brazil, Namibia, Denmark, the Russian Federation, the Libyan Arab Jamahiriya, Germany, and Canada, while Canada, speaking on behalf of IMEC, Japan, the Netherlands, New Zealand, Switzerland, India, and the United States stated their support for revising the existing standards the WPPRS had listed (International Labour Office, 2002c, pp. 1/2-6).
In addition to the traditional progression of the double-discussion procedure, the members of the 2004 Committee agreed that further consultations were necessary before they could resume their work in the second and final discussion of the procedure. To accommodate this agreement, the GB’s June 2004 session discussed holding a Tripartite Meeting of Experts on the Fishing Sector (hereinafter the ‘2004 Meeting of Experts’) in December 2004 (International Labour Office, 2004f, p. 1/7), which would later be agreed upon during the GB’s November 2004 session (International Labour Office, 2004g, p. 44). Notably, this Tripartite Meeting further discussed the provisions related to accommodation on board fishing vessels and helped the ILO Office develop ‘additional requirements for vessels of […] metres in length or more’ (International Labour Office, 2005j, p. 97). The latter issue was introduced by the Workers’ Group during the final session of the 2004 Committee and signified a shift in the approach taken to the central challenge underlying this standard-setting procedure (cf. infra).

Following the 2004 Tripartite Meeting and the second discussion during the 2005 Committee, the Work in Fishing Convention was not adopted during the plenary session of the 2005 ILC (International Labour Office, 2005b, p. 3). The final record vote shows 288 votes in favor, 8 against, and 139 abstentions. As such, the Convention failed to be adopted because the necessary quorum was not met by a single vote. Notably, the Employers’ Group abstained en masse on both votes and thus played an important role in the failure to adopt the Convention. The accompanying Recommendation received similar votes, but was accepted with 292 votes in favor, 8 against, and 135 abstentions, thereby just making the quorum. However, the Legal Advisor advised that the Recommendation would have to be reviewed and probably replaced if the Convention were to be renegotiated (International Labour Office, 2007f, p. 3). On both instruments, the governments of the then-25 EU Member States and Bulgaria and Romania as soon-to-be Member States all voted in favor of adoption.

After the plenary session of the 2005 ILC failed to adopt the Work in Fishing Convention, the procedure was rebooted almost immediately as a single-discussion procedure. Following the failed vote, Mr. Leroy Trotman (Worker representative, Barbados) introduced a motion that requested the GB to restart the tripartite dialogue by placing the item on the agenda of the 2007 ILC (International Labour Office, 2005b, p. 4). This was welcomed by Mr. Daniel Funes De Rioja (Employer representative, Argentina), who interpreted it as a motion to establish the conditions for further dialogue. In the absence of any objections to the motion, it was quickly adopted. The GB complied with this request during its November 2005 session (International Labour Office, 2005d, pp. 1-7). After a short debate, the members of the GB decided to place work in the fishing sector on the agenda of the 2007 ILC as a technical item, i.e. with a view to the adoption of a convention supplemented by a recommendation. Furthermore, at its March 2006 session the GB decided this reboot would
take the form of a single-discussion procedure and have reduced the intervals between reports by the ILO Office (International Labour Office, 2006c, pp. 50-51).

Deciding on a single-discussion procedure ensured that there would be a strong link between the outcomes of the failed double-discussion procedure that ended during the 2005 ILC and the committee discussion that would take place during the 2007 ILC. Adding to that close connection, the GB decided that the basis for discussion should be the 2005 Report of the Committee on the Fishing Sector (International Labour Office, 2005d, p. 7). Regardless of the formal and informal consultations that would take place before the 2007 Committee, the discussion would formally pick up where its 2005 predecessor had left off. However, despite this predestined and Groundhog Day-esque return to the failed Convention, we will see that the single-discussion procedure included intensive formal and informal consultations between the tripartite constituents.

Starting the single-discussion procedure, the ILO Office drafted an initial report outlining the issue and sent it to the governments, along with a short questionnaire asking them for their feedback on the key issues that had led to the breakdown during the 2005 ILC (cf. infra) (International Labour Office, 2006f). In addition, during its November 2006 session the GB decided to convene an Interregional Tripartite Round Table on Labour Standards for the Fishing Sector (hereinafter referred to as ‘the 2006 Round Table’) (International Labour Office, 2006d, p. 61). The replies to this short questionnaire and the Report of the 2006 Round Table (both included in (International Labour Office, 2007g)) illustrate the formal consultations that took place during this single-discussion procedure, while informal consultations also took place to further reconcile the tripartite partners. As a result, a substantial amount of preparatory work to resolve the existing problems had been done by the time the 2007 Committee started (Interview No. 33).

The Work in Fishing Convention was adopted during the plenary session of the 2007 ILC (International Labour Office, 2007a, pp. 11-20). The final record vote shows 437 votes in favor, 2 against, and 22 abstentions. Similarly, the accompanying Recommendation was accepted with 443 votes in favor, 19 against, and 296 abstentions. Compared to the failed adoption in 2005, these figures indicate that the rebooted single-discussion procedure successfully forged a broad consensus between the tripartite members. Recalling the experience of the 2005 ILC, when the Convention failed to be adopted, the Secretary-General of the Conference concluded the committee by stating

‘[…] that there was a great deal of symbolism in the fact that, instead of postponing indefinitely further discussion of a proposed Convention that had previously failed to receive the support of the Conference, Workers, Employers and Governments had
worked together for the past two years in order to achieve success out of what first seemed to be a failure.’ (International Labour Office, 2007d, p. 51)

On both instruments, all EU Member States voted in favor of adoption, almost always together with their national employer and worker representatives. However, we should reiterate that Kissack (2010, pp. 34-38) has nuanced the importance of coherent voting as a parameter for external EU coherence in ILO standard-setting. According to this author, the real test for the Union’s external coherence lies in the nature of its representation during the committee discussions.

Looking beyond the adoption of the instruments, as of February 2014, the Work in Fishing Convention has been ratified by only four governments (i.e. Argentina, Bosnia and Herzegovina, Morocco, and South Africa) and has therefore not yet come into force. Nevertheless, a 2010 Council Decision has authorized the EU Member States to ratify this Convention (Council of the European Union, 2010).

4.1.2. The Goal and Central Challenge of the Procedure

The comprehensive standard (i.e. a convention supplemented by a recommendation) on work in the fishing sector was conceived as an instrument to ‘[…] address effectively the decent work deficit in this sector.’ (International Labour Office, 2003a, p. 17) However, in order to achieve this goal, the tripartite members needed to tackle a central challenge that had traditionally made it difficult to improve the protection of fishermen through international standard-setting: the special nature of work in the fishing sector. Specifically, the world’s fishermen and fishing fleet are extremely heterogeneous, with a spectrum ranging from small-scale and artisanal fishers working on little more than rafts to fishers working on floating industrial enterprises (pp. 3-16). Additionally, the employment relationship, system of remuneration, and living and working conditions found in this sector further compound the difficulties to arrive at a standard that provides sufficient protection to fishermen on both ends of this spectrum, while at the same time also remaining flexible enough to be easily ratified, implemented, and enforced by the governments. In other words, in order to address the decent work deficit in this sector, the tripartite members first and foremost needed to figure out how to approach the special nature of work in fishing.

Existing ILO instruments had failed to successfully tackle this central challenge. Firstly, generally applicable conventions and recommendations that provided coverage to all workers did not take into account the specific nature of the fishing sector. In its initial report, the ILO Office noted that, ‘[w]hile laws and regulations covering all workers – or, more particularly, maritime workers – often apply to fishermen, they do not appear to take into account the nature of fishing operations.’ (International Labour Office, 2003a, p. 143) In this context, it should be noted that while the 2006 MLC was certainly present during discussions
as a ‘blueprint’ (so dubbed by George Politakis (2008, pp. 120-121)), the need for a separate standard-setting procedure to deal with issues specific to the fishing sector was clear and fully supported by all the tripartite members.

Secondly, the seven ILO instruments that specifically covered fishermen were outdated (having been adopted between 1920 and 1966) and, furthermore, had received only a limited number of ratifications since their adoption. The WPPRS, which was tasked with examining ‘[…] the need for revision of all Conventions and Recommendations adopted before 1985 with a view to rejuvenating and strengthening the standard-setting system’ (International Labour Office, 2003a, p. 18), concluded as much by slating most of the instruments specifically concerned with the fishing sector for full or partial revision (cf. Table 4.1 infra) (p. 19). As such, the goal of the new standard-setting procedure to ‘[…] address effectively the decent work deficit in this sector’ (p. 17) would be carried out by revising, extending, and replacing the seven existing instruments that specifically concerned the fishing sector.

<table>
<thead>
<tr>
<th>Instrument</th>
<th>WPPRS Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hours of Work (Fishing) Recommendation (No. 7), 1920</td>
<td>Other</td>
</tr>
<tr>
<td>Minimum Age (Fishermen) Convention (No. 112), 1959</td>
<td>Outdated</td>
</tr>
<tr>
<td>Medical Examination (Fishermen) Convention (No. 113), 1959</td>
<td>To be revised</td>
</tr>
<tr>
<td>Fishermen’s Articles of Agreement Convention (No. 114), 1959</td>
<td>To be revised</td>
</tr>
<tr>
<td>Fishermen’s Competency Certificates Convention (No. 125), 1966</td>
<td>To be revised</td>
</tr>
<tr>
<td>Accommodation of Crews (Fishermen) Convention (No. 126), 1966</td>
<td>Request for information</td>
</tr>
<tr>
<td>Vocational Training (Fishermen) Recommendation (No. 126), 1966</td>
<td>To be revised</td>
</tr>
</tbody>
</table>

Table 4.1 – Existing ILO Conventions and Recommendations specifically concerned with the fishing sector

Given the state of the existing body of ILO standards, the central challenge to achieve the goal of this standard-setting procedure was clear from the beginning: adopt an instrument that takes into account the special nature of the fishing sector, i.e. is equipped to provide sufficient protection to fishermen on both ends of a broad spectrum, while at the same time also remains flexible enough to be easily ratified, implemented, and enforced by governments. This was clear to all representatives involved in the discussions and reiterated continuously throughout the procedure. For example, in its initial report, the ILO Office stated that
‘[it] believes that the objectives of the new instruments should be to: extend coverage to reach as many persons working on board fishing vessels as possible; minimize obstacles to ratification; provide a better chance for wide ratification; enable the provisions to be implemented into practice; and minimize the risk of the Convention becoming outdated in a short period of time.’ (International Labour Office, 2003a, p. 148)

Similarly, in his opening statement, the Chairperson of the 2004 Committee summarized the central challenge as follows:

‘It would be a challenge to prepare a standard that did justice to the great diversity of the sector, the many types and sizes of vessels, the variety of fishing operations, and the different levels of development in the States concerned. That standard should provide protection for a good portion of the world’s fishing population. It should be able to attract wide ratification in order to have a real impact on the lives of fishers. Finally, it must complement the work of other United Nations system agencies without losing sight of ILO’s decent work objectives.’ (International Labour Office, 2004o, p. 2)

During this case study, we will see that this central challenge served as the jumping-off point for many of the discussions that took place during the process of standard-setting. Indeed, while the challenge was clear from the beginning, the tripartite members disagreed strongly on how to best approach the special nature of the fishing sector. This disagreement strongly influenced the positions of the tripartite groups relative toward one another on tripartite stage, of which we will now provide an overview.

4.1.3. The Tripartite Stage

Turning to the tripartite stage whereupon the standard-setting procedure on work in fishing took place, we will now outline the positions of the tripartite members relative toward one another during the discussions. Their opening and closing statements during the committee and plenary discussions provide us with an overview of how they positioned themselves vis-à-vis each other while debating the provisions of these instruments. As we will see when tracing the double-discussion and single-discussion procedures on the key issues, the relative positions of the governments and the social partners toward one another are subject to variation depending the specific issue under discussion. However, this overview of the tripartite stage provides the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

The double-discussion procedure on work in the fishing sector was characterized by a divided tripartite stage, which was informed by a structural tension between the social
partners on where to strike the right balance on the central challenge, i.e. how to take the special nature of this sector into account, while also adopting a sufficiently flexible and ratifiable instrument, while the governments played their part as referees in the tripartite dynamic at play during this procedure. The Employers’ and the Workers’ Group had a different and incompatible approach to this challenge and defined the outer ends of the stage on which the governments, themselves also divided, positioned themselves. Most governments found themselves somewhere in between the positions of the social partners and increasingly coordinated and represented their positions through the Government Group, although Japan and – riding its coattails – other Asian governments stood apart from other governments and sided with the Employers’ Group.

On one end of the stage, we find the Workers’ Group and its internal difficulties on how to handle the special nature of the fishing sector. During the General Discussion at the beginning of the 2004 Committee, the Secretary of the Workers’ Group commented that his group ‘[...] had been placed in the difficult position of having to choose between offering coverage to small fishers, but possibly abandoning the protection currently provided by existing Conventions.’ (International Labour Office, 2004o, p. 14) Indeed, the instruments that were slated to be replaced by the WPPRS might have been outdated and poorly ratified, but they nevertheless contained relatively strong protection for a limited number of fishermen, notably those working on large vessels. It was not an option for the Workers’ Group to void this existing protection without it being replaced in the new instruments, even though this clearly clashed with the overall goal of extending decent work to a larger number of fishermen. This created a conundrum for the Workers’ Group: how to extend protection to more fishermen without voiding relatively strong protection that already existed for a limited number of them? For one, it meant the Workers’ Group could not agree to the ‘one-size fits all’ approach the ILO Office suggested in the draft instruments that it submitted for consideration to the first committee discussion in 2004. This approach was built on general provisions with a broad application and limited exceptions, which would necessarily lead to concessions on the existing protection for fishermen working on large vessels (p. 4). In contrast, the Workers’ Group preferred a ‘differentiated’ approach, wherein vessels would have to adhere to different provisions depending on their size.

On the other end of the stage, the Employers’ Group agreed with their counterparts that the new instruments ‘[...] should aim for flexibility and balance so as to provide basic protection for all fishers, without eroding the standard enjoyed by some.’ (International Labour Office, 2004o, p. 14) However, the difference in opinion on where to strike the right balance quickly became apparent. The Employers warned not to let go of the one-size fits all approach proposed by the ILO Office, stating that ‘[t]here was no desire to erode the standard attained on larger vessels, but it was important to avoid an overly prescriptive instrument for small
vessels, which accounted for 90 percent of employment in the sector.’ (p. 9) Thus, while also subscribing to the overall goal of extending decent work coverage to a larger group of fishermen, their insistence on a one-size fits all instrument signified a different and incompatible approach to the central challenge, because it would necessarily result in more general provisions with broad applicability to all vessels. This logical implication was conceded by the Employers’ Group, who noted that ‘an overly prescriptive instrument’ like the existing ones would be unworkable when extending coverage to fishermen on small vessels, and more importantly: it placed the Employers’ Group in stark opposition to the approach taken by the Workers’ Group, wherein voiding existing, but prescriptive protection was not seen as a possibility.

In the middle of the stage, the governments found themselves shifting back and forth between the outer ends defined by the social partners depending on the issue under discussion or – indeed – within the discussion on a single issue. Take for example the changing position of a large group of governments on how to approach the central challenge underlying this standard-setting procedure. During the General Discussion at the beginning of the 2004 Committee, Norway, speaking on behalf of Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Japan, Kuwait, Namibia (and on behalf of the Africa Group including Algeria, Angola, and Tunesia), the Netherlands, Portugal, Saudi Arabia, Spain, Sweden, Thailand, the United Kingdom, and the United States, stated that these governments ‘[…] favoured the adoption of a general instrument of broad application that would deal comprehensively with conditions of work in the fishing sector regardless of vessel size.’ (emphasis added) (International Labour Office, 2004o, p. 12) As such, the position of this large group of governments was close to that of the Employers’ Group (p. 13) and went against the concerns expressed by the Workers’ Group (cf. supra). However, during the final session of the 2004 Committee, Canada and the Irish EU Presidency, speaking on behalf of all governments present, reverted this position and submitted an amendment that would effectively introduce the differentiated approach preferred by the Workers’ Group (cf. Box 4.2 infra) (p. 72). From this example, the general dynamic behind the work in fishing procedure becomes clear, wherein the social partners on the outer ends of the tripartite stage shape the discussion and the governments stand in the middle to serve as referees.

However, the dynamic behind the double-discussion procedure on work in fishing was more complicated than this straightforward positioning of three distinct groups would have us believe. Notably, Japan and a number of Asian governments stood apart from most governments and sided with the Employers’ Group in their opposition to a differentiated instrument, even – and especially – when the majority of the governments shifted their positions to side with the Workers’ Group. While these governments were only a small
minority in terms of voting power, their key importance in the fishing sector nevertheless made them an influential voice during the procedure. In this regard, when we look at the distribution of fishers across the world, we see that the Asian region dwarfed all other regions and accounted for 83.4% of the world's fishers at the time of the standard-setting procedure (cf. Figure 4.1 infra) (Food and Agriculture Organization, 2012, pp. 41-46). As the runner-up, the African region only accounted for 10.1% of all fishers worldwide, while the other regions barely registered in the grand scheme of things. As such, the Asian region was – and is – the home of the vast majority of fishermen worldwide, making their governments the key members that needed to be brought on board in order to adopt a meaningful Convention and Recommendation. A government member closely involved in the single-discussion procedure highlighted that ‘[…] for the credibility of the instruments when they come into force, you need the get on board the Asian governments because of this reason.’ (Interview No. 33).

The dynamic on this divided tripartite stage of the double-discussion procedure was upended after the Convention failed to be adopted during the plenary session of the 2005 ILC, after which it shifted from a tripartite to a ‘bipartite plus Japan’ dynamic during the single-discussion procedure. However, before continuing our outline of this shifting dynamic, we will first take a brief detour and have a closer look at how the initial dynamic played itself out when the decision was made to implement a differentiated approach (preferred by the Workers’ Group) in the instruments, rather than a one-size-fits-all approach (preferred by the Employers’ Group). This decision does not only serve as an illustration of the dynamic underlying the tripartite stage during the double-discussion procedure, but, as we will see
when process-tracing the key issues in the next part of this case study, this decision to go with a differentiated approach also had far-reaching consequences for the discussions taking place on specific provisions.

The text that was submitted to the 2004 Committee by the ILO Office, intended the provisions to be applicable to all vessels, ‘[…] while certain exclusions would be possible after consultation with representative organizations of employers and workers […]’. (International Labour Office, 2004o, p. 7) As such, it was clearly a one-size fits all approach. Confronted with the concerns by the Workers’ Group on lowering existing protection for fishermen onboard larger vessels, the ILO Office reacted by outlining three options for the Committee:

‘First, the Committee might wish to develop additional provisions to address the situation of fishers on vessels between 15 and 24 metres in length and for those over 24 metres long. Second, the scope of the instruments could be limited to fishers on vessels under 15 metres in length. […] The third option was for the Committee to request that the Office develop further provisions for the second discussion of the fishing Convention at the International Labour Conference.’ (pp. 9-10)

During the final session of the 2004 Committee, the different approaches by the social partners became apparent when the Workers’ Group followed up on the first suggestion made by the ILO Office and introduced two amendments to introduce additional requirements for vessels over 15 meters in length and over 24 meters in length operating in distant waters out of foreign ports (cf. Box 4.1 infra) (International Labour Office, 2004o, pp. 71-75). Rather than introducing new provisions to the text, these amendments contained a list of issues on which the ILO Office should develop additional requirements by the second discussion. As such, these amendments signify a clear break with the one-size fits all approach that was pursued throughout the 2004 Committee and revived the differentiated approach the Workers’ Group had preferred from the beginning.

ADDITIONAL REQUIREMENTS FOR VESSELS OF 15 METRES IN LENGTH OR MORE:
Minimum age (text to be developed by the Office prior to second discussion), Medical examination (text to be developed by the Office prior to second discussion), Certification and training (text to be developed by the Office prior to second discussion), Crewing/Manning (text to be developed by the Office prior to second discussion), Hours of rest (text to be developed by the Office prior to second discussion), Fishers’ work agreement (text to be developed by the Office prior to second discussion), Accommodation and food (text to be developed by the Office prior to second discussion),
Health protection, medical care and social security (text to be developed by the Office prior to second discussion).

ADDITIONAL REQUIREMENTS FOR VESSELS OF 24 METRES IN LENGTH OR MORE OPERATING IN DISTANT WATERS OUT OF FOREIGN PORTS:
Training (text to be developed by the Office prior to second discussion), Health protection, medical care and social security (text to be developed by the Office prior to second discussion), Welfare facilities on the vessel (text to be developed by the Office prior to second discussion).

Box 4.1 – The Workers’ Group amendments introducing additional requirements for large vessels

The Employers’ Group strongly opposed the amendment by its counterparts on the other side of the tripartite stage, stating that the current text struck the right balance without having to differentiate between large and small fishing vessels and – following the receptive comments to the Workers’ amendment by most governments – noted that they ‘[…] believed that from the first day of discussion there had been an agreement that the Convention would set flexible standards regardless of vessel size.’ (International Labour Office, 2004o, p. 72) Indeed, Canada and Ireland, speaking on behalf of the governments present during the committee session, were receptive to the amendment introduced by the Workers’ Group and introduced a subamendment that sought to find a compromise between the positions of the social partners (cf. Box 4.2 infra). While opposed by the Workers’ Group for its flexibility, it is important to note that the subamendment still let go of the one-size fits all approach, thereby reverting the position most governments took at the beginning of the 2004 Committee. Despite continued objections by the Employers’ Group – pushing the committee members twice to a roll call vote – the subamendment was adopted with the support from the Workers’ Group and the unanimous governments.

ADDITIONAL REQUIREMENTS FOR VESSELS OF [] METRES IN LENGTH OR MORE
(a) Taking into account the number of fishers on board, the area of operation and the length of the voyage, a Member may, after consultation, exclude additional requirements for the vessels concerned.

Box 4.2 – The subamendment introduced by the governments present during the committee session

The difference in opinion between the Employers’ and Workers’ Group became even more pronounced during the plenary discussion of the 2004 ILC, where Mr. Edward Potter (Employer representative, the United States) voiced his dissatisfaction with the outcome of the Committee. ‘Were we all on the same boat?’, he asked.
‘The clear majority of Government representatives voiced agreement with the Employers’ approach to the development of the Convention and spoke out against the Worker members […] introducing] the concept of a multi-tiered Convention with separate requirements for fishers working aboard vessels of various lengths […] The final tripartite meeting of our session concluded with the Worker members’ reintroduction of vessel classification by length. To our surprise, Governments unanimously allowed the amendment to carry into the 2005 session in contradiction to their earlier stated position.’ (International Labour Office, 2004p, p. 6)

This statement drove home the annoyance of the Employers’ Group that the governments had swung to the differentiated approach taken by the Workers’ Group. But more importantly, Ms. Karikari Anang (Employer Vice-Chairperson, Ghana) pointed out the reason behind their opposition to this approach by asking:

‘Are we developing two Conventions one for the developing countries or the smaller boats operating in the informal fishing economy, in either the developed or the developing countries, which make up the workplace of the majority of fishers; and one for the large vessels in the formal sector of developed countries?’ (p. 3)

One year later, during the 2005 Committee, the social partners continued to take their places on opposing ends of the tripartite stage, with both sides reiterating their disagreement on how to handle the central challenge underlying the standard-setting procedure (International Labour Office, 2005f, pp. 4-8). Moreover, during the plenary debate following the conclusion of the 2005 Committee, the interventions signaled that these differences had not been overcome during the second and final discussion in the procedure (International Labour Office, 2005g). On top of the lively exchange between Ms. Karikari Anang (Employer Vice-Chairperson, Ghana) and Mr. Sand Mortensen (Worker Vice-Chairperson, Denmark) (pp. 3-4), a large number of interventions from national employer delegates voiced dissatisfaction with the outcome. Notably, Mr. Edward Potter (Employer representative, the United States) summarized that ‘We had an opportunity to learn from the poor results of past fishing Conventions to improve the business model. We had an opportunity to create basic minimum standards to protect the largest number of fishers but I fear that we have again arrived at a flawed solution.’ (p. 10)

Interventions like these serve to illustrate the continued tension between the positions of the social partners that was characteristic of the double-discussion procedure on work in the fishing sector. Moreover, they also clearly show to what extent this tension was informed by the central challenge that underlied this procedure and – at least according to the Employers’ Group and certain, mostly Asian governments – was not adequately resolved. Indeed, when
tracing the standard-setting procedure, it becomes evident that the Workers’ Group effectively managed to differentiate the provisions between large and small fishing vessels, much to the chagrin of the Employers’ Group and Japan. As a direct result, the Convention failed to be adopted during the plenary session of the 2005 ILC due to a lack of quorum instigated by the en masse abstention of the Employer’s Group.

While the lack of quorum partly originated from an unfortunate concurrence of circumstances (e.g. it is mentioned that certain national worker organizations – confident that the instruments would be adopted – did not bother to deregister as they left Geneva without participating in the final vote, thus keeping the necessary quorum high (Interview No. 28)), there is a strong agreement that the main reasons were Japanese lobbying and the tactical abstention by the IOE (Interview No. 35). Firstly, the Japanese government held an intensive diplomatic offensive in the weeks between the conclusion of the 2005 Committee and the final, plenary vote on the instruments, wherein they argued against the outcomes of the double-discussion procedure (Interview No. 28). Secondly, on the side of the Employer’s Group, the final vote makes it clear that there was a concerted effort to abstain, which led to a failure to reach the quorum (International Labour Office, 2005b). In this context, respondents from the ILO Office noted that this was a tactical move by the IOE, which had not negotiated the outcomes, but stepped in to vote on behalf of the employer delegates of the fishing sector after the latter had already left Geneva (Interview No. 28 and 35). What this shows us, is that missing the quorum by one vote was more than an ‘accident at work’. Rather, it signified the discontent of the Employer’s Group and governments that were of key importance to a successful outcome of the standard-setting procedure.

After the Convention failed to be adopted and the procedure was rebooted as a single-discussion procedure, the tripartite stage was upended and a ‘bipartite plus Japan dynamic’ crystallized itself, causing the remainder of the procedure to focus on a discussion between the social partners and Japan, while most non-Asian governments took on a more passive role as bystanders. Indeed, compared to the dynamic behind the failed double-discussion procedure, the discussion now crystallized around formal and informal consultations between the social partners and Japan, while the other governments were content with the outcome of the double-discussion procedure and let themselves be sidelined as the social partners and Japan pressed on with the discussion among themselves and thrashed out an agreement.

At first glance, the restart of the standard-setting procedure seemed tailored to retain the status-quo and change only the bare minimum to appease the Employers’ Group and a number of Asian governments. As we have seen before (cf. supra), it was inbuilt in the single-discussion procedure that the 2007 Committee would start off its discussion based on
the failed outcomes of the 2005 Committee, regardless of the formal or informal consultations that would take place in between. This will have been welcome news to the majority of the tripartite constituents, specifically the Workers’ Group and a large number of non-Asian governments, who were satisfied with the provisions contained in the failed convention. During the introduction to the 2007 Committee the representative of the Secretary-General remarked that ‘[…] most replies to the questionnaire [sent to the Governments by the ILO Office in preparation for the single-discussion procedure] did not necessitate modifications to the text [and] the Office had made no substantive changes to the instruments as they appeared in the report of the Committee on the Fishing Sector in 2005.’ (International Labour Office, 2007d, p. 2) At the beginning of the 2006 Round Table, the Workers’ Group reiterated the widespread satisfaction that spoke from these replies and stressed that the Convention had failed because the quorum had not been met by a single vote (International Labour Office, 2007g, pp. 82-83). While also stating that they were willing to resolve some of the existing difficulties, this gave the Group reason to propose as little changes as possible to the instruments. In addition, the Government Group, set for a more passive role going forward, simply ‘[…] supported a new Convention that would be flexible in the application of its provisions, easily ratifiable, implemented in a uniform manner and enforced.’ (p. 83)

However, we have also seen that extensive consultations nevertheless took place during the single-discussion procedure and that much heavy lifting was carried out in the run-up to the 2007 Committee. Despite satisfaction among many of the ILO’s constituents, the Employers’ group and the key Asian governments for the fishing sector were deeply dissatisfied with the outcomes of the double discussion procedure. For the Employers’ group, the failed adoption in 2005 was not an ‘accident at work’ but rather the result of a breakdown of the social dialogue (International Labour Office, 2007e, p. 48). At the beginning of the 2006 Round Table, the Employers’ Group stated that the failure to adopt the proposed instruments during the plenary session of the 2005 ILC was due to the fact that key governments, together representing most of the world’s fishers, could not accept the texts proposed by the committee (cf. Figure 4.1 supra). Subsequently, the Group had abstained as they did not believe the instruments would be widely ratified (International Labour Office, 2007g, pp. 82-83). As a solution, they proposed a ‘development clause’, more flexible provisions, and that Annex III be moved to the Recommendation. In addition, the Government Group, referring to Japan, noted that one government had great difficulties with the rejected Convention.

This situation was mended through a series of bipartite and tripartite consultations that were organized in a formal and informal manner and were largely concluded before the start of the 2007 ILC. Firstly, on the formal level, the 2006 Round Table was a central part of the
consultations. In 2007, during the discussion on the committee’s final report, an Employer member noted that the Round Table played a ‘pivotal’ role in making the single discussion procedure a success, notably by introducing new concepts that would help ratifications of the new Convention (International Labour Office, 2007e, p. 48). Indeed, a government member closely involved with the procedure notes that the 2006 Round Table was where the Japanese governments was brought ‘on board’ for the adoption of the instruments by addressing some of its key concerns (Interview No. 33). Secondly, on the informal level, a string of informal, often bipartite consultations (including a crucial dinner in London in the final weeks before the 2007 ILC) between the social partners made sure that an agreement was locked before the start of the 2007 Committee, rightly assuming that the non-Asian governments would not stand in the way of a successful outcome. Against this background, it should be noted that the EU Member States – like most other governments – were only involved during the 2006 Round Table and, even there, mostly took a role as bystanders while the difficulties raised by Japan were trashed out in time for the 2007 ILC.

In summary, the standard-setting procedure on work in fishing took place on a divided tripartite stage, whereupon the social partners fundamentally disagreed on how to approach the complex nature of the fishing sector and, as a consequence, took opposite positions at the outer ends of the tripartite stage during the double-discussion and single-discussion procedures. Most governments found themselves somewhere in between the positions of the social partners and increasingly coordinated and represented their positions through the Government Group, although it is important to note that Japan and – riding its coattails – other Asian governments stood apart from other governments and sided with the Employers’ Group.

4.1.4. The Key Issues

The key issues providing a representative cross-section of the discussion during the standard-setting procedure on work in fishing quickly become clear when tracing the double-discussion procedure and, moreover, are listed by the ILO Office after the procedure concluded. After the plenary session of the 2005 ILC failed to adopt the outcome of the double-discussion procedure, the rebooted single-discussion procedure focused specifically on those issues that were not resolved with a tripartite consensus and continued to be problematic. The short questionnaire that was sent to the constituents by the ILO Office ‘[focused] on those provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5) These were (1) the scope of application, (3) medical examination and certification, (4) manning and hours of rest, and (6) accommodation.
<table>
<thead>
<tr>
<th>2004 Committee(^{42})</th>
<th>2005 Committee(^{43})</th>
<th>2007 Committee(^{44})</th>
<th>Final instruments(^{45})</th>
<th>Issue</th>
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<td>1 Point 6, 7, 8, 9, 10</td>
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<td>Art. 10, 11, 12</td>
<td>Art. 10, 11, 12</td>
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<td>4 Point 21, 22</td>
<td>Art. 13, 14</td>
<td>Art. 13, 14</td>
<td>Art. 13, 14</td>
<td>Manning and hours of rest</td>
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<td>Art. 22</td>
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<td>Art. 22</td>
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<td>Art. 25, 26, 27, 28; Annex III</td>
<td>Art. 25, 26, 27, 28; Annex III</td>
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<td>7 Point 42</td>
<td>Art. 41, 42</td>
<td>Art. 43, 44</td>
<td>Art. 43, 44</td>
<td>Port state control</td>
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Table 4.2 – The key issues during the standard-setting procedure on the Work in Fishing Convention (No. 188) and Recommendation (No. 199), 2007

\(^{42}\) Numbering based on (International Labour Office, 2004a, pp. 181-201).
\(^{43}\) Numbering based on (International Labour Office, 2005k, pp. 6-71).
\(^{44}\) Numbering based on (International Labour Office, 2007f, pp. 10-83). No substantive changes compared to the provisions that were rejected during the 2005 ILC (International Labour Office, 2005f, pp. 96-130).
\(^{45}\) Numbering based on (International Labour Office, 2007d, pp. 53-96).
\(^{46}\) Starting in the 2005 Committee, one major change was ‘[…] the placement of provisions for “larger” vessels throughout the text rather than in a separate section […]’ (International Labour Office, 2005f, p. 3).
\(^{47}\) The discussion focused on exemptions during the double-discussion procedure before 2005 and the ‘Progressive Implementation Approach’ during the single-discussion procedure after 2005 (International Labour Office, 2007g, p. 80). The latter was originally introduced by the Employer group as a ‘Development Clause’ during the 2006 Interregional Tripartite Round Table (p. 98).
As such, these first four issues were all included on the agenda of the 2006 Round Table for further discussion. However, based on the replies from the tripartite members to the questionnaire, it was decided that two additional issues would also be included on the agenda (International Labour Office, 2007g, pp. 80-81). These were: (2) training and minimum age and (5) private employment agencies. This selection of key issues is partly confirmed in a journal article by Politakis (2008), who was closely involved with the standard-setting procedure as an official of the ILO Office’s International Labour Standards Department. He highlights progressive implementation (included under scope of application), manning and hours of rest, accommodation, and private employment agencies as ‘[…] areas where no consensual solutions had been found during the previous [double-discussion procedure].’ (p. 122) Using this criterion, Politakis additionally highlights the discussion on (7) port state control as a key issue.

Taken together, these seven key issues provide a representative cross-section of the standard-setting procedure on work in fishing. Based on their central importance for the (failed) adoption of the Convention and Recommendation, the discussions on these issues provide us with an insight into the broader dynamic between the tripartite members and, moreover, allow us to explore the causal potential of external EU coherence in relation to effectiveness within this standard-setting procedure.

4.2. A Bird’s-Eye View of EU Representation

Before turning to a qualitative process-tracing of the causal relation between EU coherence and effectiveness in the standard-setting procedure on work in fishing, we first take a bird’s-eye view of the Union’s representation. Based on a quantitative overview of the interventions by EU Member States as they are reported in the record of proceedings of the 2004, 2005, and 2007 committee discussions, this bird’s-eye view serves to provide us with a first impression of how the Union and its Member States were represented during this procedure and, moreover, eventually allows us to compare its evolution across the case studies included in this dissertation. Importantly, while this quantitative overview can give some preliminary indications, it does not allow us to detect whether the independent interventions of EU Member States were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other Member States.

4.2.1. The 2004 Committee on the Fishing Sector

During the 2004 Committee on the Fishing Sector, the EU was represented by Ireland as the then-holder of the EU Presidency. When representing the Union, Ireland formally spoke on behalf of the ‘government members of the committee Member States of the European
Union’ (International Labour Office, 2004o, p. 12). This phrasing was used to clarify that these interventions were made on behalf of the EU Member States present in the 2004 Committee, but not those that were absent or the worker and employer representatives of these states. Looking at the ‘European Union’ column in Table 4.3 (cf. infra), which includes all interventions that are reported as being made on behalf of the Union, we find that the Irish EU Presidency only intervened twice in this manner. Both of these interventions were made during the General Discussion at the beginning of the 2004 Committee and were devoid of any meaningful substance. Rather, these interventions were used to express the Union’s general support for the standard-setting procedure on work in the fishing sector (p. 4) and to announce the tragic sinking of a Spanish tuna-fishing vessel (p. 12). Moreover, the limited EU representation stands in stark contrast with the 197 independent interventions that were made by the Union’s Member States during the 2004 Committee. These interventions are included in the column titled ‘Independent’ in Table 4.3 (cf. infra), which includes all interventions that are reported as being made by the EU Member States on their own behalf.

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Belgium</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>Cyprus (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Czech Republic (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Denmark</td>
<td>23</td>
<td>17</td>
<td>0</td>
<td>40</td>
</tr>
<tr>
<td>Estonia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>France</td>
<td>29</td>
<td>3</td>
<td>0</td>
<td>32</td>
</tr>
<tr>
<td>Germany</td>
<td>33</td>
<td>1</td>
<td>0</td>
<td>34</td>
</tr>
<tr>
<td>Greece</td>
<td>22</td>
<td>6</td>
<td>0</td>
<td>28</td>
</tr>
<tr>
<td>Hungary</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Ireland (Rotating President)</td>
<td>22</td>
<td>8 (6 on behalf of the Core EU Group)</td>
<td>2</td>
<td>32</td>
</tr>
<tr>
<td>Italy</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Latvia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Lithuania (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Luxembourg (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
</tbody>
</table>

While the EU’s committee Member States are not specified in the record of proceedings, the list of participants to the 2004 Committee shows that all EU Member States were represented, except Cyprus, the Czech Republic, Latvia, Lithuania, Luxembourg, Slovakia, and Slovenia (International Labour Office, 2004e).
Table 4.3 – Interventions by EU Member States during the 2004 Committee on the Fishing Sector

<table>
<thead>
<tr>
<th></th>
<th>0</th>
<th>0</th>
<th>0</th>
<th>0</th>
</tr>
</thead>
<tbody>
<tr>
<td>Malta</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Poland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Portugal</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Slovakia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Slovenia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Spain</td>
<td>19</td>
<td>0</td>
<td>0</td>
<td>19</td>
</tr>
<tr>
<td>Sweden</td>
<td>3</td>
<td>0</td>
<td>0</td>
<td>3</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>35</td>
<td>5</td>
<td>0</td>
<td>40</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>197</td>
<td>40</td>
<td>2</td>
<td>239</td>
</tr>
</tbody>
</table>

However, the stark contrast between independent and EU interventions does not tell us the whole story. In addition to these two types of interventions, a substantial number of interventions (40) were made in ‘Other configurations’ (cf. Table 4.3 supra), which refers to EU Member States speaking on behalf of other EU and/or non-EU states in configurations other than the Union. Looking at this third type of interventions, two conclusions can be drawn. Firstly, we find that a number of EU Member States stood out as the representatives for a broader group of states. Notably, Denmark (17), the Irish EU Presidency (eight), Greece (six), the United Kingdom (five), France (three), and Germany (once) regularly intervened on behalf of other EU and/or non-EU Member States.

Secondly, while these other configurations mostly signify small groups of states who spoke on behalf of each other for a limited number of times, the record of proceedings also reveals the existence of a larger and relatively stable coalition of (mostly) EU Member States which recurred throughout the 2004 committee discussion. We have dubbed this the ‘Core EU Group’, because despite its overlap with EU representation, it is not reported as such.

49 During the 2004 Committee on the Fishing Sector, these small groups of states included Denmark speaking on behalf of Germany (three times), on behalf of Germany and the United Kingdom (three), on behalf of Ireland, and the United Kingdom (once), on behalf of Norway (six), on behalf of Greece (twice), on behalf of Canada (once), and on behalf of Canada, Germany, Iceland, and Norway (once); France speaking on behalf of Greece (once), on behalf of Belgium (once), and on behalf of Germany, the Netherlands, and the United Kingdom (once); Germany speaking on behalf of Denmark, Ireland, the Netherlands, and the United Kingdom (once); Greece speaking on behalf of France (twice), on behalf of the United Kingdom (three), and on behalf of Ireland, the United Kingdom, and the United States (once); the United Kingdom speaking on behalf of Norway (twice), and on behalf of Greece (three); the Irish EU Presidency speaking on behalf of the United Kingdom (once) (International Labour Office, 2004o). It should also be noted that non-EU Member State Norway spoke on behalf of Greece (once) and that the Irish EU Presidency spoke on behalf of the Government Group (once).
Table 4.4 (cf. infra) focuses on this Core EU Group and breaks it down into its representatives and its members. Fifteen EU Member States were part of this coalition at least once during the 2004 Committee, while ten of those were part of the Core EU Group all seven times it intervened in the discussion. Estonia (six), Spain (six), the United Kingdom (five), Hungary (twice), Italy (once) were regularly, but not always included, while Austria, Malta, and Poland were the only three EU Member States who were present in the 2004 Committee, but never part of the Core EU Group. Interestingly, while the Irish EU Presidency did not formally represent the EU Member States during the 2004 committee discussion (cf. supra), it did serve as the primary representative of the fifteen EU Member States in this Core EU Group (six times). In addition, Norway was the representative of the Core EU Group one time, during which this group was extended with ten non-EU Member States.

Curiously, while this relatively stable and recurring Core EU Group shows a strong, albeit not identical overlap with EU representation in terms of membership (i.e. mostly EU Member States) and representatives (i.e. mostly the Irish EU Presidency), the record of proceedings does not report this group as an instance of EU representation. How can we explain this? When asked about the Core EU Group, a Commission official points to the then-reporting by the ILO Office to explain this distinction, dismissing the suggestion that it referred to two separate modes of EU representation (Interview No. 41). At the time, general statements could be reported on behalf of self-proclaimed groups even when not all of its members were present, while amendments were reported strictly on the basis of their signatories. Given that not all EU Member States were present during the 2004 Committee, the introduction of amendments could thus not be reported on behalf of the Union. This explains the inconsistent reporting between the general statements by the Irish EU Presidency at the start of the 2004 Committee (cf. supra) and its interventions on behalf of what we have dubbed the Core EU Group. For all intents and purposes, this group can thus be seen as an instance of EU representation, even though it is not reported as such.

50 During the 2004 Committee on the Fishing Sector, the Core EU Group was represented by the Irish EU Presidency speaking on behalf of Belgium, Denmark, Estonia, Finland, France, Germany, Greece, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom (twice), on behalf of the same group, but without the United Kingdom (once), on behalf of the same group, but with the addition of Hungary and Italy (once), on behalf of the same group, but with the addition of Hungary and without Spain and the United Kingdom (once), and on behalf of the same group, but with the addition of Hungary and Italy and without Estonia (once) (International Labour Office, 2004o). It should also be noted that non-EU Member State Norway spoke on behalf of Belgium, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Guatemala, Iceland, Ireland, Japan, Kuwait, Namibia (itself speaking on behalf of the African group, including Algeria, Angola, and Tunisia), the Netherlands, Portugal, Saudi Arabia, Spain, Sweden, Thailand, the United Kingdom, and the United States (once).
<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Representative</th>
<th>Member</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Denmark</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>France</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Germany</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Greece</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Ireland (Rotating President)</td>
<td>6</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Netherlands</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Portugal</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>7</td>
<td>7</td>
</tr>
<tr>
<td>Estonia</td>
<td>0</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>Spain</td>
<td>0</td>
<td>6</td>
<td>6</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>0</td>
<td>5</td>
<td>5</td>
</tr>
<tr>
<td>Hungary</td>
<td>0</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Italy</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Norway (non-EU Member State)</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Canada (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Guatemala (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Iceland (non-EU Member State)</td>
<td>0</td>
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<td>1</td>
</tr>
<tr>
<td>Japan (non-EU Member State)</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Kuwait (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Namibia (non-EU Member State)</td>
<td>0</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Saudi Arabia (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Thailand (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>United States (non-EU Member State)</td>
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<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Austria</td>
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<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Malta</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Poland</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Cyprus (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Czech Republic (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Latvia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Lithuania (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Luxembourg (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
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<tr>
<td>Slovakia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Slovenia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
</tbody>
</table>

Table 4.4 – The Core EU Group during the 2004 Committee on the Fishing Sector (descending on ‘Total’)

4.2.2. The 2005 Committee on the Fishing Sector

During the 2005 Committee, our bird’s-eye view of EU representation tells a similar story wherein our findings from the previous year become more pronounced (International Labour Office, 2005f). The Luxembourg EU Presidency is completely absent from the
discussion and intervened neither independently nor formally on behalf of the Union.\(^\text{51}\)

Given that no other Member State was reported as intervening on behalf of the Union, the column titled ‘European Union’ in Table 4.5 (cf. infra) shows that the EU was formally absent during the 2005 committee discussion. Also similar to the previous year, this non-existent EU representation stands in stark contrast with the 163 independent interventions by the Union’s Member States during the 2005 Committee.

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Belgium</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>5</td>
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<tr>
<td>Cyprus (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
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<tr>
<td>Czech Republic (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Denmark</td>
<td>27</td>
<td>17 (6 on behalf of the Core EU Group)</td>
<td>0</td>
<td>44</td>
</tr>
<tr>
<td>Estonia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Finland</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>France</td>
<td>23</td>
<td>4 (2 on behalf of the Core EU Group)</td>
<td>0</td>
<td>27</td>
</tr>
<tr>
<td>Germany</td>
<td>16</td>
<td>0</td>
<td>0</td>
<td>16</td>
</tr>
<tr>
<td>Greece</td>
<td>25</td>
<td>10 (9 on behalf of the Core EU Group)</td>
<td>0</td>
<td>35</td>
</tr>
<tr>
<td>Hungary (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Ireland</td>
<td>6</td>
<td>0</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Italy</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Latvia</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Lithuania</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Luxembourg (Rotating President)</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Malta</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Netherlands</td>
<td>5</td>
<td>1 (on behalf of the Core EU Group)</td>
<td>0</td>
<td>6</td>
</tr>
<tr>
<td>Poland (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Portugal</td>
<td>12</td>
<td>0</td>
<td>0</td>
<td>12</td>
</tr>
</tbody>
</table>

\(^{51}\) The list of participants to the 2005 Committee shows that all EU Member States were represented, except Cyprus, the Czech Republic, Hungary, Ireland, Poland, Slovakia, and Slovenia (International Labour Office, 2005c). However, despite the list of participants not mentioning Ireland as a participant to the 2005 Committee, the record of committee proceedings confirms the Irish government was definitely present during the discussion (International Labour Office, 2005f).
Table 4.5 – Interventions by EU Member States during the 2005 Committee on the Fishing Sector

<table>
<thead>
<tr>
<th></th>
<th>/</th>
<th>/</th>
<th>/</th>
<th>/</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovakia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Slovenia (not present)</td>
<td>/</td>
<td>/</td>
<td>/</td>
<td>/</td>
</tr>
<tr>
<td>Spain</td>
<td>20</td>
<td>1</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>25</td>
<td>8 (on behalf of the Core EU group)</td>
<td>0</td>
<td>33</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>163</td>
<td>42</td>
<td>0</td>
<td>205</td>
</tr>
</tbody>
</table>

However, similar to the previous year, a substantial number of interventions (42) were again made in ‘Other configurations’ (cf. Table 4.5 supra). Looking at this third type of interventions, we find that our bird’s-eye view of EU representation from the previous year is confirmed and that our findings have become more pronounced. Firstly, we find that a small number of EU Member States again stood out as the representatives for a broader group of states. Notably, Denmark (17), Greece (ten), the United Kingdom (eight), France (four), Belgium (once), the Netherlands (once), and Spain (once) regularly intervened on behalf of other EU and/or non-EU Member States. Compared to the previous year, Denmark and the United Kingdom are joined by Greece and France in this group, while Ireland disappeared on this front.

The disappearance of Ireland as a representative gives us an indication of the influence the Rotating Presidency confers to its holder in terms of EU representation in ILO standard-setting. Compared to its role as the most important representative (albeit mostly through the Core EU Group) during the 2004 Committee, the Irish shift towards a passive role in 2005 serves as an indicator of the *primum inter pares* role the EU Presidency lends to the Member State holding this position. At first sight, the notable absence of the Luxembourg EU Presidency during the 2005 Committee seems to contradict the influence of this position. However, as a landlocked state, Luxembourg chose to delegate its responsibilities in the standard-setting procedure on work in fishing to other EU Member States (Interview No. 28). As such, the absence of Luxembourg during the 2005 Committee refines, rather than contradicts the central role the EU Presidency confers to its holder.

Secondly, contrasting to our findings from the year before, we find that these other configurations no longer mostly signify small groups of states speaking on behalf of each other for a limited number of times.\(^{52}\) Compared to the 2004 Committee, the focal point of

\(^{52}\) During the 2005 Committee on the Fishing Sector, these small groups of states included Belgium speaking on behalf of France (once); Denmark speaking on behalf of Germany and Norway (once), on behalf of Germany, Ireland, and Sweden (once), on behalf of France, Norway, and Spain (once), and on behalf of Greece
these configurations shifted towards larger groups of states. Notable examples include Norway representing the Government Group (87) and Denmark intervening on behalf of a sizeable group of states (seven times). Embedded within this shift toward larger coalitions of states, we again find the coalition which we have dubbed the Core EU Group. Table 4.6 (cf. infra) focuses on this group and breaks it down into its representatives and its members. Fourteen EU Member States were part of this coalition at least once during the 2005

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53 During the 2005 Committee on the Fishing Sector, these large groups of states included Norway speaking on behalf of the Government Group (87); and Denmark speaking on behalf of the Bahamas, Belgium, Brazil, Côte d'Ivoire, Cuba, Egypt, Finland, France, Germany, Greece, Ireland, Iceland, Kenya, Mauritania, Mexico, Mozambique, Namibia, the Netherlands, Norway, Portugal, South Africa, Spain, Sweden, the Syrian Arab Republic, Turkey, United Arab Emirates, the United Kingdom, and Uruguay (twice); and on behalf of the same group, but with the addition of Japan (five) (International Labour Office, 2005f).

54 During the 2005 Committee on the Fishing Sector, the Core EU Group was represented by Denmark speaking on behalf of Austria, Belgium, Finland, France, Germany, Greece, Ireland, Malta, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom (once); on behalf of the same group, but without Austria, Belgium, Greece, and Malta (once), on behalf of the same group, but without Austria, Belgium, Malta, Spain, and the United Kingdom (twice), on behalf of the same group, but without Austria, Belgium, France, Malta, Spain, and the United Kingdom (once), and on behalf of the same group, but without Austria, Belgium, France, Germany, Greece, Malta, Norway, and Spain (once); France speaking on behalf of Belgium, Denmark, Finland, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom (once), and on behalf of the same group, but with the addition of Greece and without Ireland and Spain (once); the Netherlands speaking on behalf of Belgium, Denmark, Finland, France, Germany, Ireland, Portugal, Spain, Sweden, and the United Kingdom (once); Greece speaking on behalf of Belgium, Denmark, Finland, France, Germany, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom (four), on behalf of the same group, but without Denmark and Ireland (once), on behalf of the same group, but without Spain (once), on behalf of the same group, but without Belgium (once), and on behalf of the same group, but without Belgium, France, and Portugal (once), and on behalf of the same group, but without Belgium, Denmark, France, Germany, Portugal, and Sweden (once); and the United Kingdom speaking on behalf of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, Norway, Portugal, Spain, Sweden, and the United Kingdom (once) (International Labour Office, 2005f). It should also be noted that non-EU Member State Norway spoke on behalf of Spain (three).
Committee, while Estonia, Italy, Latvia, Lithuania, and Luxembourg were present in the Committee, but never part of the Core EU Group. The remaining EU Member States were not present in the 2005 Committee (cf. supra). In contrast to the year before, the Core EU Group was now represented by five EU Member states, including Greece (nine), the United Kingdom (eight), Denmark (six), France (twice), and the Netherlands (once). In addition, Norway (twice) and the Employers’ Group (once) also served as representatives of the Core EU Group, during which this group was extended one time with four non-EU Member States.

<table>
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<tr>
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<td>Slovenia (not present)</td>
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4.2.3. **The 2007 Committee on the Fishing Sector**

During the 2007 Committee on the Fishing Sector, our bird’s-eye view of EU representation shows a marked change when compared to the 2004 and 2005 committee discussions. The Union was formally represented by Germany as the then-holder of the EU Presidency, who either spoke on behalf of the ‘Government members of the Committee Member States of the European Union’ or on behalf of the ‘EU Group’ (International Labour Office, 2007d). The first phrasing was used once during the General Discussion at the beginning of the 2007 Committee, where it was used to clarify that these interventions were made on behalf of the EU Member States, but not those that were absent or the national worker or employer representatives of these states (p. 4). In addition, Germany’s first intervention during the General Discussion at the beginning of the 2007 Committee was also reported to have been on behalf of three candidate countries (i.e. Croatia, Turkey, and the former Yugoslav Republic of Macedonia), four countries of the Stabilization and Association Process and potential candidates (i.e. Albania, Bosnia and Herzegovina, Montenegro, and Serbia), the European Free Trade Association countries, Iceland, Norway, the Republic of Moldova, and Ukraine. During the committee discussion itself, the German EU Presidency was the sole representative speaking on behalf of the Union, which was reported to also have regularly included Norway and/or Iceland.

Looking at Table 4.7 (cf. infra), wherein all interventions that are reported as having been made on behalf of the EU Member States are included in the column titled ‘European Union’, we find that for the first time during this standard-setting procedure there existed a substantial EU representation, with the German EU Presidency intervening fourteen times on behalf of the Union. In part, this is caused by a change in reporting practices by the ILO Office, given the complete disappearance of the Core EU Group from the record of proceedings. However, the shift in the Union’s representation is also accompanied by the disappearance of any of the ‘Other configurations’ that existed during the 2004 and 2005 committee discussions and by a sharp decline of ‘Independent’ interventions by the EU

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55 During the 2007 Committee on the Fishing Sector, interventions on behalf of the Union were made on behalf of all 27 EU Member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (International Labour Office, 2007d, p. 4). Interestingly, while Cyprus, the Czech Republic, Hungary, and Latvia are included among their European peers, the list of participants to the 2007 Committee does not include government representatives for these states.

56 During the 2007 Committee on the Fishing Sector, Germany spoke on behalf of only the EU Member States (two times), on behalf of the EU Member States and Norway (once), and on behalf of the EU Member States, Norway, and Iceland (eleven).
Member States (51), which indicated that this shift was caused by more than a simple issue of reporting.\footnote{57}

<table>
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<td><strong>Total</strong></td>
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Table 4.7 – Interventions by EU Member States during the 2007 Committee on the Fishing Sector

In conclusion, this bird’s-eye view has given us a first impression of the EU’s representation during the standard-setting procedure on work in fishing. At first sight, the EU Member States seemed to speak almost exclusively on their own behalf during the 2004 and 2005

\footnote{57} Greece provides a single exception by speaking on behalf of the Workers’ Group one time (International Labour Office, 2007d, p. 46).
committees, given that an almost non-existent formal EU representation stood in stark contrast with a large number of independent interventions by the Member States. However, a closer look at the numbers revealed the existence of a relatively stable and recurring Core EU Group which, despite not being reported as such, can be counted as EU representation. In addition, this overview showed that governments were increasingly represented in large governmental coalitions, notably including an actively involved Government Group during the 2005 Committee. During the 2007 Committee, the Union’s representation shifted towards formal EU representation. While this was partly a consequence of a change in reporting practices, the significant drop of independent interventions and interventions in other configurations indicates that this shift was caused by more than a simple change of reporting.

Finally, it should be reiterated that this bird’s-eye view only gives us a preliminary impression of EU representation. While this quantitative overview can give some preliminary indications, it does not allow us to detect whether the independent interventions were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other EU Member States. In order to detect the nature of these interventions, we now turn to a qualitative analysis of the EU’s representation on the key issues in this standard-setting procedure.

4.3. The Causal Potential of EU Coherence in Relation to its Effectiveness

4.3.1. The Scope of Application

The discussion on the scope of application was the key battleground where the tripartite members discussed their opposing views on how to approach the special nature of the fishing sector. As the underlying logic behind the instruments shifted from a one-size fits all approach in 2004 (preferred by the Employers’ Group) to a differentiated approach in 2005 (preferred by the Workers’ Group), the provisions on the scope of application served to anchor this shifting approach into the Convention and Recommendation. During the double-discussion procedure, the discussion first focused on the possibility to exempt certain fishing vessels from the one-size fits all provisions and, after the introduction of a differentiated approach, the additional requirements for larger vessels. After the Convention failed to be adopted during the 2005 ILC, the discussion focused on the progressive implementation approach, which was introduced by the Employers’ Group to allow for additional flexibility in the instruments. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.
6. The Convention applies to all vessels engaged in commercial fishing operations.

7. In the event of doubt as to whether a vessel is engaged in commercial fishing, the question should be determined by the competent authority in each Member after consultation.

8. (1) The competent authority might, after consultation, exclude from the application of the Convention:
   (a) fishing vessels engaged in fishing operations in rivers and inland waters; and
   (b) limited categories of fishers or fishing vessels in respect of which special and substantial problems relating to application arise in the light of particular conditions of service of the fishers or the fishing vessel’s operations.
   (2) In the case of exclusions under the preceding paragraph the competent authority should take measures to progressively extend the protections under the Convention to those categories of fishers and fishing vessels. [modified: C. 138, Art. 4(1); C. 158, Art. 2(5); C. 184, Art. 3(1)(b)]

9. Each Member which ratifies the Convention should list, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization, any categories of fishers or fishing vessels which might have been excluded in pursuance of Point 8(1), and should give the reasons for such exclusion, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist, and describing the measures taken to give adequate protection to the excluded categories. [modified: C. 155, Art. 2(3); C. 172, Art. 1(4)]

10. Each Member which ratifies the Convention should describe in subsequent reports on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organization the measures taken with a view to extending progressively the provisions of the Convention to the excluded fishers and fishing vessels. [modified C. 184, Art. 3(2)]

Box 4.3 – Provisions on the scope of application submitted to the 2004 Committee by the ILO Office

During the 2004 Committee, the EU Member States were actively involved in the discussion on the scope of application, during which they intervened independently or in limited coalitions to introduce several amendments to the relevant provisions (International Labour Office, 2004o, pp. 29-35). These provisions were drafted by the ILO Office and submitted for consideration to the 2004 Committee as points six, seven, eight, nine, and ten (cf. Box 4.3 supra) (International Labour Office, 2004a, p. 183).
On the sixth point, Denmark and the United Kingdom introduced an amendment to replace this point with a new text that would have the Convention apply ‘[…] to all new fishing vessels and fishers engaged in commercial fishing operations;’ (emphasis added) (International Labour Office, 2004o, p. 29), rather than all vessels engaged in these operations, full stop. This ‘grandfather clause’ (so dubbed by the United Kingdom) was by far the most ambitious of all the EU Member State amendments and would drastically alter the scope of application. The principle behind the amendment found some support with the social partners, although both the Workers’ and Employers’ Group felt that point six was not the right place for it, while Chile and Namibia, speaking on behalf of thirteen Latin-American and African states, opposed the exclusion of existing vessels. Faced with this broad opposition, the United Kingdom introduced a subamendment to retain some of the text, but to remove the grandfather clause and to reinstate the instrument’s coverage of all vessels. While this subamendment was thus adopted with broad, tripartite support (notably including explicit support from EU Member States Ireland and Greece), it is important to note that the coalition between Denmark and the United Kingdom failed to have the original intention behind its amendment adopted. Nevertheless, the final instrument did end up including a grandfather clause for specific provisions. Notably, parts of Annex III on accommodation only apply to new vessels, after several governments (including the United Kingdom) pointed this out to the ILO Office during the 2004 Meeting of Experts (International Labour Office, 2005j, p. 103).

On the other points, a limited coalition between Greece and the United Kingdom introduced three amendments that were effectively adopted (two on the eighth point, one on the ninth point) and withdrew a fourth amendment (on the tenth point) before it was discussed. On the first paragraph of point eight, their amendment intended to replace ‘from the application of the Convention’ with ‘from the requirements of the Convention, where the application is considered to be impracticable’ and was adopted as subamended with broad, tripartite support, notably including explicit support from EU Member States Spain, Denmark, Ireland, and Germany. On the second paragraph of point eight, their amendment intended to add ‘and where practicable’ after ‘paragraph’ and was adopted with the support of the Employers’ Group and a large number of governments, despite opposition from the Workers’ Group. On point nine, their amendment intended to replace ‘the measures taken to give adequate’ with ‘any measures which may have been taken to provide equivalent’ was adopted with broad, tripartite support. In addition to the amendments of this limited coalition, Ireland and the United Kingdom also supported a successfully adopted amendment introduced by Japan on point eight. While these amendments were certainly relevant for the scope of application, it should be clear that none of them matched the ambition of the failed grandfather clause.
2. (1) Except as provided otherwise, the Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.

2. (2) In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

2. (3) Any Member, after consultation, may extend to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels 24 metres in length and over.

3. (1) The competent authority, after consultation, may exclude from the requirements of the Convention, or certain provisions thereof, where the application raises special and substantial problems in the light of the particular conditions of service of the fishers or fishing vessels' operations:

(a) fishing vessels engaged in fishing operations in rivers, lakes and canals; and

(b) limited categories of fishers or fishing vessels.

3. (2) In the case of exclusions under the preceding paragraph, and where practicable, the competent authority shall take measures, as appropriate, to extend progressively the requirements under the Convention to those categories of fishers and fishing vessels.

4. (1) Each Member which ratifies the Convention shall, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation:

(a) list any categories of fishers or fishing vessels excluded under Article 3, paragraph 1;

(b) give the reasons for such exclusion, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and

(c) describe any measures taken to provide equivalent protection to the excluded categories.

4. (2) Each Member shall describe in subsequent reports submitted under article 22 of the Constitution the measures taken with a view to extending progressively the provisions of the Convention to the excluded fishers and fishing vessels.

5. The competent authority, after consultation, may decide to use the units of measurement defined in the Convention other than length (L) and, in the first report submitted under article 22 of the Constitution, shall communicate the reasons for the decision and any comments arising from the consultation. For this purpose, units of measurement equivalent to length (L) are set out in Annex I to the Convention.

Annex I (1) For the purposes of this Convention, where the competent authority, after
consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:
(a) a length overall (LOA) of [26.5] metres shall be considered equivalent to a length (L) of [24] metres;
(b) a length overall (LOA) of [16.5] metres shall be considered equivalent to a length (L) of [15] metres;
(c) a length overall (LOA) of [50] metres shall be considered equivalent to a length (L) of [45] metres.
Annex I (2) For the purposes of this Convention, where the competent authority, after consultation, decides to use gross tonnage (gt) rather than length (L) as the basis of measurement:
(a) a gross tonnage of [100] gt shall be considered equivalent to a length (L) of [24] metres;
(b) a gross tonnage of [30] gt shall be considered equivalent to a length (L) of [15] metres;
(c) a gross tonnage of [500] gt shall be considered equivalent to a length (L) of [45] metres.

Box 4.4 – Provisions on the scope of application submitted to the 2005 Committee by the ILO Office

During the 2005 Committee, the discussion on the scope of application was heavily affected by the shift in the standard-setting procedure to a differentiated approach. Following the first discussion, the ILO Office had redrafted the relevant provisions and submitted them for consideration to the 2005 Committee as articles two, three, four, five, and Annex I (cf. Box 4.4 supra) (International Labour Office, 2005k, pp. 9,11,35). While the ILO Office had placed specific provisions on additional requirements for larger vessels ‘[…] throughout the text rather than in a separate section […]’ (International Labour Office, 2005f, p. 3), the discussion on these provisions needed to settle the exact figures that would be used to determine the difference between large and small vessels. These figures and their use were included in Annex I and the fifth article of the new text, wherein we find that length, length overall, and – interestingly – gross tonnage are all accepted as units of measurement.

The discussion focused on the new Article five and the related Annex I, which started with Brazil presenting the conclusions of a Working Party on the equivalence in units of measurement (International Labour Office, 2005f, pp. 15-19). This presentation reveals that gross tonnage as an alternative to length and overall length had created ‘great difficulty’ during the Working Party, both in terms of the exact figures and in terms of its applicability, while the length and length overall figures had been settled relatively easily. Indeed, the latter figures had been drawn from existing IMO Convention on Standards of Training, Certification and Watch Keeping for Fishing Vessel Personnel and the 1966 ILO Convention on Accommodation of Crews (Fishermen) Convention by the ILO Office and could therefore be decided on with relative ease. In addition, this meant that the Convention was compatible with the Union *acquis communautaire*, wherein Council Directive 97/70/EC
(Council of the European Union, 1997) and the amending Commission Directives 1999/19/EC (European Commission, 1999) and 2002/35/EC (European Commission, 2002) all set up a harmonized safety regime that only applies to fishing vessels of 24 meters in length and over. However, gross tonnage was included as a concession made specifically to Japan and the Asian governments and proved a tougher nut to crack in the absence of existing instruments (Interview No. 35). The reason for this peculiar concession lies in the different way of constructing Asian vessels, which tend to be longer and less wide than elsewhere, therefore potentially creating a disadvantage if the instruments were to rely exclusively on length (overall) to impose additional requirements on larger vessels.

Looking at the discussion on this article and annex, we clearly see the social partners lead the debate and – ultimately – decided the final outcome after consultations held between them. Between these two opposites, we find Norway, speaking on behalf of the Government Group, stating that most governments had provided positive feedback to the joint proposal by the social partners. Nevertheless, the Japanese government situated itself nearer to the Employers’ Group and even took a position further away from the center of the tripartite stage when it ‘[…] expressed disappointment and grave concern with the outcome.’ (p. 17) after consultations between the social partners had decided the discussion. Indeed, Japan did not agree with 175 gross tonnage as the equivalent of 24 meters (a compromise figure born out of the consultations held between the social partners during the committee discussion), nor did it agree that gross tonnage could only be used as a unit of measurement for certain parts of Annex III on accommodation (as decided by the Working Party). If anything, we here find the key to understanding the tripartite dynamic behind the standard-setting procedure on work in the fishing sector. Against this background, we find that the EU Member States played a limited role. France, Portugal, and Germany intervened independently to side with the majority of the governments, but as such hardly influenced the outcome of the discussion.

On the other articles, the EU Member States introduced minor amendments that were adopted with broad, tripartite support (International Labour Office, 2005f, p. 15). The third and fourth article were adopted without amendment, but on the second article, Germany independently introduced an amendment to replace the opening of the first paragraph by ‘Except as provided otherwise in this Convention it’. In addition, a limited coalition consisting of Denmark, Germany, and non-EU Member State Norway introduced an amendment to add ‘on smaller vessels’ after ‘in whole or in part’ in the third paragraph of the same article. These relevant, but minor amendments were adopted with broad tripartite support, including EU Member States Greece and the United Kingdom expressing their explicit support, but it should be clear that the discussion on the fifth article and Annex I was of predominant importance.
2. (1) Except as otherwise provided herein, this Convention applies to all fishers and all fishing vessels engaged in commercial fishing operations.

2. (2) In the event of doubt as to whether a vessel is engaged in commercial fishing, the question shall be determined by the competent authority after consultation.

2. (3) Any Member, after consultation, may extend, in whole or in part, to fishers working on smaller vessels the protection provided in this Convention for fishers working on vessels 24 metres in length and over.

3. (1) The competent authority, after consultation, may exclude from the requirements of this Convention, or certain provisions thereof, where their application raises special and substantial problems in the light of the particular conditions of service of the fishers or the fishing vessels’ operations:
(a) fishing vessels engaged in fishing operations in rivers, lakes and canals; and
(b) limited categories of fishers or fishing vessels.

3. (2) In the case of exclusions under the preceding paragraph and, where practicable, this competent authority shall take measures, as appropriate, to extend progressively the requirements under the Convention to those categories of fishers and fishing vessels concerned.

4. (1) Each Member which ratifies the Convention shall, in the first report on the application of the Convention submitted under article 22 of the Constitution of the International Labour Organisation:
(a) list any categories of fishers or fishing vessels excluded under Article 3, paragraph 1;
(b) give the reasons for such exclusion, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
(c) describe any measures taken to provide equivalent protection to the excluded categories.

4. (2) Each Member shall describe in subsequent reports submitted under article 22 of the Constitution the measures taken with a view to extending progressively the provisions of the Convention to the excluded fishers and fishing vessels.

5. (1) For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set
5. (2) In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

Annex I For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:
(a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
(b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
(c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

Box 4.5 – Provisions on the scope of application rejected during the 2005 ILC

After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles served as the jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee (cf. Box 4.5 supra) (International Labour Office, 2005f, pp. 98-99,113). The discussion on the scope of application shifted toward an approach that allowed governments to ratify and subsequently ‘grow into’ certain provisions included in the Convention, i.e. the progressive implementation approach.\(^{58}\) This approach was first introduced by the Employers’ Group during the 2006 Round Table as a ‘development clause’, which the group explained as follows: ‘Ratifying countries, whose infrastructure and institutions are not sufficiently developed for implementation of certain provisions or requirements should get the opportunity to “grow” into these provisions and requirements within a certain period of time.’ (International Labour Office, 2007g, p. 99) The key argument behind introducing this approach was to make the implementation and enforcement of specific provisions (temporarily) more flexible, in order to facilitate ratification of the Convention.\(^{59}\) However, different from the exemptions found elsewhere in the proposed text, the Employers’ Group stressed that ‘[t]he objective was not to exempt countries from applying part of the Convention, but to encourage them to commit themselves to its full application.’ (p. 90)

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\(^{58}\) It should be noted that the discussion on gross tonnage figures by this time had moved to Annex III on accommodation, which is where we will deal with it in this dissertation.

\(^{59}\) Exploring the many facets and uses of flexibility in ILO instruments, Politakis (2004, pp. 483-484) points out that the progressive implementation approach was not an entirely new concept and had been used before in several other Conventions.
The progressive implementation approach was at the center for the Employers’ Group’s efforts to add additional flexibility to the scope of the provisions found in the Convention. However, the majority of the governments and the Workers’ Group were satisfied with the outcome of the double-discussion procedure in terms of the flexibility the instruments offered. Asked by the ILO Office whether additional flexibility should be introduced with regards to the scope of the instruments, a large majority of the governments replied that this was not necessary and, moreover, often advised against further flexibility on the scope of application (International Labour Office, 2007g, pp. 7-22). Within this context, the EU Member States were consistent in their replies and sided with the majority of the governments, although the Netherlands was more willing to entertain the idea of further flexibility and noted that it supported ‘[…] the extension of the scope of Article 3 in the sense that it gives developing countries the opportunity to “grow” into the obligations of the Convention.’ (p. 12)

Despite this majority of the tripartite constituents being hesitant to discuss further flexibility in the scope of application, the Employers’ Group pressed on and argued for the progressive implementation approach. As a result, during the Final Discussion of the 2006 Round Table, the Employers’ Group announced that common ground was found on introducing the approach in the Convention with a view to facilitating ratification. Moreover, consultations had made it clear to all parties that ‘[…] provisions of the Convention subject to progressive implementation would be mandatory; the only question was the time allowed to achieve full implementation […] and also] that Member States should only invoke the progressive implementation clause if a clear and objective justification, linked to infrastructural shortcomings, existed.’ (International Labour Office, 2007g, pp. 91-92)

Based on the discussion during the 2006 Round Table and the replies to the questionnaire at the beginning of the single-discussion procedure, the ILO Office drafted new versions of articles three and four (International Labour Office, 2007g, pp. 19-20). These drafts introduced the progressive implementation approach in the scope of the Convention, but lacked a specific list provisions that would be affected by this approach. Building on these drafts, continued consultations between the tripartite constituents eventually led to the amendments introduced during the 2007 Committee, wherein their consensus was translated into a specific list of provisions that would fall under this approach (cf. Box 4.6 infra) (International Labour Office, 2007d, pp. 11-16).

During the 2007 Committee, the discussion was usurped by joint amendments on articles three and four that were formally introduced by the Employers’ Group, but informally the result of a tripartite consensus the social partners and key governments arrived at through
extensive bipartite and tripartite consultations in the run-up to the 2007 Committee
(International Labour Office, 2007d, pp. 11-16). This background shaped the discussion,
wherein the social partners took the lead in defending their agreed ‘package’ against minor
subamendments by individual governments. While Germany, speaking on behalf of the
extended group of EU and non-EU Member States, Brazil, speaking on behalf of GRULAC,
and Namibia, speaking on behalf of the Africa Group, expressed a willingness to further
discuss the progressive implementation approach during the General Discussion at the
beginning of the 2007 Committee, these groups were absent during the actual discussion on
article three and four. Instead, a number of individual governments introduced minor
amendments that were mostly unsuccessful against the united front the social partners put up
in defense of their joint amendments.

Against this background, we find that the EU Member States joined their government
counterparts and played a limited role in a discussion that was lead by the social partners.
Despite Greece noting that it ‘[…] was very encouraged that the social partners were
approaching agreement on issues relating to the progressive implementation approach, and
trusted that the consensus would not be presented on a “take it or leave it” basis, but rather
as a topic for discussion.’ (p. 13) the independent interventions by Greece, Denmark, and the
Netherlands did not influence the outcome of the discussion, which is a situation similar to
the one we found during the 2005 committee discussion on Article five and Annex I (cf. supra).

2. (1) Except as otherwise provided herein, this Convention applies to all fishers and all
fishing vessels engaged in commercial fishing operations.
2. (2) In the event of doubt as to whether a vessel is engaged in commercial fishing, the
question shall be determined by the competent authority after consultation.
2. (3) Any Member, after consultation, may extend, in whole or in part, to fishers working
on smaller vessels the protection provided in this Convention for fishers working on
vessels of 24 metres in length and over.

3. (1) Where the application of the Convention raises special problems of a substantial
nature in the light of the particular conditions of service of the fishers or of the fishing
vessels’ operations concerned, a Member may, after consultation, exclude from the
requirements of this Convention, or from certain of its provisions:
(a) fishing vessels engaged in fishing operations in rivers, lakes or canals;
(b) limited categories of fishers or fishing vessels.
3. (2) In case of exclusions under the preceding paragraph, and where practicable, the
competent authority shall take measures, as appropriate, to extend progressively the
requirements under this Convention to the categories of fishers and fishing vessels
concerned.

3. (3) Each Member which ratifies this Convention shall:
(a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
(i) list any categories of fishers or fishing vessels excluded under paragraph 1;
(ii) give the reasons for any such exclusions, stating the respective positions of the representative organizations of employers and workers concerned, in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
(iii) describe any measures taken to provide equivalent protection to the excluded categories; and
(b) in subsequent reports on the application of the Convention, describe any measures taken in accordance with paragraph 2.

4. (1) Where it is not immediately possible for a Member to implement all of the measures provided for in this Convention owing to special problems of a substantial nature in the light of insufficiently developed infrastructure or institutions, the Member may, in accordance with a plan drawn up in consultation, progressively implement all or some of the following provisions:
(a) Article 10, paragraph 1;
(b) Article 10, paragraph 3, in so far as it applies to vessels remaining at sea for more than three days;
(c) Article 15;
(d) Article 20;
(e) Article 33; and
(f) Article 38.

4. (2) Paragraph 1 does not apply to fishing vessels which:
(a) are 24 metres in length and over; or
(b) remain at sea for more than seven days; or
(c) normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag State or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater; or
(d) are subject to port State control as provided for in Article 43 of this Convention, except where port State control arises through a situation of force majeure, nor to fishers working on such vessels.

4. (3) Each Member which avails itself of the possibility afforded in paragraph 1 shall:
(a) in its first report on the application of this Convention submitted under article 22 of the Constitution of the International Labour Organisation:
(i) indicate the provisions of the Convention to be progressively implemented;
(ii) explain the reasons and state the respective positions of representative organizations of
employers and workers concerned, and in particular the representative organizations of fishing vessel owners and fishers, where they exist; and
(iii) describe the plan for progressive implementation; and
(b) in subsequent reports on the application of this Convention, describe measures taken with a view to giving effect to all of the provisions of the Convention.

5. (1) For the purpose of this Convention, the competent authority, after consultation, may decide to use length overall (LOA) in place of length (L) as the basis for measurement, in accordance with the equivalence set out in Annex I. In addition, for the purpose of the paragraphs specified in Annex III of this Convention, the competent authority, after consultation, may decide to use gross tonnage in place of length (L) or length overall (LOA) as the basis for measurement in accordance with the equivalence set out in Annex III.

5. (2) In the reports submitted under article 22 of the Constitution, the Member shall communicate the reasons for the decision taken under this Article and any comments arising from the consultation.

Annex I For the purpose of this Convention, where the competent authority, after consultation, decides to use length overall (LOA) rather than length (L) as the basis of measurement:
(a) a length overall (LOA) of 16.5 metres shall be considered equivalent to a length (L) of 15 metres;
(b) a length overall (LOA) of 26.5 metres shall be considered equivalent to a length (L) of 24 metres;
(c) a length overall (LOA) of 50 metres shall be considered equivalent to a length (L) of 45 metres.

Box 4.6 – The final provisions on the scope of application in the 2007 Work in Fishing Convention

**Issue Conclusion on the Scope of Application**

In the final Convention, the provisions on the scope of application were included as articles two, three, four, five, and Annex I (cf. Box 4.6 supra) (International Labour Office, 2007d, pp. 55-57,71). The discussion on the scope of application served to anchor the differentiated approach to standard-setting on the fishing sector in these articles and decided on its practicalities. We have seen how the EU Member States were part of a large majority of governments that sided with the Workers’ Group in favor of a differentiated approach, wherein additional requirements would be applied to large vessels. Once this approach was adopted, the overarching goal of the Member States during the discussion on the scope of application was to keep the specific provisions in line with the *acquis communautaire*, specifically three Directives setting up a harmonized safety regime that only applies to fishing vessels of 24 meters in length and over, while also consistently intervening independently or
in small coalitions to introduce a failed ‘grandfather clause’ and several successful adopted, but comparatively minor amendments. In addition, during the single-discussion procedure, the EU Member States were again part of the majority of governments who accepted the introduction of a progressive implementation approach.

When we compare this goal with the final provisions on the scope of application (cf. Box 4.6 supra), we find that the standard-setting procedure on work in the fishing sector settled on 24 meters in length (during the 2005 Committee) as one of the central figures deciding on the difference between large and small fishing vessels. Also, looking at the committee discussions, we see that a majority of the amendments introduced independently or in small coalitions by the EU Member States were successfully adopted. As such, it would seem that the Member States effectively attained their goals on this issue. However, having process-traced the discussion on the scope of application, we need to add several important qualifications to the apparent effectiveness of the EU Member States. Firstly, on the compatibility with EU legislation, we have noted that 24 meters has long been used as a central figure in the IMO Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel and the 1966 ILO Convention on Accommodation of Crews (Fishermen) Convention. Indeed, ‘24 meters’ was introduced as a central figure in the new instruments because the ILO Office had drawn it from these instruments, rather than because the EU Member States introduced it as part of the acquis. Moreover, the reason that an agreement on 24 meters was reached relatively easily, especially when compared to the difficult discussion on its equivalence in length overall and gross tonnage, is precisely because it was drawn from these preexisting international instruments, rather than because the EU Member States effectively managed to introduce parts of the acquis.

Secondly, a closer look at the amendments introduced by the EU Member States independently or in small coalitions, rather than as part of the majority of governments, during the committee discussions reveals that the effectiveness of the EU Member States on the scope of application was in fact limited. While a majority of these amendments were successfully adopted and – moreover – could usually count on a tripartite consensus between the social partners and a majority of the governments, none of these amendments entailed extensive changes, but rather provided comparatively minor clarifications to the existing text. Indeed, it is precisely the broad consensus that shows us how minor these amendments were within a discussion wherein substantive changes to the text were sensitive and entailed heated debates. One exception further strengthens this finding: when Denmark and the United Kingdom did introduce a more ambitious amendment during the 2004 Committee that would have substantially altered the scope of application (i.e. limit it to new fishing vessels), they failed to have this amendment adopted in the face of strong opposition from all sides (International Labour Office, 2004o, p. 29).
Thirdly, when the progressive implementation approach found in the fourth article was introduced during the single-discussion procedure, the majority of governments (again including the EU Member States) accepted the joint-amendment by the social partners and repeatedly voiced their openness to make use of this approach, but none of them had a stake in the discussion. Indeed, with the exception of Japan and the Asian governments, the dynamic behind this standard-setting procedure had shifted to a bipartite discussion between the social partners, effectively sideling the majority of governments. Taking these qualifications into account, we have found that the EU Member States mostly influenced the discussion on the scope of application as part of the majority of governments, while their impact as a distinct group intervening independently or in small coalitions was much more limited.

### 4.3.2. Training and Minimum Age

Training and minimum age was a key issue during the standard-setting procedure on work in fishing. Firstly, its central place in the procedure came from the need to be mindful of the complexities the special nature of the fishing sector offers in this regard. The initial report by the ILO Office outlined the complexity of setting a minimum age for work in the fishing sector, which had much to do with the fact that ‘[...] many fishermen have traditionally learned their profession by working alongside a parent at sea.’ (International Labour Office, 2003a, pp. 23-28) Nevertheless, considering the hazardous nature of work in this sector, the new instruments should find a way to adequately protect young workers. Secondly, the standard-setting procedure also needed to ensure that the new instruments stayed compatible with existing international instruments. While the 1959 Minimum Age (Fishermen) Convention (establishing that children below the age of 15 could not be employed in the fishing sector) was intended to be replaced by this procedure, the new instruments would have to exist alongside more recent Conventions. Notably, compatibility would have to be ensured with the widely ratified CLS on the abolition of child labor: the 1973 Minimum Age Convention (establishing a minimum age no lower than the completion of compulsory schooling and no lower than 15 in all sectors) and the 1999 Worst Forms of Child Labour Convention (establishing additional protection for children under the age of 18). Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

13. No person under the minimum age should work on board a fishing vessel.

14. The minimum age at the time of the initial entry into force of this Convention is 16 years. [modified: C. 180, Art. 12; C. 138]
15. The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health and safety of young persons, should not be less than 18 years. [modified: C. 184, Art. 16; C. 138, Art. 3]

16. The types of employment or work to which Point 15 applies should be determined through consultation, taking into account the risks concerned and the applicable international standards. [modified C. 184, Art. 16]

17. The competent authority might, after consultation, authorize the performance of work referred to in Point 15 as from 16 years of age, on condition that the health and safety of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training. [modified: C. 184, Art. 16; C. 138, Art. 3]

Box 4.7 – Provisions on training and minimum age submitted to the 2004 Committee by the ILO Office

Before the 2004 Committee, the relevant provisions on training and minimum age were drafted by the ILO Office and submitted for consideration as points 13, 14, 15, 16, and 17 (cf. Box 4.7 supra) (International Labour Office, 2004a, p. 184). During the first committee discussion, the social partners and a number of governments introduced amendments on all points except the fifteenth (International Labour Office, 2004o, pp. 39-43). Against the background of this tripartite dynamic, the EU Member States intervened independently when positioning themselves toward the amendments of others, but several of them also came together in small coalitions to introduce two amendments of their own. Firstly, France and Greece introduced a new point after Point 14, which would prove to be the most substantial amendment to be adopted during the first discussion:

‘(1) The minimum age might be 15 years for persons who are no longer subject to compulsory schooling as imposed by national legislation, and who are engaged in maritime vocational training. (2) Persons of 15 years of age might also be authorized, in accordance with national laws and practice, to perform light work during school holidays; in this case they should be granted a rest of a duration equal to at least half of each holiday period.’ (p. 40)

This amendment made the minimum age for fishermen dependent on national laws regarding compulsory schooling, albeit never going below the age of fifteen, and made room for apprenticeships during school holidays. Importantly, from a European perspective, this amendment brought the international provisions on training and minimum age in line with those found in Council Directive 94/33/EC, which prescribes ‘[…] that the minimum
working or employment age is not lower than the minimum age at which compulsory full-time schooling as imposed by national laws ends or 15 years in any event.” (Council of the European Union, 1994, p. 2) Ensuring that the provisions in the final instruments were compatible with the standards that were already in place in European legislation was the overarching goal of the EU Member States during the discussion on training and minimum age. Besides continuously referring to this Council Directive during the standard-setting procedure, the Member States made this clear right at the beginning with their replies to the questionnaire attached to the initial report by the ILO Office (International Labour Office, 2004a, pp. 25-39).

However, it should be noted that, along with a large majority of governments, the EU Member States had ratified the 1973 Minimum Age Convention and the 1999 Worst Forms of Child Labour Convention and also needed to ensure the standards in the new instruments were compatible. Indeed, it was precisely because of the fact that the amendment was also compatible with the 1973 Minimum Age Convention, that it was adopted with broad support from the social partners and a show of hands from the governments.

Secondly, Denmark, speaking on behalf of Ireland and the United Kingdom, introduced a minor amendment to replace ‘through’ with ‘after’ in the wording of Point 16 (p. 41). This amendment was adopted without further discussion and with the support of the Employers’ and the Workers’ Group. In addition, Belgium, France, Greece, Spain, and the United Kingdom intervened independently, but always consistently, to express their support for or oppose the amendments by others.

In between the 2004 and 2005 committee meetings of the double-discussion procedure, training and minimum age was one of the issues that were folded into the agenda of the additional 2004 Meeting of Experts (International Labour Office, 2004h, p. 5). This meeting was convened by the GB to follow-up on accommodation and additional requirements for larger vessels. Training and minimum age was included in the agenda as one of the issues that were potentially going to be affected by the additional requirements that were being developed for larger fishing vessels. After a brief discussion during a meeting that was mainly

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60 At the start of the standard-setting procedure on work in fishing, the 1973 Minimum Age Convention had not been ratified by three EU Member States (i.e. the Czech Republic, Estonia, and Latvia) and the 1999 Worst Forms of Child Labour Convention had not been ratified by one EU Member State (i.e. Latvia). However, all had ratified these Conventions before the Work in Fishing Convention was adopted during the plenary session of the 2007 ILC. For ratification information on the former 1973 Convention, see: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312283:NO and for ratification information on the 1999 Convention, see: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312327:NO (accessed 13 March 2014).
focused on other issues, the Secretary-General noted that ‘[…] no consensus had been reached.’ (International Labour Office, 2005j, p. 120) Although there seemed to be a consensus that these provisions should apply to all vessels, further discussion on specific issues and whether to place them in the Convention or the Recommendation was needed.

9. (1) The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.
9. (2) The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.
9. (3) The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.
9. (4) The types of activities to which paragraph 3 applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.
9. (5) The performance of the activities referred to in paragraph 3 as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety or morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.
9. (6) The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:
(a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
(b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.
9. (7) None of the provisions in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.
During the 2005 Committee, the discussion focused on paragraph two and three of Article nine. Following the first discussion, the ILO Office had merged and redrafted the relevant provisions and submitted them for consideration to the 2005 Committee as Article nine (cf. Box 4.8 supra) (International Labour Office, 2005k, pp. 13,15). On the second paragraph of this article, two amendments were introduced by two small coalitions to delete this paragraph (International Labour Office, 2005f, pp. 22-23). One by Canada, Switzerland, and the United States and the other by Brazil, EU Member State Spain, and the Bolivarian Republic of Venezuela. Switzerland argued that this paragraph was incompatible with the 1973 Minimum Age Convention and the 1999 Worst forms of Child Labour Convention, which are both widely ratified as part of the CLS. The Employers’ and the Workers’ Group opposed the deletion of the second paragraph, stating that it was an indelible part of the balanced ‘package’ found in Article nine, while Norway, speaking on behalf of the Government Group, stated that this group was evenly divided on this issue. While this ultimately led Switzerland to withdraw its amendment and the second amendment failing to be adopted, the inconsistency between the EU Member States is what draws our attention here. Recall that this second paragraph was originally introduced by France and Greece during the 2004 Committee, thereby bringing the provisions on training and minimum age in line with Council Directive 94/33/EC. While this makes it unsurprising that Greece, Denmark, and France intervened independently to oppose the amendments to delete them, it makes it all the more surprising that Spain would be one of the governments introducing one of those amendments in the first place. As we will see during the 2006 Round Table, apparently this stemmed from confusion over the compatibility of Article nine with these international standards.

On the third paragraph, non-EU Member State Norway, speaking on behalf of Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom, coherently introduced an amendment to replace the text with: ‘Fishers under the age of 18 shall not be required to perform tasks which are particularly hazardous in nature.’ (p. 23) While the intention behind the paragraph remained the same, this ‘modernized’ wording introduced by the Core EU Group removed the protection of fishermen’s morals found in the original text. However, Switzerland and the Workers’ Group opposed the amendment for precisely this reason, as the original paragraph reflected the wording found in the 1973 Minimum Age Convention and the 1999 Worst forms of Child Labour Convention that are part of the CLS. Despite the support of the Employers’ Group, Norway withdrew the amendment after a show of hands revealed that a majority of the governments was opposed to the amendment.
9. (1) The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

9. (2) The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.

9. (3) The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

9. (4) The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.

9. (5) The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety or morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

9. (6) The engagement of fishers under the age of 18 for work at night shall be prohibited. For the purpose of this Article, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:

(a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or

(b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

9. (7) None of the provisions in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

Box 4.9 – Provisions on training and minimum age rejected during the 2005 ILC

After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles served as the
jumping-off point for the discussion during the 2006 Round Table (cf. Box 4.9 supra) (International Labour Office, 2005f, pp. 101-102). The ILO Office sent out a new questionnaire to the tripartite constituents. While training and minimum age was not included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5), this issue was repeatedly raised in the replies to the questionnaire as well as during the 2006 Round Table (International Labour Office, 2007g, pp. 62-72,89-90). Following the second discussion during the 2005 Committee, the compatibility of Article nine with the 1973 Minimum Age Convention and the 1999 Worst forms of Child Labour Convention was again raised. On this issue, the ILO Office (pp. 70-71) and France (p. 65) provided elaborate rebuttals from a legal point of view and, additionally, the intricate balance between the paragraphs of Article nine was again highlighted during the 2006 Round Table (pp. 89-90). Given that the confusion on Article nine’s compatibility with existing and widely ratified international standards had effectively been put to rest, Article nine on training and minimum age was adopted without amendment during the 2007 Committee (International Labour Office, 2007d, p. 17).

9. (1) The minimum age for work on board a fishing vessel shall be 16 years. However, the competent authority may authorize a minimum age of 15 for persons who are no longer subject to compulsory schooling as provided by national legislation, and who are engaged in vocational training in fishing.

9. (2) The competent authority, in accordance with national laws and practice, may authorize persons of the age of 15 to perform light work during school holidays. In such cases, it shall determine, after consultation, the kinds of work permitted and shall prescribe the conditions in which such work shall be undertaken and the periods of rest required.

9. (3) The minimum age for assignment to activities on board fishing vessels, which by their nature or the circumstances in which they are carried out are likely to jeopardize the health, safety or morals of young persons, shall not be less than 18 years.

9. (4) The types of activities to which paragraph 3 of this Article applies shall be determined by national laws or regulations, or by the competent authority, after consultation, taking into account the risks concerned and the applicable international standards.

9. (5) The performance of the activities referred to in paragraph 3 of this Article as from the age of 16 may be authorized by national laws or regulations, or by decision of the competent authority, after consultation, on condition that the health, safety and morals of the young persons concerned are fully protected and that the young persons concerned have received adequate specific instruction or vocational training and have completed basic pre-sea safety training.

9. (6) The engagement of fishers under the age of 18 for work at night shall be prohibited.
For the purpose of this Article, “night” shall be defined in accordance with national law and practice. It shall cover a period of at least nine hours starting no later than midnight and ending no earlier than 5 a.m. An exception to strict compliance with the night work restriction may be made by the competent authority when:
(a) the effective training of the fishers concerned, in accordance with established programmes and schedules, would be impaired; or
(b) the specific nature of the duty or a recognized training programme requires that fishers covered by the exception perform duties at night and the authority determines, after consultation, that the work will not have a detrimental impact on their health or well-being.

9. (7) None of the provisions in this Article shall affect any obligations assumed by the Member arising from the ratification of any other international labour Convention.

Box 4.10 – The final provisions on training and minimum age in the 2007 Work in Fishing Convention

**Issue Conclusion on Training and Minimum Age**

In the final Convention, the provisions on training and minimum age are included as Article nine (cf. Box 4.10 supra) (International Labour Office, 2007d, pp. 58-59). The final shape of these provisions was settled during the 2005 Committee, although their compatibility with existing international standards would continue to be discussed during the consultations taking place during the single-discussion procedure. Indeed, while the final provisions on the minimum age (first paragraph) and the possibility for apprenticeships (second paragraph) were broadly supported by the social partners and a majority of the governments during the 2004 and 2005 committee discussions, a number of governments would continue to question their compatibility with the existing CLS on the abolition of child labor. After the majority opposed amendments by these governments during the 2005 Committee, the issue was clarified and settled during the consultations in the run-up to the 2007 Committee. During the latter committee discussion, the provisions on training and minimum age were adopted without further amendment.

Against this background, we find that a small coalition of EU Member States played a central role in shaping the final provisions on training and minimum age during the 2004 Committee, although they were therein aided by a favorable tripartite stage. Specifically, during the first committee discussion, a small coalition of EU Member States (i.e. France and Greece) effectively introduced the amendment that would bring the provisions on training and minimum age in line with the *acquis communautaire*. They were therein supported by the social partners and a majority of the governments, although this broad support depended on the amendment’s compatibility with existing international standards. The latter clearly mattered more to the broader tripartite membership, especially when defending these provisions against amendments of some governments to delete them during the 2005 Committee. As such, the causal potential of the small coalition between France and Germany
was aided by a favorable tripartite stage. In addition, it should be noted that during the 2005 Committee Spain was part of the governments that introduced amendments to delete the provisions that had previously been introduced by a small coalition between France and Greece, creating an inconsistency in the Union’s representation.

4.3.3. Medical Examination and Certification

Medical examination and certification was one of the key issues during the standard-setting procedure on work in the fishing sector. The nature of work in fishing – with workers out at sea, exposed to extreme weather and hazardous working conditions – makes this issue a natural point of interest for a standard-setting procedure on this sector. In addition, the central place of medical examination and certification originated from its close connection to the overall goal of this procedure, i.e. address the decent work deficit in this sector. While the 1959 Convention on Medical Examination on Fishermen had previously addressed this issue, this existing Convention was one the instruments the WPPRS had slated for revision. The initial report by the ILO Office collaborated this assessment by highlighting that the coverage offered by the 1959 Convention had failed to reach the majority of the world’s fishermen and needed to be extended (International Labour Office, 2003a, pp. 33-34). As such, medical examination and certification tied in closely with the overall goal of this standard-setting procedure. In their replies to the questionnaire attached to the initial report of the ILO Office, the governments (including the EU Member States) were predominantly in favor that the convention on work in the fishing sector should provide for mandatory medical examinations (i.e. 75 yes votes out of a total of 82 replies (International Labour Office, 2004a, pp. 39-40)), mostly in favor that it should not allow exemptions (i.e. 57 no votes out of a total of 82 replies (pp. 42-43)), and predominantly in favor that it should provide that fishermen working on board a fishing vessel should hold a medical certificate attesting his or her fitness for work (i.e. 76 yes votes out of a total of 82 replies (pp. 44-45)).

The issue remained on the agenda throughout the double-discussion procedure and was included in the single-discussion procedure as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5) Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

18. No person should work on board a fishing vessel unless they have valid medical certificates attesting that they are medically fit to perform their duties. [modified C. 113, Art. 2].

19. The competent authority might, after consultation, grant exemptions from the
application of the preceding point in respect of vessels which do not normally undertake
voyages of more than [ ] days. [modified C. 113, Art. 1(2)]

20. Members should adopt laws or regulations or other measures providing for the
following: [main concepts of C. 113]
(a) nature of medical examinations;
(b) form and content of medical certificates;
(c) qualifications of the medical practitioner who signs the medical certificate;
(d) frequency of medical examinations and the period of validity of medical certificates;
(e) appeal procedures in the event that a person has been refused a certificate or has
had limitations imposed on the work he or she might do; and
(f) other relevant requirements.

Box 4.11 – Provisions on medical examination and certification submitted to the 2004 Committee by the ILO Office

During the 2004 Committee, the discussion on medical examination and certification
followed two separate dynamics. The relevant provisions were drafted by the ILO Office and
submitted for consideration to the 2004 Committee as points 18, 19, and 20 (cf. Box 4.11

Firstly, the discussion on points 18 and 19 was shaped by amendments introduced by the
social partners, while the EU Member States (and other governments) stayed on the sidelines
of the debate and served as referees (International Labour Office, 2004o, pp. 43-45). On
point 18, the Employers’ Group introduced an amendment to limit the scope by replacing
the text so that medical certificates would be required for ‘new entrant fishers’, but not
fishers already working in the sector. On point 19, the Workers’ Group introduced an
amendment to take into account more criteria to grant exemptions, thereby adding some
flexibility. The discussion on both points followed a similar pattern, wherein the social
partners opposed each other’s amendments and the governments intervened to side with one
or the other, thereby in effect serving as referees deciding the discussion. This resulted in the
Employer’s Group withdrawing its amendment after the governments sided with the
Workers’ Group, while the latter had its amendment adopted after securing the support of a
majority of the governments. Against this background, we find the EU Member States (and
other governments) as independent actors. On point 18, Germany, France, and the United
Kingdom sided with the Workers’ Group to have the Employers’ Group withdraw its
amendment, while on point 19 the United Kingdom, Denmark, France, Germany, Greece,
Ireland, the Netherlands, Portugal, and Spain supported the adoption of the Workers’
amendment. As such, the positions on of these Member States were consistent with each
other and, in both instances, sided with the winning side.
Secondly, the discussion on point 20 was less clear-cut, because the EU Member States (and other governments) no longer remained sidelined and played a more active role in the debate (International Labour Office, 2004o, pp. 45-48). While other actors also introduced amendments, most of the discussion revolved around three separate amendments introduced by a small coalition between Denmark and Norway. These three amendments specifically aimed to add greater detail to clauses (c), (d), and (e), without making any further changes to this point. Focusing on the discussion that followed after each of these three amendments, we find that the social partners now took on the role of referees. The amendment on clause (c) was adopted with the support of both the Workers’ and the Employers’ Group, while the amendment on clause (e) was not adopted after the social partners both voiced their opposition. However, the amendment on clause (d) divided the Workers’ Group (in favor) and the Employers’ Group (against), allowing Namibia, the United States, and Canada to become the ultimate referees by siding with the latter group and blocking the amendment’s adoption. In addition, France, Spain, and Germany also intervened during the discussion, the latter two together introducing a minor subamendment to the amendment on clause (d) before it failed to be adopted. As such, the EU Member States were represented independently or in small coalitions and took positions that were consistent with each other, but were mostly ineffective in having their amendments adopted.

In between the 2004 and 2005 committee meetings of the double-discussion procedure, medical examination and certification was one of the issues that were folded into the agenda of the additional 2004 Tripartite Meeting (International Labour Office, 2004h, p. 5). This meeting was convened by the GB to follow-up on accommodation and additional requirements for larger vessels. Medical examination and certification was included in the agenda as one of the issues that were potentially going to be affected by the additional requirements that were being developed for larger fishing vessels. After a brief discussion during a meeting that was mainly focused on other issues, the Meeting of Experts ‘[…] was in agreement as to the importance of the issue and [Canada] suggested that the discussion be continued during the next [committee meeting].’ (International Labour Office, 2005j, p. 120) As a consequence, the redrafted articles the ILO Office submitted to the 2005 Committee for consideration were influenced by the evolution toward additional requirements for larger vessels. Notably, this influence is evident in subparagraph three of article ten and the newly drafted article twelve (cf. Box 4.12 infra).

10. (1) No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
10. (2) The competent authority, after consultation, may grant exemptions from the application of the preceding paragraph, taking into account the health and safety of
10. (3) The exemptions in paragraph 2 shall not apply to a person working on a fishing vessel of [24] metres in length and over or on an international voyage or normally remaining at sea for more than three days. In urgent cases, the competent authority may permit a person to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the person is in possession of an expired medical certificate of a recent date.

11. Each Member shall adopt laws, regulations or other measures providing for:
(a) the nature of medical examinations;
(b) the form and content of medical certificates;
(c) the medical certificate to be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a medical certificate, and who shall enjoy full professional independence in exercising their medical judgement in terms of the medical examination procedures;
(d) the frequency of medical examinations and the period of validity of medical certificates;
(e) the right to a further examination by another independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
(f) other relevant requirements.

12. On a fishing vessel of [24] metres in length and over or on an international voyage or on a vessel which normally remains at sea for more than three days:
12. (1) The medical certificate of a fisher shall state, at a minimum, that:
(a) the hearing and sight of the fisher concerned are satisfactory for the fisher’s duties on the vessel; and
(b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the health of other persons on board.
12. (2) The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.
12. (3) If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.
Box 4.12 – Provisions on medical examination and certification submitted to the 2005 Committee by the ILO Office

During the 2005 Committee, the discussion on medical examination and certification was shaped by multiple amendments introduced by the Core EU Group and even larger coalitions of EU and non-EU Member States, signposting coherent EU representation (International Labour Office, 2005f, pp. 24-27). Following the first discussion and the 2004 Tripartite Meeting, the ILO Office had redrafted these provisions and had submitted them for consideration to the 2005 Committee as articles ten, eleven, and twelve (cf. Box 4.12 supra) (International Labour Office, 2005k, pp. 15,17).

On the third paragraph of article ten, Greece introduced two amendments on behalf of Belgium, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, non-EU Member State Norway, Portugal, Spain, Sweden, and the United Kingdom. The first amendment of this Core EU Group replaced ‘person’ with ‘fisher’ and was adopted after receiving support from the Workers’ and Employers’ Group. The second amendment intended to replace ‘or on an international voyage or’ with ‘and’, thereby opening the possibility of exemptions for fishers undertaking an international voyage, but was not adopted as easily as the first one. Norway, speaking on behalf of the Government Group, and the Employers’ Group supported the amendment, but it initially met with strong opposition by the Workers’ Group. However, after the latter’s subamendment to replace ‘and’ with ‘or’ was accepted by Denmark, France, Greece, Namibia, the Philippines, Portugal, and Spain, the amendment was adopted as subamended.

On article eleven, Greece, again speaking on behalf of the Core EU Group and non-EU Member State Norway, introduced an amendment on clause (e) to replace ‘person’ with ‘fisher’, similar to the amendment on the third paragraph of article ten. However, following opposition by the Workers’ Group on the ground that ‘person’ was more appropriate in this context and the deputy representative of the Secretary-General confirming this, Greece withdrew the amendment. In addition, a small coalition between Norway and Spain introduced an amendment on clause (d) to add ‘which in no case shall exceed two years’ after ‘certificates’. This amendment was opposed by the Employers’ Group and – strangely – Norway, speaking on behalf of a clear majority of the Government Group.

On article twelve, Denmark, speaking on behalf of the Core EU Group and non-EU Member States the Bahamas, Brazil, Côte d'Ivoire, Cuba, Egypt, Iceland, Kenya, Mauritania, Mexico, Mozambique, Namibia, Norway, South Africa, the Syrian Arab Republic, Turkey, the United Arab Emirates, and Uruguay, introduced an amendment to delete ‘or on an international voyage’. Given that this issue had already been settled during the discussion on the third paragraph of article ten, the amendment was adopted after receiving unanimous,
tripartite support from Norway, speaking on behalf of the Government Group, the Employer's and the Workers’ Group.

10. (1) No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.

10. (2) The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the health and safety of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.

10. (3) The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

11. Each Member shall adopt laws, regulations or other measures providing for:

(a) the nature of medical examinations;
(b) the form and content of medical certificates;
(c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;
(d) the frequency of medical examinations and the period of validity of medical certificates;
(e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
(f) other relevant requirements.

12. On a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

12. (1) The medical certificate of a fisher shall state, at a minimum, that:
(a) the hearing and sight of the fisher concerned are satisfactory for the fisher’s duties on the vessel; and
(b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the health of other persons on board.

12. (2) The medical certificate shall be valid for a maximum period of two years unless the
Work in Fishing

194  

fisher is under the age of 18, in which case the maximum period of validity shall be one year.

12. (3) If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

Box 4.13 – Provisions on medical examination and certification rejected during the 2005 ILC

After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles served as the jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee (cf. Box 4.13 supra) (International Labour Office, 2005f, pp. 102-103). The ILO Office sent out a new questionnaire to the tripartite constituents. The medical examination of fishers in articles ten, eleven, and twelve was included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5) Asked whether additional flexibility should be introduced, a large majority of the governments replied that this was not necessary and, moreover, often advised against it (International Labour Office, 2007g, pp. 22-32). Within this context, the EU Member States were consistent in their replies and sided with the majority of the governments, although Austria and the United Kingdom noted they would be open to discuss the issue further in order to appease those governments that were not satisfied with the current provisions (pp. 23, 29-30).

During the 2006 Round Table, the discussion saw the social partners continue to take their place on opposing sides of the tripartite stage (International Labour Office, 2007g, pp. 85-86). The Workers’ Group highlighted their satisfaction with the existing provisions on medical examination and certification and felt justified by the majority of the government replies. Nevertheless, they did signal a willingness to discuss the proposal by the Employers’ Group to introduce ‘progressive implementation’ in relation to specific paragraphs of articles ten, eleven, and twelve. Indeed, during the single-discussion procedure the debate on medical examination and certification shifted from the actual provisions to the applicability of progressive implementation on these articles. A series of bipartite and tripartite consultations between the 2006 Round Table and the 2007 Committee decided that paragraphs one and three (the latter ‘in so far as it applies to vessels remaining at sea for more than three days’) of article ten would be subject to the progressive implementation approach. This can be inferred from the joint amendment on the fourth article that was introduced by the Employers’ Group with the support of the Workers’ Group during the 2007 Committee (International Labour Office, 2007d, pp. 13-14).
As a consequence, articles ten, eleven, and twelve were only very briefly discussed during the 2007 Committee and adopted with little or no changes compared to the failed outcome of the 2005 Committee (cf. Box 4.13 supra) (International Labour Office, 2007d, pp. 17-18). Articles ten and eleven were adopted without amendment, while the adopted Workers’ Group amendment on article twelve did not alter the substance of the article, but rather clarified its link with articles ten and eleven by adding ‘In addition to the requirements set out in Article 10 and Article 11’ at the beginning of the chapeau. In this context, Denmark, France, the Netherlands, and Sweden joined Lebanon, Namibia, Norway, and the Employers’ Group to oppose a subamendment introduced by Argentina. However, it is clear that the final provisions on this issue were settled elsewhere with the introduction of the progressive implementation approach.

10. (1) No fishers shall work on board a fishing vessel without a valid medical certificate attesting to fitness to perform their duties.
   (2) The competent authority, after consultation, may grant exemptions from the application of paragraph 1 of this Article, taking into account the safety and health of fishers, size of the vessel, availability of medical assistance and evacuation, duration of the voyage, area of operation, and type of fishing operation.
   (3) The exemptions in paragraph 2 of this Article shall not apply to a fisher working on a fishing vessel of 24 metres in length and over or which normally remains at sea for more than three days. In urgent cases, the competent authority may permit a fisher to work on such a vessel for a period of a limited and specified duration until a medical certificate can be obtained, provided that the fisher is in possession of an expired medical certificate of a recent date.

11. Each Member shall adopt laws, regulations or other measures providing for:
   (a) the nature of medical examinations;
   (b) the form and content of medical certificates;
   (c) the issue of a medical certificate by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate; these persons shall enjoy full independence in exercising their professional judgement;
   (d) the frequency of medical examinations and the period of validity of medical certificates;
   (e) the right to a further examination by a second independent medical practitioner in the event that a person has been refused a certificate or has had limitations imposed on the work he or she may perform; and
   (f) other relevant requirements.
12. In addition to the requirements set out in Article 10 and Article 11, on a fishing vessel of 24 metres in length and over, or on a vessel which normally remains at sea for more than three days:

12. (1) The medical certificate of a fisher shall state, at a minimum, that:
(a) the hearing and sight of the fisher concerned are satisfactory for the fisher’s duties on the vessel; and
(b) the fisher is not suffering from any medical condition likely to be aggravated by service at sea or to render the fisher unfit for such service or to endanger the safety or health of other persons on board.

12. (2) The medical certificate shall be valid for a maximum period of two years unless the fisher is under the age of 18, in which case the maximum period of validity shall be one year.

12. (3) If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain in force until the end of that voyage.

Box 4.14 – The final provisions on medical examination and certification in the 2007 Work in Fishing Convention

**Issue Conclusion on Medical Examination and Certification**

In the final Convention, the provisions on medical examination and certification are included as articles ten, eleven, and twelve (cf. Box 4.14 supra) (International Labour Office, 2007d, pp. 59-60). The final shape of these provisions was settled during the 2005 Committee. While medical examination and certification was included by the ILO Office among the issues that were particularly problematic to the Employer’s Group and the Asian governments and had led to the failed adoption of the Convention during the plenary session of the 2005 ILC, the relevant articles found in the final Convention are virtually identical to how they appeared in the rejected Convention. Instead, the consensus on this issue was forged by informal, mostly bipartite consultations between the social partners who decided to apply the progressive implementation approach to certain paragraphs of the tenth article, rather than further amend the provisions on this issue.

Against this background, the EU Member States could not draw on relevant legislation found in the *aquis communautaire* to orientate their position as a distinct group during the discussion on this issue. Nevertheless, apart from their support for these provisions and the application of the progressive implementation approach as part of the governmental majority, the EU Member States also intervened to introduce amendments as a distinct group or at the head of an even larger group of governments. Notably, during the 2005

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61 While Council Directive 92/29/EEC (Council of the European Union, 1992) and 93/103/EC (Council of the European Union, 1993b) on the minimum safety and health requirements for improved medical treatment and work on board vessels were closely related to this issue, European legislation did not directly address medical examination and certification.
Committee EU representation was coherent with Greece introducing amendments on behalf of the Core EU Group and Denmark introducing an amendment on behalf of an even larger group of EU- and non-EU Member States. As such, we find that the EU Member States were able to play a role in the discussion by effectively introducing amendments that made the final outcome more flexible by adjusting the scope for exemptions, albeit within the confines of the broader dynamic wherein the social partners would eventually introduce more far-reaching flexibility on a bipartite basis.

4.3.4. Manning and Hours of Rest

Manning and hours of rest was a key issue during the standard-setting procedure on work in the fishing sector. Specifically, the central place of this issue both stemmed from the difficulties posed by the special nature of this sector to regulate this issue and from its close connection to the overall goal of this procedure, i.e. address the decent work deficit in this sector. The initial report by the ILO Office outlines the difficulties of regulating working time (including hours of rest) with an international standard, given the complexities that are inherent to the special nature of the sector (International Labour Office, 2003a, p. 63). Moreover, the report concludes that existing ILO standards do not sufficiently take into account these complexities, thereby laying the groundwork to include manning and hours of rest in the new standard-setting procedure as a replacement for the 1920 Recommendation on Hours of Work in Fishing. Manning and hours of rest would continuously stay on the agenda throughout the double- and single-discussion procedure, leading ILO Official Politakis to highlight it as one of the five issues on which no consensus had been found before the 2007 Committee: ‘Although the [2006 Round Table] had permitted some convergence on certain issues, the Round Table had also demonstrated that considerable differences persisted.’ (Politakis, 2008, p. 122) Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

21. Members should adopt laws or regulations or other measures requiring that owners of fishing vessels flying their flag ensure that their vessels are sufficiently and safely manned and under the control of a competent skipper.

22. Members should adopt laws or regulations or other measures requiring that owners of fishing vessels that fly their flag ensure that fishers are given rest periods of sufficient frequency and duration for the safe and healthy performance of their duties.

Box 4.15 – Provisions on manning and hours of rest submitted to the 2004 Committee by the ILO Office

Before the 2004 Committee, the relevant provisions on manning and hours of rest were drafted by the ILO Office and submitted for consideration as points 21 and 22 (cf. Box 4.15 supra) (International Labour Office, 2004a, p. 185). During the first committee discussion, the social partners each wanted to take the discussion on manning and hours in a different
direction by introducing amendments that would have taken these provisions in an opposite direction. While the Workers’ Group introduced amendments to replace point 21 and add additional paragraphs to point 22 to make the requirements more specific, the Employers’ Group introduced a subtle, but far reaching amendment to make point 22 non-mandatory (International Labour Office, 2004o, pp. 48–51). However, these two amendments by the social partners were opposed by their counterpart on the opposite end of the tripartite stage and numerous governments, causing both of them to be withdrawn.

Against this background, several EU Member States introduced less ambitious amendments in limited coalitions. On point 21, Denmark and Germany introduced an amendment to further specify ‘manned’ with the addition of ‘with a crew necessary for the safe navigation of the vessel’. The amendment was adopted after having received broad support from the Employers’ Group, the Danish worker member (presumably speaking on behalf of the Workers’ Group), Ireland, and Norway. A limited inconsistency was noted when the United Kingdom expressed doubts about the implications of the amendment, but the latter Member State was reassured by the representative of the Secretary-General. On point 22, the same coalition between Denmark and Germany introduced an amendment to replace ‘ensure’ with ‘make sure that the skipper ensures’. However, this amendment was withdrawn after Denmark and Germany agreed with Brazil that this would undermine the joint responsibility of the skipper and the owner of the vessel.

In addition, the Irish EU Presidency, speaking on behalf of Belgium, Denmark, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom, intervened coherently to state that the Workers’ Group amendment on point 22 was in line with Directive 2000/34/EC (European Parliament & Council of the European Union, 2000). However, since the amendment was opposed by a similarly large coalition of developing countries, this Core EU Group ‘[…] recognized that some countries might experience problems with the detailed provisions on rest periods. Rest periods were adequately dealt with in the Office text.’ (p. 51) As we have seen before, the Workers’ Group amendment was subsequently withdrawn by the Danish worker member.

The coherent intervention by the Irish EU Presidency on behalf of the Core EU Group reveals the overarching goal of the EU Member States during the discussion on manning and hours of rest, i.e. ensuring that the provisions in the Convention would be complementary with the extensive body of legislation found in the *acquis communautaire* on working time, which notably included specific provisions on hours of rest for fishermen. Directive 2003/88/EC (European Parliament & Council of the European Union, 2003) was the most recent directive on working time during the standard-setting procedure on work in fishing, although the preceding Directive 2000/34/EC remained important due to its specific and
overriding relevance for fishermen. In addition, it is important not to lose sight of the original Directive 93/104/EC (Council of the European Union, 1993a). In their replies to the questionnaire attached to the initial report by the ILO Office, the EU Member States and ‘nearly all states’ were in favor of including provisions that would ensure that fishing vessels have sufficient and competent crew on board and that these persons are allowed minimum periods of rest (International Labour Office, 2004a, pp. 70-76). Furthermore, in relation to the latter, Denmark, Ireland, the Netherlands, non-EU Member State Norway, and the United Kingdom explicitly referred to Directive 2000/34/EC concerning certain aspects of the organization of working time to cover workers on board sea-going vessels, ‘[…] noting that the ILO standard should not conflict with its provisions.’ (p. 74) As such, these EU Member States immediately made it clear that their encompassing goal on this issue was to ensure that the provisions in the final instruments were in line with those already in place in European legislation.

In between the 2004 and 2005 committee meetings of the double-discussion procedure, manning and hours of rest was one of the issues that were folded into the agenda of the additional Tripartite Meeting of Experts on the Fishing Sector (International Labour Office, 2004h, p. 5). This meeting was convened by the GB to follow-up on accommodation and additional requirements for larger vessels. Manning and hours of rest was included in the agenda as one of the issues that were potentially going to be affected by the additional requirements that were being developed for larger fishing vessels. After a brief discussion during a meeting that was mainly focused on other issues, the Chairperson of the Meeting of Experts noted that no consensus could be reached on the provisions relating to manning and hours of rest (International Labour Office, 2005j, pp. 121-122) Importantly, Spain expressed concern over the ‘limited and specified reasons’ to allow exceptions and suggested replacing this phrasing with the one found in Directive 2000/34/EC: ‘objective or technical reasons or for reasons solely related to the organization of labour and respecting the general principles for the profession of health and safety of workers’ (p. 122). Despite being supported by the Commission, fellow EU Member State France and several other delegates warned that the latter phrase was taken out of context and could introduce more stringent constraints than the ones found in the Directive itself. As a consequence, the redrafted articles the ILO Office submitted to the 2005 Committee for consideration retained their original wording and were mainly influenced by the broader evolution toward additional requirements for larger vessels. Notably, the latter evolution is evident in the newly drafted Article 14 (cf. Box 4.16 infra).

13. Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:

(a) their vessels are sufficiently and safely manned with a crew necessary for the safe
navigation and operation of the vessel and under the control of a competent skipper; and
(b) fishers are given rest periods of sufficient frequency and duration for the safe and
healthy performance of their duties.

14. (1) In addition to the requirements set out in Article 13, for vessels of [24] metres in
length and over or those engaged on international voyages, the competent authority shall:
(a) establish a minimum level of manning for the safe navigation of the vessel, specifying
the number and the qualifications of the fishers required;
(b) after consultation and for the purpose of limiting fatigue, establish the minimum hours
of rest to be provided to fishers. Minimum hours of rest shall be no less than ten hours in
any 24-hour period, and 77 hours in any seven-day period.

14. (2) The competent authority may permit, for limited and specified reasons, temporary
exceptions to the limits established in paragraph 1 (b). However, in such circumstances, it
shall require that fishers shall receive compensatory periods of rest as soon as practicable.

14. (3) The competent authority, after consultation, may establish alternative requirements
to those in paragraphs 1 and 2. However, such alternative requirements shall provide at
least the same level of protection.

Box 4.16 – Provisions on manning and hours of rest submitted to the 2005 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted these provisions and submitted them
for consideration to the 2005 Committee as articles 13 and 14 (cf. Box 4.16 supra)
(International Labour Office, 2005k, pp. 17,19). During the second committee discussion,
large coalitions of EU and non-EU Member States introduced amendments that shaped the
discussion on articles 13 and 14 from start to finish and brought the provisions in line with
European legislation (International Labour Office, 2005f, pp. 28-31). On Article 13,
Denmark, on behalf of Finland, France, Germany, Ireland, the Netherlands, non-EU
Member State Norway, Portugal, Spain, Sweden, and the United Kingdom, introduced an
amendment to replace subparagraph (b) with 'fishers are given regular periods of rest of
sufficient length to ensure health and safety.' (emphasis added) (p. 28) This amendment by
the Core EU Group was supported by the Workers' Group and a 'clear majority in the
Government group', which led the Chairperson to announce that there existed a majority in
favor of adopting the amendment. However, during the discussion the Employers' Group
and a minority group of governments, notably China and Japan as major Asian governments
in relation to the fishing sector, introduced dissenting subamendments intended to replace
'regular' with more flexible wording. These were rejected in favor of the original amendment
after Belgium, Germany, and South Africa voiced additional concerns about the possible
implications of the subamendments.
On Article 14, Denmark, speaking on behalf of the Bahamas, Belgium, Brazil, Côte d'Ivoire, Cuba, Egypt, Finland, France, Germany, Greece, Ireland, Iceland, Kenya, Mauritania, Mexico, Mozambique, Namibia, the Netherlands, Norway, Portugal, South Africa, Spain, Sweden, the Syrian Arab Republic, Turkey, the United Arab Emirates, the United Kingdom, and Uruguay, introduced an amendment to replace the first paragraph with a similar text, albeit removing the parameters from the chapeau and placing them in the subparagraphs on either manning or hours of rest. As such, different parameters were introduced for manning and hours of rest, most importantly making the latter applicable to all vessels ‘regardless of [their] size’. Once again, this amendment was adopted with the support of the Workers’ Group and Norway, speaking on behalf of the Government Group. Similar to the discussion on Article 13, the Employers’ Group again ‘[…] urged the Committee to take the Employer members’ amendments into account.’ (p. 30), but was therein not followed.

<table>
<thead>
<tr>
<th>Box 4.17 – Provisions on manning and hours of rest rejected during the 2005 ILC</th>
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<tr>
<td>13. Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:</td>
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<td>(a) their vessels are sufficiently and safely manned with a crew necessary for the safe navigation and operation of the vessel and under the control of a competent skipper; and</td>
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<td>(b) fishers are given regular periods of rest of sufficient length to ensure health and safety.</td>
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<td>14. (1) In addition to the requirements set out in Article 13, the competent authority shall:</td>
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<td>(a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;</td>
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<tr>
<td>(b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than ten hours in any 24-hour period, and 77 hours in any seven-day period.</td>
</tr>
<tr>
<td>14. (2) The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.</td>
</tr>
<tr>
<td>14. (3) The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall provide at least the same level of protection.</td>
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After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles served as the
jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee (cf. Box 4.17 supra) (International Labour Office, 2005f, p. 103). The ILO Office sent out a new questionnaire to the tripartite constituents. Manning and hours of rest in articles 13 and 14 were included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5) Asked whether changes should be made to these provisions, the EU Member States for the most part indicated that they had no problem with the provisions as they stood, although some suggestions were made to ensure conformity with Directive 2003/88/EC (International Labour Office, 2007g, pp. 33-44). However, these concerns were put to rest during the 2006 Round Table, when the Legal Advisor of the ILO Office clarified that the exceptions found in paragraphs two and three of article 14 were not in conflict with the more stringent provisions in the Directive (p. 87). In addition, it is important to note that the Japanese reply to the questionnaire highlighted manning and hours of rest as one of the essential issues that needed to be addressed during the single-discussion procedure (p. 26). The issue was indeed discussed during the 2006 Round Table, where ‘[…] progress was being made, and would continue to be made, on this issue through informal consultations.’ (p. 80)

During the 2007 Committee, the discussion on articles 13 and 14 each followed different dynamics, although in both cases the EU Member States intervened independently to position themselves toward amendments introduced by others, rather than shaping the debate with their own amendments (International Labour Office, 2007d, pp. 19-22). On article 13, the Republic of Korea and Japan introduced an amendment to delete the words ‘sufficiently and’ and replace the word ‘crew’ with ‘sufficient number of fishers’ in subparagraph (a), which was intended to clarify the language and bring the Convention closer to the previously adopted 2006 MLC. While this amendment was backed by New Zealand’s subamendment to simply replace ‘crew’ with ‘fishers’ and leave the rest of the provision unchanged, it was the Chairperson’s proposal to avoid both ‘crew’ and ‘fishers’ that was adopted with broad, tripartite support from the social partners and several governments. Interestingly, the EU Member States intervened independently and took inconsistent positions on both the original amendment and the subamendment. For example, the former was supported by Sweden, the United Kingdom, and the Netherlands, but opposed by Greece and Denmark. Similarly, the subamendment was supported by the Netherlands, but opposed by Sweden.

On article 14, the tripartite dynamic of the discussion differed substantially. After the Russian Federation introduced an amendment to increase the minimum hours of work per week, the Employers’ Group revealed that this issue was part of a package to which the social partners had agreed during the informal consultations leading up to the 2007 Committee. As such, the
social partners opposed all further amendments by the governments, although the Workers’ Group added that ‘[…] under different circumstances, his group would have supported the proposed amendment.’ (p. 21) and instead introduced their own amendments to solidify the package to which they had agreed. Against this background, Germany, the Netherlands, non-EU Member State Norway, and the United Kingdom intervened to support the amendments introduced by the social partners.

13. Each Member shall adopt laws, regulations or other measures requiring that owners of fishing vessels flying its flag ensure that:
(a) their vessels are sufficiently and safely manned for the safe navigation and operation of the vessel and under the control of a competent skipper; and
(b) fishers are given regular periods of rest of sufficient length to ensure safety and health.

14. (1) In addition to the requirements set out in Article 13, the competent authority shall:
(a) for vessels of 24 metres in length and over, establish a minimum level of manning for the safe navigation of the vessel, specifying the number and the qualifications of the fishers required;
(b) for fishing vessels regardless of size remaining at sea for more than three days, after consultation and for the purpose of limiting fatigue, establish the minimum hours of rest to be provided to fishers. Minimum hours of rest shall not be less than:
(i) ten hours in any 24-hour period; and
(ii) 77 hours in any seven-day period.

14. (2) The competent authority may permit, for limited and specified reasons, temporary exceptions to the limits established in paragraph 1(b) of this Article. However, in such circumstances, it shall require that fishers shall receive compensatory periods of rest as soon as practicable.

14. (3) The competent authority, after consultation, may establish alternative requirements to those in paragraphs 1 and 2 of this Article. However, such alternative requirements shall be substantially equivalent and shall not jeopardize the safety and health of the fishers.

14. (4) Nothing in this Article shall be deemed to impair the right of the skipper of a vessel to require a fisher to perform any hours of work necessary for the immediate safety of the vessel, the persons on board or the catch, or for the purpose of giving assistance to other boats or ships or persons in distress at sea. Accordingly, the skipper may suspend the schedule of hours of rest and require a fisher to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the skipper shall ensure that any fishers who have performed work in a scheduled rest period are provided with an adequate period of rest.
**Issue Conclusion on Manning and Hours of Rest**

In the final Convention, the provisions on manning and hours of rest are included in articles 13 and 14 (cf. Box 4.18 supra) (International Labour Office, 2007d, pp. 60-61). During the double-discussion procedure, the discussion on these provisions took place on a divided tripartite stage, wherein the social partners represented opposing views of the issue. At the end of the second committee discussion, the Employer’s Group (along with Japan and other Asian governments) voiced its dissatisfaction with the outcome the Workers’ Group and a majority of the governments had effectively introduced during the discussion. As such, manning and hours of rest became one of the stumbling blocks that led to the failed adoption of the Convention during the plenary session of the 2005 ILC. During the rebooted single-discussion procedure, the dynamic on tripartite stage shifted to bipartite consultations between the social partners, therein aided with additional input by Japan. This resulted in a package deal that was defended by both social partners against further amendments during the 2007 Committee, albeit begrudgingly on the side of the Workers’ Group.

Against this background, we detected that the EU Member States effectively attained their goal of ensuring that the provisions in the final instrument were in line with those already in place in the extensive European legislation on this issue. When we compare the final provisions on manning and hours of rest (cf. Box 4.18 supra) with those found in European legislation, we find that both sets of provisions are conform with each other and, moreover, often identical on crucial points. For example, the minimum hours of rest in subparagraph (b) of Article 14 are the same as in Directive 2000/34/EC. Moreover, having process-traced the discussion on manning and hours of rest, we find that the EU Member States played a central role in achieving this outcome, notably by intervening coherently during the 2005 Committee. Indeed, while the small coalitions of EU Member States played a secondary role during the tug of war between the social partners that characterized the 2004 Committee, the coherent interventions by the Core EU Group (standing on point for an even larger group of governments) shaped the discussion during the 2005 Committee and effectively introduced major amendments that brought the outcomes of the double-discussion procedure in line with the legislation found in the *acquis*. In contrast, the EU Member States intervened inconsistently during the 2007 Committee, during which they intervened independently to support opposing amendments introduced by others. However, the proceedings during the rebooted single-discussion procedure did not challenge the conformity of the provisions on manning and hours of rest with the *acquis*.

As such, we can conclude that the EU Member States effectively used the divided tripartite stage during the double-discussion procedure to their advantage by coherently introducing
their amendments on behalf of the Core EU Group or an even larger group of governments. Supported by the Workers’ Group, this allowed their amendments to be adopted against the will of the Employer’s Group and a small number of Asian governments. During the single-discussion procedure, the now inconsistently intervening EU Member States and other governments were sidelined by a bipartite plus Japan dynamic, which resulted in the social partners pushing through a package deal and blocked further amendments by governments. However, it should also be noted that the EU Member States were willingly sidelined, as the deal did not challenge the goals they had attained at the end of the double-discussion procedure.

4.3.5. Private Employment Agencies

Private employment agencies were a key issue during the standard-setting procedure on work in fishing. The initial report by the ILO Office situated these agencies as part of an evolution toward a more professional recruitment and placement of workers in this sector (International Labour Office, 2003a, pp. 48-50). However, the report went on to highlight the persistent and abusive practices found in these agencies, despite national efforts to mediate the problem. Similarly, existing international standards also failed to offer protection against the dubious practices of these agencies. On the one hand, the 1997 Private Employment Agencies Convention focuses specifically on this issue, but does not apply to fishermen, while on the other hand the 1996 Recruitment and Placement of Seafarers Convention is applicable to fishermen, but does not include specific provisions regulating these agencies and their practices. As such, setting standards on private employment agencies fitted nicely with the overarching goal to address the decent work deficit in the fishing sector.

Private employment agencies were discussed throughout the double-discussion agenda, although their role as employers in their own right was only discussed during the single-discussion procedure at the request of the Employers’ Group. While this issue was not included in the questionnaire at the start of the latter procedure as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5), this specific role of these agencies was repeatedly raised in the replies to the questionnaire as well as during the 2006 Round Table (International Labour Office, 2007g, pp. 62-72,89). Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

28. Fishers working on board fishing vessels that undertake international voyages should enjoy treatment no less favourable than that provided to seafarers working on board vessels flying the flag of the Member and ordinarily engaged in commercial activities with respect to:
The provisions specifically on private employment agencies were introduced during the single-discussion procedure, but had a long pedigree in the discussion on placement and recruitment services. Provisions on the latter services were first drafted by the ILO Office and submitted for consideration to the 2004 Committee as Point 28 (cf. Box 4.19 supra) (International Labour Office, 2004a, pp. 185-186). Replying to the questionnaire attached to the initial report by the ILO Office, a ‘large majority’ of the governments agreed that the new Convention on work in the fishing sector should include, among other things, provisions on the recruitment and placement of fishermen (International Labour Office, 2004a, pp. 94-97). Among this majority we also find most EU Member States, although a sizeable minority did not explicitly reply or agree to include this issue in the Convention. When the role of private employment agencies as employers in their own right, rather than merely as recruitment and placement services, was brought up at the beginning of the single-discussion procedure, the EU Member States again did not express a distinct goal in their replies and took their place among the supportive majority of governments.

During the 2004 Committee, the social partners took the lead in the discussion and each introduced, or intended to introduce, amendments that would take the substance of Point 28 in opposite directions (International Labour Office, 2004o, pp. 56-60). While the discussion did not directly address subparagraph (c) on recruitment and placement services, the Employers’ Group did introduce an amendment that would replace point 28 in its entirety and provide ‘[…] greater flexibility with regard to three issues of importance to fishers who worked internationally, that is, identity documents, repatriation, and recruitment and placement.’ (p. 56). Specifically for the latter issue, the amendment would replace the text of subparagraph (c) with: ‘[…] have access to an efficient, adequate and accountable system for finding employment on board a vessel without cost to themselves.’ (p. 56) However, faced with opposition from the Danish worker member (presumably speaking on behalf of the Workers’ Group) and receiving no support from the governments, the amendment failed to be adopted. In turn, the Danish worker member, speaking on behalf of the Workers’ Group, withdrew their own amendments on subparagraphs (b) and (c) in order to retain their flexibility and not make them overly prescriptive, but added that this issue would have to be revisited in the following year. Against this background, the EU Member States and other governments were largely absent from the discussion on recruitment and placement services, although it should be noted that a small coalition between Greece, Ireland, and the United

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<th>Box 4.19 – Provisions on private employment agencies submitted to the 2004 Committee by the ILO Office (emphasis added)</th>
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<td>(a) identity documents;</td>
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<td>(b) repatriation conditions;</td>
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<tr>
<td>(c) recruitment and placement services.</td>
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Kingdom did introduce an unsuccessful amendment on subparagraph (a) on identity documents.

In between the 2004 and 2005 committee meetings of the double-discussion procedure, recruitment and placement services was one of the issues that were folded into the agenda of the additional Tripartite Meeting of Experts on the Fishing Sector (International Labour Office, 2004h, p. 6). This meeting was convened by the GB to follow-up on accommodation and additional requirements for larger vessels. Private employment agencies was included in the agenda as one of the issues that were potentially going to be affected by the additional requirements that were being developed for larger fishing vessels. During the 2004 Meeting of Experts, Norway, speaking on behalf of the government experts, stated that according to them ‘[…] length was not a relevant parameter for [this] provision.’ (International Labour Office, 2005j, p. 124). The social partners were receptive to this position and the ILO Office took note of the emerging consensus, which resulted in Article 22 being applicable to all vessels regardless of their size. In addition, drawing on the 1996 Recruitment and Placement of Seafarers Convention, the ILO Office also introduced into the provisions a differentiation between public and private services, which heavily impacted the shape of Article 22 that was submitted to the 2005 Committee (cf. Box 4.20 infra, specifically paragraph one and two).

22. (1) Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.

22. (2) Any private service providing recruitment and placement for fishers operating in its territory shall be operated in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.

22. (3) Each Member shall, by means of laws, regulations or other measures:
(a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
(b) require that no fees or other charges for recruitment and placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
(c) determine the conditions under which the licence, certificate or similar authorization of a recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws and regulations; and specify the conditions under which recruitment and placement services can operate.

22. (4) Each Member shall ensure that a system of protection, by way of insurance or an equivalent appropriate measure, is established to compensate fishers for monetary loss that they may incur as a result of the failure of a recruitment and placement service to meet its obligations to them.
Following the first discussion and the 2004 Meeting of Experts, the ILO Office redrafted these provisions and submitted them for consideration to the 2005 Committee as Article 22, wherein public and private services were first differentiated from each other (cf. Box 4.20 supra) (International Labour Office, 2005k, p. 23). During the second committee discussion, the discussion on private services was shaped by different coalitions of EU and non-EU Member States who introduced amendments on the relevant second, third, and fourth paragraph of Article 22 (International Labour Office, 2005f, pp. 39-41). On the second paragraph, which explicitly set out the rules in relation to private employment agencies, Denmark, speaking on behalf of Germany, Ireland, and Sweden, introduced an amendment to replace the original text by the following:

‘Any private service providing recruitment and placement of fishers operating in its territory shall be operated in conformity with the general rules of the public employment service covering recruitment and placement of all workers and employers and/or the established practice of recruitment and placement of fishers. If there are no regulations or established practice in the member State in question or the employment conditions of fishers necessitate it, any private service providing recruitment and placement for fishers operating in its territory shall be operated in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.’ (p. 39)

This amendment of this small coalition of EU Member States was intended ‘[… to make it possible for countries with established systems for shore-based recruitment and placement to continue using these systems after ratification’ (p. 39), rather than having to conform with a standardized system. However, the amendment was not adopted after both the Workers’ and the Employers’ Group indicated that they preferred the original text and opposed both the original amendment and all of its subamendments. Indeed, many subamendments were introduced during the discussion on this amendment and, importantly, revealed inconsistent positions among EU Member States. While, the Netherlands and Greece supported the (sub)amendment by Denmark, the United Kingdom received support from France and Ireland for its own subamendment, which intended to delete ‘of the public employment service.’ (p. 40) As such, the discussion on the second paragraph was mainly an intra-EU Member State discussion, before it was cut short by both social partners voicing their preference for the original text.

On the third paragraph, the United Kingdom, on behalf of Belgium, Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, and Sweden (i.e. the
Core EU Group), introduced an amendment have it say ‘any licence’, rather than ‘the licence’ in subparagraph (c), while Greece, speaking on behalf of Finland, Ireland, the Netherlands, non-EU Member State Norway, Spain, and the United Kingdom, introduced an amendment to insert ‘private’ before ‘recruitment’ in the same subparagraph. These minor amendments were intended to clarify the exact meaning of the text, rather than alter their substance, which resulted in both of them being adopted with unanimous, tripartite support. On the fourth paragraph, the Employers’ Group and a coalition of EU Member States, including Denmark, Finland, France, Germany, Greece, Ireland, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom, each introduced their own amendment to delete this paragraph. While the Workers’ Group opposed this move, the support from Norway, speaking on behalf of the Government Group, ensured that these amendments received sufficient support to be adopted.

22. (1) Each Member that operates a public service providing recruitment and placement for fishers shall ensure that the service forms part of, or is coordinated with, a public employment service for all workers and employers.

22. (2) Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.

22. (3) Each Member shall, by means of laws, regulations or other measures:
(a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;
(b) require that no fees or other charges for recruitment and placement of fishers be borne directly or indirectly, in whole or in part, by the fisher; and
(c) determine the conditions under which any licence, certificate or similar authorization of a private recruitment or placement service may be suspended or withdrawn in case of violation of relevant laws or regulations; and specify the conditions under which private recruitment and placement services can operate.

Box 4.21 – Provisions on private employment agencies rejected during the 2005 ILC (emphasis added)

After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on this article served as the jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee (cf. Box 4.21 supra) (International Labour Office, 2005f, p. 105). Importantly, at this point the discussion first included private employment agencies, i.e. agencies functioning as the actual employers, rather than simply providing recruitment and placement services. The ILO Office sent out a new questionnaire to the tripartite constituents. While private employment
agencies were not included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5), this issue was repeatedly raised in the replies to the questionnaire as well as during the 2006 Round Table (International Labour Office, 2007g, pp. 62-72,89). Specifically, the Employers’ Group highlighted the growing practice wherein these ‘[…] were not simply recruiting or placement agencies, but were themselves the actual employer.’ (p. 89) While the existing Article 22 covered private recruitment and placement services, it did not cover the latter scenario. Following this suggestion of the Employers’ Group, the ILO Office made its own suggestion to draw on the 1997 Private Employment Agencies Convention to extend the coverage in the final instruments (pp. 71-72).

During the 2007 Committee, the discussion on Article 22 was dominated by an amendment introduced by the Employers’ Group to add additional paragraphs on private employment agencies (cf. Box 4.22 infra) (International Labour Office, 2007d, pp. 23-25). For all intents and purposes, this was a joint amendment by the social partners that ‘[…] resulted from long discussions between [the Employers’] group and the Workers’ group, and also took into account comments by Government members at the Round Table.’ (p. 24) This heavily affected the dynamic of the discussion, wherein the Workers’ Group withdrew an identical amendment and only introduced a minor subamendment, while the governments predominantly limited themselves to expressing their support or asking for clarification. Against this background, Germany, speaking on behalf of the EU Member States, Iceland, and Norway supported the amendments as subamended. In addition, Greece intervened independently to introduce a drafting amendment (i.e. merge the first two paragraphs) and Ireland intervened independently to ask the Legal Advisor of the ILO Office for clarification.

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<tr>
<td>22. (2) Any private service providing recruitment and placement for fishers which operates in the territory of a Member shall do so in conformity with a standardized system of licensing or certification or other form of regulation, which shall be established, maintained or modified only after consultation.</td>
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<td>22. (3) Each Member shall, by means of laws, regulations or other measures:</td>
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<td>(a) prohibit recruitment and placement services from using means, mechanisms or lists intended to prevent or deter fishers from engaging for work;</td>
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<td>(b) require that no fees or other charges for recruitment or placement of fishers be borne</td>
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directly or indirectly, in whole or in part, by the fisher; and
(c) determine the conditions under which any licence, certificate or similar authorization of
a private recruitment or placement service may be suspended or withdrawn in case of
violation of relevant laws or regulations; and specify the conditions under which private
recruitment and placement services can operate.

Private employment agencies
22. (4) A Member which has ratified the Private Employment Agencies Convention, 1997
(No. 181), may allocate certain responsibilities under this Convention to private
employment agencies that provide the services referred to in paragraph 1(b) of Article 1 of
that Convention. The respective responsibilities of any such private employment agencies
and of the fishing vessel owners, who shall be the “user enterprise” for the purpose of that
Convention, shall be determined and allocated, as provided for in Article 12 of that
Convention. Such a Member shall adopt laws, regulations or other measures to ensure that
no allocation of the respective responsibilities or obligations to the private employment
agencies providing the service and to the “user enterprise” pursuant to this Convention
shall preclude the fisher from asserting a right to a lien arising against the fishing vessel.
22. (5) Notwithstanding the provisions of paragraph 4, the fishing vessel owner shall be
liable in the event that the private employment agency defaults on its obligations to a
fisher for whom, in the context of the Private Employment Agencies Convention, 1997
(No. 181), the fishing vessel owner is the “user enterprise”.
22. (6) Nothing in this Convention shall be deemed to impose on a Member the obligation
to allow the operation in its fishing sector of private employment agencies as referred to in
paragraph 4 of this Article.

Box 4.22 – The final provisions on private employment agencies in the 2007 Work in Fishing Convention

Issue Conclusion on Private Employment Agencies
In the final Convention, the provisions on private employment agencies are included in
Article 22 (cf. Box 4.22 supra) (International Labour Office, 2007d, pp. 63-64). During the
double-discussion procedure, a divided tripartite stage discussed the role of these agencies as
recruitment and placement services. Following strong disagreement by the social partners
during the 2004 Committee and an emerging consensus during the subsequent Meeting of
Experts, large coalitions of governments stepped in to shape the final provisions during the
2005 Committee. During the single-discussion procedure, at the request of the Employers’
Group, the discussion was expanded to include the role of private employment agencies as
employers in their own right. During this second discussion, the discussion shifted to a
bipartite dynamic, resulting in a joint amendment that was effectively introduced by the
social partners.
Against this background, we find that the EU Member States did not have an encompassing goal to orient them as a distinct group during the discussion on this issue. Rather, they took their place among the majority of governments and the latter’s general support to include standards on these agencies as recruitment and placement services (during the double-discussion procedure) and as employers in their own right (during the single-discussion procedure). Having process-traced the discussion on this issue, we find that after a tug of war between the social partners during the 2004 Committee, the governments took over during the second committee discussion, shaping it with numerous amendments introduced in different coalitions. Against this background, the EU Member States played a central role during this 2005 committee discussion, both coherently and inconsistently. Firstly, the Core EU Group effectively introduced three amendments, of which two minor amendments were unanimously adopted and a more ambitious amendment (i.e. deleting the fourth paragraph) was adopted after receiving support from the Employers’ Group and Norway, speaking on behalf of the Government Group.

Secondly, a small coalition of EU Member States introduced an ambitious amendment to the second paragraph on private recruitment and placement services (i.e. allowing established practices), but in the ensuing discussion was countered by other EU Member States before the social partners broke off the discussion by voicing their support for the original text. As such, the discussion during the 2005 Committee suggests a strong covariance between the Union’s coherence and its effectiveness, while inconsistency detracts from its potential to attain its goals. However, while the intra-EU Member State debate on the latter amendment certainly detracted from the ability of the small coalition to make a case for it, it should be noted that tripartite support and the relative level of ambition also played a significant role as well. Indeed, the amendment on the second paragraph was of specific concern to a select number of EU coastal states and, as a result, the only amendment that was not backed by the majority of governments, while also running into opposition from the social partners.

4.3.6. Accommodation

The discussion on accommodation was a key issue during the standard-setting procedure on work in fishing. Specifically, its central place in the discussion stemmed from the broad divide that existed between the social partners on how to handle these provisions in relation to the special nature of the sector. As such, accommodation found itself at the heart of the shifting dynamic that underlied the standard-setting procedure, wherein the non-Asian majority of governments were progressively sidelined in favor of a focused discussion between the social partners and Japan. Indeed, it was mostly this issue that led Japan to lobby against the adoption of the Convention in the run-up to the plenary session of the 2005 ILC. As a consequence, during the single-discussion procedure, the final shape of the provisions on accommodation thus had to be resolved between the social partners and Japan, while the EU Member States and most other governments were sidelined as a silent, but supportive
majority. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

29. Members should adopt laws or regulations or other measures with respect to accommodation, food and potable water on board for fishing vessels that fly their flag.

30. Members should adopt laws or regulations or other measures requiring that accommodation on board fishing vessels that fly their flag should be of sufficient size and quality and should be appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures should address, as appropriate, the following issues: [main concepts of C. 126]

(a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
(b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
(c) ventilation, heating, cooling and lighting;
(d) mitigation of excessive noise and vibration;
(e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
(f) sanitary facilities, including water closets and washing facilities, and supply of sufficient hot and cold water; and
(g) procedures for responding to complaints concerning sub-standard accommodation.

31. The food carried and served on board fishing vessels should be of an appropriate quantity, nutritional value and quality for the service of the vessel and potable water should be of sufficient quantity and quality.

<table>
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<th>Box 4.23 – Provisions on accommodation submitted to the 2004 Committee by the ILO Office (Annex II abridged)</th>
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<td>Before the 2004 Committee, the provisions on accommodation were drafted by the ILO Office and submitted for consideration to the 2004 Committee as points 29, 30, 31, and Annex II (cf. Box 4.23 supra) (International Labour Office, 2004a, pp. 186,194-201). In line</td>
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with the Office’s initial intention to draft a one-size fits all instrument with a broad application, these points were general in nature. Additionally, more detailed provisions based on the 1966 Accommodation of Crews (Fishermen) Convention were included in Annex II, since ‘[…] the Office felt that it was not within its mandate to simply eliminate or convert to guidance the extensive protection provided in Convention No. 126.’ (p. 69) During the discussion on accommodation, the Workers’ Group and the majority of the governments would be supportive of including these detailed provisions, albeit with the necessary flexibility for their implementation, while the Employer’s Group and a minority of Asian governments would staunchly oppose them.

As part of the majority, the EU Member States that had ratified the 1966 Convention on Accommodation of Crews (Fishermen) aimed to ensure that the standards found in this instrument would not be lowered by the new Work in Fishing Convention, wherein these were to be reproduced and updated in an annex. During the 2004 Meeting of Experts, Spain intervened to request ‘[…] that the minima in Convention No. 126 not be lowered, as that would be problematic for countries having ratified the instrument.’ (p. 100) However, while making the same request, the United Kingdom added that the discussion should be mindful of the fact that the excessive level of detail in the 1966 Convention had resulted in a low number of ratifications and needed to be resolved in the new instrument.62 Furthermore, the goal of the EU Member States as a distinct group was to ensure that the final standards on this issue would be compatible with those already in place in European legislation. The *acquis communautaire* of the Union contains several Directives relevant to this issue. Firstly, Council Directives 92/29/EEC (Council of the European Union, 1992) and 93/103/EC (Council of the European Union, 1993b) set out the minimum safety and health requirements on board (fishing) vessels. Secondly, the Directives which underpinned the Union’s goals during the discussion on the scope of application are also relevant here. Council Directive 97/70/EC (Council of the European Union, 1997) and Commission Directives 1999/19/EC (European Commission, 1999) and 2002/35/EC (European Commission, 2002) set up and amend a harmonized safety regime for fishing vessels of 24 meters in length and over. In relation to accommodation, the EU replied to a questionnaire of the ILO Office that the latter directives contain the minimum standards under European legislation and ‘[s]hould the draft provisions on accommodation affect the construction of the vessel in relation to safety, they ought to be compatible with the EU legislation.’ (International Labour Office, 2005j, p. 36)

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62 Before being replaced by the 2007 Work in Fishing Convention, the 1966 Accommodation of Crews (Fishermen) Convention was ratified by nine EU Member States: Belgium, Denmark, France, Germany, Greece, the Netherlands, Slovenia, Spain, and the United Kingdom. See: http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::PT11300_INSTRUMENT_ID:312271 (accessed 14 February 2014).
During the 2004 Committee, the discussion on accommodation illustrated tripartite dynamic that underpinned the double-discussion procedure on work in fishing, although the discussion on the actual provisions was postponed to allow for additional consultations between the 2004 and 2005 committee discussions (International Labour Office, 2004o, pp. 60-62). The Workers’ Group opened the discussion by submitting an amendment ‘[… that would make Annex II on Accommodation mandatory for vessels of a certain size,’ (emphasis added) (p. 62) Harking back to the difficult position of this group on how to handle the special nature of the fishing sector, this amendment shows the Workers’ Group choosing to let go of a one-size fits all solution and move toward a differentiated approach based on vessel size, which would allow for more prescriptive standards. While a small coalition between Denmark and non-EU Member State Norway submitted a similar amendment, the Employers’ Group on the other end of the tripartite stage highlighted that the discussion should be ‘[…] mindful of the need for balance between what would be mandatory and what would be recommended, in order for the Convention to be widely ratified.’ (p. 61) It was therein supported by Japan, which explicitly objected to both amendments, because in their opinion Annex II was too detailed to be considered as a mandatory part of the Convention.

As it became apparent that accommodation was a ‘critical point’ in the standard-setting procedure, the Irish EU Presidency, speaking on behalf of Belgium, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom, proposed to postpone the discussion. Moreover, this Core EU Group suggested that the ILO Office should organize additional consultations in the run-up to the 2005 Committee and a Working Party to finalize the discussion. This suggestion received broad support from the social partners and a large group of governments, leading the representative of the Secretary-General to announce that the ILO Office would set out to comply with these requests.

As a direct consequence of the 2004 committee discussion on accommodation, the GB convened the 2004 Meeting of Experts in between the 2004 and 2005 committee meetings of the double-discussion procedure. This meeting was convened to follow-up on accommodation and additional requirements for larger vessels, whereby the latter opened the door to consultations on a variety of issues that were potentially going to be affected by these additional requirements. However, the focus of the discussion during the 2004 Meeting of Experts was on accommodation (International Labour Office, 2005j, pp. 99-117). Continuing to serve as an illustration of the tripartite dynamic underpinning the double-discussion procedure, the discussion on this issue again saw the social partners stake out their positions on opposite ends of the tripartite stage, although the shift from a one-size fits all solution to a differentiated approach had gathered steam since the 2004 Committee. Indeed, while the Employers’ Group stressed the need for minimum standards covering a large
number of fishers, it conceded that more prescriptive provisions for large vessels were a possibility (p. 99). In addition, the role of Japan as a vocal critic of detailed and prescriptive provisions for the fishing sector is here clearly seen throughout the discussion, notably highlighting its discontent with ‘length’ as the only criterion to decide the applicability of Annex II (p. 100). Against this background, the independent interventions by the EU Member States and most other governments sided with the Workers’ Group in requesting not to lower the standards found in the 1966 Accommodation of Crews (Fishermen) Convention on which Annex II was based, although also echoing the warning of the Employers’ Group on the level of detail of that Convention and its consequential low level of ratification (p. 100).

25. Each Member shall adopt laws, regulations or other measures with respect to accommodation, food and potable water on board for fishing vessels that fly its flag.

26. Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:
   (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
   (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
   (c) ventilation, heating, cooling and lighting;
   (d) mitigation of excessive noise and vibration;
   (e) location, size, construction materials, furnishing and equipping of sleeping rooms, messrooms and other accommodation spaces;
   (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
   (g) procedures for responding to complaints concerning substandard accommodation.

27. Each Member shall adopt laws, regulations or other measures requiring that:
   (a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
   (b) potable water be of sufficient quantity and quality.

28. The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25-27 shall give full effect to Annex III concerning fishing vessel accommodation. This annex may be amended in the manner provided for in Article 43.
Annex III Fishing Vessel Accommodation

Box 4.24 – Provisions on accommodation submitted to the 2005 Committee by the ILO Office (Annex III abridged)

Following the first discussion and the 2004 Meeting of Experts, the ILO Office redrafted the provisions on accommodation and submitted them for consideration to the 2005 Committee as articles 25, 26, 27, 28, and Annex III (cf. Box 4.24 supra) (International Labour Office, 2005k, pp. 25,39-54). During the second committee discussion, the discussion on accommodation focused on the applicability of the more detailed provisions found in Annex III, which again serves as an illustration of the tripartite dynamic underpinning the double-discussion procedure on work in the fishing sector (Politakis, 2008, pp. 123-124). The discussion on this issue first took place in a Working Party, which subsequently presented its report to the committee (International Labour Office, 2005f, pp. 44-48,69-80). This report included the equivalence figures between length and gross tonnage, which had been moved here from the scope of application with the intention of only being applicable to certain provisions of Annex III. In addition, the report suggested adding an important second paragraph to Article 28, which would allow governments to take measures ‘substantially equivalent’ to the provisions found in Annex III:

‘A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.’ (p. 45)

This paragraph was added after ‘some members’ (presumably the Asian governments, lead by Japan) opposed the fact that the first paragraph of Article 28 ‘give[s] full effect to Annex III’. By adding a new paragraph allowing for substantially equivalent measures, the applicability of the more detailed provisions found in Annex III remained intact, although governments now had more leeway concerning the manner in which they adopted these into their national legislation. As a compromise, it was noted that this solution was supported by all members of the Working Party, except for one government member (presumably Japan) (p. 45).

After the presentation of the Working Party’s report and the near-unanimous consensus found therein, the 2005 Committee adopted articles 25, 26, and 27 without further discussion (p. 47). However, on Article 28, Japan intervened by stating that no consensus had been found and, on behalf of China, Indonesia, and the Republic of Korea, introduced an amendment to replace ‘shall give full effect’ with ‘shall give effect, as far as possible according to the condition of the Member.’ Despite the Working Party’s introduction of a
new paragraph to allow the governments more leeway, Japan stressed that this was insufficient as a solution. Moreover, Japan ‘[…] urged the Committee to consider carefully the implications of rejecting the subamendment he had introduced.’ (p. 47) Nevertheless, the social partners and Norway, speaking on behalf of the Government Group, stated that a ‘clear majority’ of the governments was satisfied with the solution offered by the Working Party, which was subsequently adopted in favor of the Japanese subamendment.

Against this background, the EU Member States were not represented during the discussion on the applicability of the provisions on accommodation, but can be assumed to have been part of the ‘clear majority’ of governments that were satisfied with the outcome of the Working Party. In contrast to this lack of explicit representation, during the discussion on the provisions included in Annex III, the EU Member States were represented independently, in small coalitions or (one time) by France speaking on behalf of Belgium, Denmark, Finland, Germany, Greece, the Netherlands, non-EU Member State Norway, Portugal, Sweden, and the United Kingdom (i.e. the Core EU Group) (pp. 69-80). By and large, these amendments were effectively introduced and made minor adjustments to the provisions on accommodation, thereby safeguarding their compatibility with the acquis. However, as mentioned before, the focus of the discussion was on the applicability of Annex III, which took precedence over the actual provisions, which ‘[…] essentially reproduce[d] and update[d] the provisions of the existing [1966 Accommodation of Crews (Fishermen) Convention].’ (Politakis, 2008, p. 123)

25. Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

26. (1) Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:
   (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
   (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
   (c) ventilation, heating, cooling and lighting;
   (d) mitigation of excessive noise and vibration;
   (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess-rooms and other accommodation spaces;
   (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot
and cold water; and
(g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

27. Each Member shall adopt laws, regulations or other measures requiring that:
(a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
(b) potable water be of sufficient quality and quantity; and
(c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher’s work agreement so provides.

28. (1) The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.

28 (2) A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

Annex III Fishing Vessel Accommodation

7. The use of gross tonnage as referred to in Article 5 of this Convention is limited to the following specified paragraphs of this annex: 12, 34, 35, 37, 39, 42, 56 and 61. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:
(a) a gross tonnage of 55 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
(b) a gross tonnage of 175 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
(c) a gross tonnage of 700 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

Box 4.25 – Provisions on accommodation rejected during the 2005 ILC (Annex III abridged)

After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles serves as the jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee
Work in Fishing

(c.f. Box 4.25 supra) (International Labour Office, 2005f, pp. 106-107,115-121). The ILO Office sent out a new questionnaire to the tripartite constituents. Accommodation in articles 25, 26, 27, 28, and Annex III was included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector.’ (International Labour Office, 2006f, p. 5) Asked whether changes should be made to the provisions on accommodation, the replies of the tripartite constituents continued in the same vein as where the double-discussion procedure had left off (International Labour Office, 2007g, pp. 45-59). As the social partners continued to stand on opposing sides of the tripartite stage, the governments again found themselves taking positions between these opposing ends of the spectrum. A large majority of governments expressed satisfaction with the outcome of the 2005 Committee, although a significant minority, notably the Asian governments, again voiced dissatisfaction and highlighted their intent to introduce additional flexibility measures. The positions taken by the EU Member States reflected this division between the governments, causing inconsistent representation. While most of them agreed with the outcome of the 2005 Committee, several states sided with the Employers’ Group and the Asian governments. Notably, the United Kingdom ‘[…] suggested that Article 28 be deleted and the provisions of Annex III transferred to a revised Recommendation.’ (p. 56)

However, despite this apparent status-quo of the dynamic, a close reading of the single-discussion procedure on accommodation illustrates how the tripartite setting had been replaced by a focused discussion between the social partners and Japan. The replies to the questionnaire from the ILO Office and the report of the 2006 Round Table reveals that the consultations between these key actors was making headway in terms of finding an agreeable solution to the provisions on accommodation. Specifically, the Workers’ Group and the Japanese government started focusing on the exact figures of the length-gross tonnage equivalence in order to adjust applicability of the provisions found in Annex III (pp. 57-58). By adjusting these figures, the applicability to (mostly) Asian vessels could be adjusted so that Japan and other Asian governments would come on board for the adoption of the instruments. This became the cornerstone of a ‘package’ on which the social partners and the Asian governments agreed, as was mentioned multiple times during the 2006 Round Table (pp. 87-89). By adjusting these figures, an elegant solution was found to this critical point that had played a large role in the failure to adopt the Convention during the 2005 ILC.

During the 2007 Committee, the consultations in the run-up to the final discussion had resulted in a broad, tripartite consensus which included Japan and the Asian governments (International Labour Office, 2007d, pp. 25-26,34-35). The relevant articles and Annex III were adopted with little or no amendments except to clarify the text or – importantly – to adjust the exact length-gross tonnage equivalence figures. On the latter, Japan, speaking on
behalf of the Employers’ Group, the Workers’ Group, Iceland, Indonesia, Malaysia, Sri Lanka, Thailand, Togo, and Vietnam, introduced an amendment that replaced these figures in the seventh paragraph of Annex III (p. 35). By adopting these figures, the tripartite constituents adopted the package that came out of the consultations and left the crucial Article 28 intact, despite having caused such disruption at the end of the double-discussion procedure. Against this background, the EU Member States are again largely absent. Similar to most non-Asian governments, the EU Member States were satisfied with the outcome of the 2005 Committee and did not have a stake in the exact length-tonnage equivalence figures, making them part of the silent, but supportive majority.

25. Each Member shall adopt laws, regulations or other measures for fishing vessels that fly its flag with respect to accommodation, food and potable water on board.

26. Each Member shall adopt laws, regulations or other measures requiring that accommodation on board fishing vessels that fly its flag shall be of sufficient size and quality and appropriately equipped for the service of the vessel and the length of time fishers live on board. In particular, such measures shall address, as appropriate, the following issues:
   (a) approval of plans for the construction or modification of fishing vessels in respect of accommodation;
   (b) maintenance of accommodation and galley spaces with due regard to hygiene and overall safe, healthy and comfortable conditions;
   (c) ventilation, heating, cooling and lighting;
   (d) mitigation of excessive noise and vibration;
   (e) location, size, construction materials, furnishing and equipping of sleeping rooms, mess rooms and other accommodation spaces;
   (f) sanitary facilities, including toilets and washing facilities, and supply of sufficient hot and cold water; and
   (g) procedures for responding to complaints concerning accommodation that does not meet the requirements of this Convention.

27. Each Member shall adopt laws, regulations or other measures requiring that:
   (a) the food carried and served on board be of a sufficient nutritional value, quality and quantity;
   (b) potable water be of sufficient quality and quantity; and
   (c) the food and water shall be provided by the fishing vessel owner at no cost to the fisher. However, in accordance with national laws and regulations, the cost can be recovered as an operational cost if the collective agreement governing a share system or a fisher’s work agreement so provides.
28. (1) The laws, regulations or other measures to be adopted by the Member in accordance with Articles 25 to 27 shall give full effect to Annex III concerning fishing vessel accommodation. Annex III may be amended in the manner provided for in Article 45.

28 (2) A Member which is not in a position to implement the provisions of Annex III may, after consultation, adopt provisions in its laws and regulations or other measures which are substantially equivalent to the provisions set out in Annex III, with the exception of provisions related to Article 27.

Annex III Fishing Vessel Accommodation

8. The use of gross tonnage as referred to in Article 5 of the Convention is limited to the following specified paragraphs of this Annex: 14, 37, 38, 41, 43, 46, 49, 53, 55, 61, 64, 65 and 67. For these purposes, where the competent authority, after consultation, decides to use gross tonnage (gt) as the basis of measurement:

(a) a gross tonnage of 75 gt shall be considered equivalent to a length (L) of 15 metres or a length overall (LOA) of 16.5 metres;
(b) a gross tonnage of 300 gt shall be considered equivalent to a length (L) of 24 metres or a length overall (LOA) of 26.5 metres;
(c) a gross tonnage of 950 gt shall be considered equivalent to a length (L) of 45 metres or a length overall (LOA) of 50 metres.

Box 4.26 – The final provisions on accommodation in the 2007 Work in Fishing Convention (Annex III abridged)

Issue Conclusion on Accommodation

In the final Convention, the provisions on accommodation are included in articles 25, 26, 27, 28, and Annex III (cf. Box 4.26 supra) (International Labour Office, 2007d, pp. 64-65, 74-82). The discussion on this issue serves as a key illustration for the broader dynamic during this standard-setting procedure, wherein the tripartite dynamic of the double-discussion procedure gave way to a bipartite plus Japan dynamic after the Convention failed to be adopted during the plenary session of the 2005 ILC. Indeed, accommodation was arguably the most important stumbling block that led the Employer’s Group and Japan to rally against adopting the outcome of the double-discussion procedure. Subsequently, to forge a consensus the applicability of these provisions underwent far-reaching changes during the single-discussion procedure.

Against this background, we detected that the EU Member States effectively attained their twin-goals of ensuring (as part of the majority of governments) that the detailed provisions of 1966 Accommodation of Crews (Fishermen) Convention were included in the new
Convention, albeit allowing for more flexibility on their implementation, and (as a distinct group) that the provisions in the final instrument were in line with those already in place in the European legislation on this issue. On the first goal, we have seen that Article 28 of the convention ‘give[s] full effect’ to the standards found in Annex III that ‘[…] essentially reproduces and updates the provisions of the existing [1966 Accommodation of Crews (Fishermen) Convention]’ (Politakis, 2008, p. 123), but at the same time also strikes a broadly supported balance on the applicability of these detailed provisions by allowing governments to take ‘substantially equivalent’ measures. Further balanced by the possibility to use gross tonnage as an equivalent to length (overall) for some of the provisions in Annex III, the first goal certainly seems to have been reached. In addition, on the second goal, when we compare the final provisions on accommodation (cf. Box 4.26 supra) with those found in the acquis, we find that both sets of standards are compatible with each other. As such, it would seem that the EU Member States effectively attained their twin-goals on this issue.

However, having process-traced this issue, we find that the EU Member States were mostly involved as part of the majority of governments and only played a minor role as a distinct group during the committee discussions. During the 2004 Committee, the Irish EU Presidency, speaking on behalf of the Core EU Group, intervened in the discussion to postpone the debate and suggested that additional consultations should be held to bridge the wide gap that existed between the social partners on this issue. This was an important intervention that led to the 2004 Meeting of Experts, but at the same time it was the high-water mark for their involvement as a distinct group in the discussion. While the Core EU Group would later also coherently intervene on specific provisions in Annex III, the EU Member States were folded into the ‘clear majority’ of governments when accommodation and its applicability were discussed in a Working Party at the end of the double-discussion procedure. As such, they played their part in shaping a compromise that intended to bring the social partners and Japan on board, but which failed to be adopted during the plenary session of the 2005 ILC. During the single-discussion procedure, the dynamic shifted to a focused discussion between the social partners and Japan, which sidelined the EU Member States and other non-Asian governments as a silent, but supportive majority while these actors found an elegant solution in adjusting the equivalence figures for the use of gross tonnage.

4.3.7. Port State Control

Port state control was a key issue during the standard-setting procedure on work in the fishing sector. In contrast to the more traditional flag state control, this type of control delegates part of the responsibility to ensure the compliance with and enforcement of standards to port states, specifically by allowing them to inspect the living and working conditions on board fishing vessels that fly the flag of another state, but anchor in their ports. The central place of port state control in the procedure came from the novelty of
introducing this type of control in the fishing sector. The initial report by the ILO Office noted that there are no preexisting ILO instruments that apply port state control to fishing vessels (International Labour Office, 2003a, pp. 139-142). Indeed, while this type of control did already exist in instruments regarding the shipping sector and figured prominently during the discussion on the 2006 MLC, the recommendation of the ILO’s Tripartite Meeting on Safety and Health in the Fishing Industry to transpose this type of control to the fishing sector was a novelty within the ILO’s body of international labor standards. The question, then, was how to make this ‘powerful instrument’ from the shipping sector work vis-à-vis the different nature of the fishing sector, wherein vessels do not necessarily have to visit other ports than their home port during their operations (Interview No. 35). Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

42. A Member that has ratified the Convention might inspect a fishing vessel flying the flag of another State when the vessel is in its port in order to determine whether the vessel is in compliance with the standards of the Convention relating to living and working conditions of fishers on board.

Box 4.27 – Provisions on port state control submitted to the 2004 Committee by the ILO Office

Before the 2004 Committee, the provisions on port state control were drafted by the ILO Office and submitted for consideration to the 2004 Committee as Point 42, which allowed ratifying port states to inspect the living and working conditions on board fishing vessels that fly the flag of another state (cf. Box 4.27 supra) (International Labour Office, 2004a, p. 188). On port state control, the EU Member States were part of the majority of governments and the Workers’ Group. While unable to draw on relevant European legislation to orient their position as a distinct group, they were part of the majority that intended to include these provisions in the new instruments on work in the fishing sector and, more specifically, ensure their compatibility with the 1976 Merchant Shipping (Minimum Standards) Convention and the 2006 MLC. Although the EU Member States were divided on the issue in their replies to the initial questionnaire sent out by the ILO Office,63 they consistently and, during the 2007 Committee, coherently pursued these goals throughout the entire standard-setting procedure.

63 Asked whether the Convention should include a provision on port state control, the following EU Member States (14) were in favor: Austria, Belgium, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Latvia, Portugal, Spain, Sweden, and the United Kingdom, while the following states (4) were opposed: Cyprus, Germany, Lithuania, and the Netherlands (International Labour Office, 2004a, pp. 101-104). In addition, the replies by the Czech Republic and Denmark were listed as ‘other’.
During the 2004 Committee, the discussion on port state control illustrated the divided tripartite stage between the social partners and the outlier role of Japan among the governments (International Labour Office, 2004o, pp. 75-76). The Employers’ Group started the discussion by introducing an amendment to delete Point 42, stating that ‘[…] that the issue of inspection was already covered by Point 39.’ (p. 75) The Workers’ Group and a number of government members opposed this amendment, with the United Kingdom pointing out that Point 39 dealt with flag state control, while the point under consideration dealt with port state control. Following this clarification, Japan intervened to express its support for the Employers’ Group amendment and explicitly opposed the introduction of port state control in instruments concerning the fishing sector. However, because of the broad opposition, the amendment by the Employers’ Group nevertheless failed to be adopted. Importantly, in effect this outcome introduced this type of control in the international standards for the fishing sector. Following this introduction, Norway, speaking on behalf of Greece, introduced an amendment to replace the text of Point 42 with the provisions found in the 1976 Merchant Shipping (Minimum Standards) Convention, arguing that ‘[…] the time had come for port state control of fishing vessels.’ (p. 76) After receiving broad support from the social partners (both introducing minor subamendments), France, Ireland, Namibia, and Spain, this amendment was adopted as subamended by the Workers’ Group.

In between the 2004 and 2005 committee meetings of the double-discussion procedure, compliance and enforcement (including port state control) was one of the issues that were folded into the agenda of the additional 2004 Meeting of Experts (International Labour Office, 2004h, p. 7). This meeting was convened by the GB to follow-up on accommodation and additional requirements for larger vessels. Compliance and enforcement (including port state control) was included in the agenda as one of the issues that were potentially going to be affected by the additional requirements that were being developed for larger fishing vessels. Specifically, the ILO Office suggested that the 2004 Meeting of Experts might wish to consider two interlinking concepts with regards to port state control: firstly, a ‘certificate or other form of documentation’ issued by a ratifying flag state and attesting the compliance of a vessel and, secondly, that this certificate would serve as prima facie evidence of compliance to the port state inspectors. As one ILO Official noted, this certificate exists in the 2006 MLC and its obvious desirability for ship owners is one of the reasons ratification has been a success for this instrument (Interview No. 35). However, this type of certificate was watered down during this standard-setting procedure and ultimately included as a ‘valid document’ in Article 41 (International Labour Office, 2007d, p. 69). Returning to the 2004 Meeting of Experts, we find that this Meeting was mainly focused on other issues and port state control received only limited attention, albeit with generally favorable replies by the states (International Labour Office, 2005j, pp. 51-52).
41. (1) A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

41. (2) A Member may prepare a report, with a copy to the Director-General of the International Labour Office, addressed to the government of a country in which a fishing vessel is registered, where such vessel flies the flag of the other State and calls in the normal course of its business or for operational reasons in a Member’s port and the Member receives a complaint or obtains evidence that the fishing vessel does not conform to the requirements of the Convention. In such case, the Member may take the measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

41. (3) In taking the measures referred to in paragraph 2, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.

41. (4) For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.

41. (5) This Article does not apply to complaints which a Member considers to be manifestly unfounded.

42. Each Member shall apply the Convention in such a way as to ensure that the fishing vessels flying the flag of States that have not ratified the Convention do not receive more favourable treatment than the fishing vessels that fly the flag of Members that have ratified it.

Box 4.28 – Provisions on port state control submitted to the 2005 Committee by the ILO Office

Following the first committee discussion, the ILO Office redrafted the provisions on port state control and submitted them for consideration to the 2005 Committee as articles 41 and 42 (cf. Box 4.28 supra) (International Labour Office, 2005k, p. 33). During the second committee discussion, the amendments of the Workers’ Group shaped the discussion on port state control with attempts to revert back to original wording from the 1976 Merchant Shipping (Minimum Standards) Convention. This wording had been introduced the year before, but had been redrafted by the ILO Office between the two committee discussions (International Labour Office, 2005f, pp. 60-61). Specifically, the Workers’ Group introduced amendments to replace the second and fourth paragraph of Article 41 with the original wording found in the 1976 Convention. As such, both amendments intended to revert back
to the amendment Norway, speaking on behalf of Greece, had introduced during the 2004 Committee (cf. supra), even though the provisions the ILO Office had proposed to the 2005 Committee had only altered the wording, rather than the substance of these provisions. The ‘editorial’ amendment on the second paragraph was adopted with the support of Norway, speaking on behalf of the Government Group, and saw the Employers’ Group withdraw an editorial subamendment that, as Greece and Norway pointed out, was incompatible with Article 42. The amendment on the fourth paragraph went slightly further by adding an explicit definition of what constituted a ‘complaint’ and was not adopted after Norway, speaking on behalf of a clear majority in the Government Group, and the Employers’ Group voiced their opposition. In addition, Japan, speaking on behalf of Indonesia, introduced a minor drafting amendment on Article 42. While Ireland and the Workers’ Group supported this amendment, Norway, speaking on behalf of a clear majority of the Government Group, and the Employers’ Group opposed its adoption on the basis that the wording of the ILO Office was more traditional in ILO instruments. The amendment subsequently failed to be adopted.

43. (1) A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

43. (2) If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the standards of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

43. (3) In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.

43. (4) For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.

43. (5) This Article does not apply to complaints which a Member considers to be manifestly unfounded.

44. Each Member shall apply the Convention in such a way as to ensure that the fishing vessels flying the flag of States that have not ratified the Convention do not receive more favourable treatment than fishing vessels that fly the flag of Members that have ratified it.
After the Convention on Work in Fishing failed to be adopted during the plenary session of the 2005 ILC and the GB subsequently decided to move forward with a single-discussion procedure, the rejected outcome of the second discussion on these articles served as the jumping-off point for the discussion during the 2006 Round Table and the 2007 Committee (cf. Box 4.29 supra) (International Labour Office, 2005f, p. 111). The ILO Office sent out a new questionnaire to the tripartite constituents. While port state control was not included in the questionnaire as one of the ‘[…] provisions of the proposed Convention that seemed to pose particularly difficult problems during the discussions in the Committee on the Fishing Sector’ (International Labour Office, 2006f, p. 5), this issue was raised in the replies to the questionnaire (International Labour Office, 2007g, p. 72). Moreover, ILO Official Politakis highlights it as one of the five issues on which no consensus had been found before the 2007 Committee: ‘Although the [2006 Round Table] had permitted some convergence on certain issues, the Round Table had also demonstrated that considerable differences persisted.’ (Politakis, 2008, p. 122)

During the 2007 Committee, a large number of amendments were introduced, but none were adopted because the majority of the tripartite constituents preferred to retain the outcome of the double-discussion procedure that was consistent with the 1976 Merchant Shipping (Minimum Standards) Convention and – since its adoption a year earlier – the 2006 MLC (International Labour Office, 2007d, pp. 30-33). Specifically, Malaysia and Indonesia introduced four amendments and the Employers’ Group introduced two amendments on articles 43 and 44. In addition, New Zealand, the United States, and Uruguay introduced a new article after Article 43. However, all of these amendments failed to be adopted after they were opposed by broad, tripartite oppositions. Against this background, the German EU Presidency, speaking on behalf of the EU, Iceland, and Norway, was particularly vocal in its opposition and continuously argued to retain the close connection with the 1976 Merchant Shipping (Minimum Standards) Convention and the 2006 MLC that the outcome of the double-discussion procedure.

43. (1) A Member which receives a complaint or obtains evidence that a fishing vessel that flies its flag does not conform to the requirements of this Convention shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

43. (2) If a Member, in whose port a fishing vessel calls in the normal course of its business or for operational reasons, receives a complaint or obtains evidence that such vessel does not conform to the requirements of this Convention, it may prepare a report addressed to the government of the flag State of the vessel, with a copy to the Director-
General of the International Labour Office, and may take measures necessary to rectify any conditions on board which are clearly hazardous to safety or health.

43. (3) In taking the measures referred to in paragraph 2 of this Article, the Member shall notify forthwith the nearest representative of the flag State and, if possible, shall have such representative present. The Member shall not unreasonably detain or delay the vessel.

43. (4) For the purpose of this Article, the complaint may be submitted by a fisher, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the vessel, including an interest in safety or health hazards to the fishers on board.

43. (5) This Article does not apply to complaints which a Member considers to be manifestly unfounded.

44. Each Member shall apply this Convention in such a way as to ensure that the fishing vessels flying the flag of any State that has not ratified this Convention do not receive more favourable treatment than fishing vessels that fly the flag of any Member that has ratified it.

Box 4.30 – The final provisions on port state control in the 2007 Work in Fishing Convention

**Issue Conclusion on Port State Control**

In the final Convention, the provisions on port state control are included in articles 43 and 44 (cf. Box 4.30 supra) (International Labour Office, 2007d, pp. 69-70). While the tripartite stage was originally divided on the question of whether to introduce port state control for the first time in international standards on the fishing sector, a tripartite majority gathered behind its introduction during the 2004 Committee, and further supported lifting the relevant provisions from the 1976 Merchant Shipping (Minimum Standards) Convention. Once this existing wording was introduced, any changes were heavily opposed and usually rejected.

Against this background, the encompassing goal of the EU Member States was in line with the majority of governments and the Workers’ Group. While unable to draw on relevant European legislation to orient their position as a distinct group, they were part of the majority that intended to include these provisions in the new instruments on work in the fishing sector and, more specifically, ensure their compatibility with the 1976 Merchant Shipping (Minimum Standards) Convention and the 2006 MLC. Having process-traced the discussion on port state control, we find that a small coalition between non-EU Member State Norway and Greece played a central role during the 2004 Committee, wherein they stepped in after the tug of war between the social partners was resolved and introduced an amendment that would decisively shape the final outcome on this issue. During the remainder of the standard-setting procedure, EU Member States would continue to intervene consistently as part of a ‘clear majority’ in the Government Group (during the 2005
Committee) and coherently as the Union (during the 2007 Committee) to vocally defend the original amendment against any changes. However, despite the buildup to EU coherence and the seemingly strong link with effectiveness, it is critical to note that the original amendment was language drawn from the 1976 Merchant Shipping (Minimum Standards) Convention. Indeed, it is this compatibility with an existing international standard that ensured it was adopted with a broad consensus during the 2004 Committee and found staunch defenders afterwards. The EU Member States played their part as vocal defenders on behalf of a larger majority, but this was clearly enabled by this favorable context.

4.4. Case Conclusion

The goal of the standard-setting procedure on work in fishing was to consolidate the existing body of standards into a Convention and Recommendation and, as such, address the decent work deficit in this sector. In order to achieve this goal, the tripartite members first and foremost needed to overcome a central challenge: adopt an instrument that takes into account the special nature of the fishing sector, i.e. is equipped to provide sufficient protection to fishermen on both ends of a broad spectrum, while at the same time also remains flexible enough to be easily ratified, implemented, and enforced by the governments. Because of difficulties in overcoming this central challenge, the Work in Fishing Convention failed to be adopted after the double-discussion procedure. Following this failure, the procedure was rebooted as a single-discussion procedure and the Work in Fishing Convention and Recommendation were eventually adopted with broad tripartite support during the 2007 ILC. However, as of February 2014, the Work in Fishing Convention has been ratified by only four governments and has therefore not yet come into force.

The standard-setting procedure on work in fishing took place on a divided tripartite stage, whereupon the social partners fundamentally disagreed on how to approach the complex nature of the fishing sector and, as a consequence, took opposite positions at the outer ends of the tripartite stage during the double-discussion and single-discussion procedures. Most governments found themselves somewhere in between the positions of the social partners and increasingly coordinated and represented their positions through the Government Group, although it is important to note that Japan and – riding its coattails – other Asian governments stood apart from the other governments and sided with the Employers’ Group.

Extending on the governmental representation, we have seen that non-Asian governments were progressively sidelined in the course of the standard-setting procedure on work in fishing, as the tripartite dynamic of the double-discussion procedure was replaced by a ‘bipartite plus Japan’ dynamic between the social partners during the single-discussion procedure. Indeed, Japan and the broader Asian region is home to more than 80 percent of the world’s fishers, meaning that without them any instrument for this sector would in effect be meaningless. Based on this issue-related power, Japan (on point for the Asian
governments during the procedures) was able to move from ineffectively being overruled by the majority during the double-discussion procedure, to effectively attaining its goals during the 2006 Round Table of the single-discussion procedure, after it successfully lobbied the Employer’s Group against the adoption of the Convention at the end of the double-discussion procedure. For example, comparing the critically important discussions on accommodation during both procedures provides a clear illustration of this shifting dynamic. However, despite this shifting dynamic sidelining the majority of governments, a Government Group (speaking on behalf of all or a majority of governments) formed itself in the course of the standard-setting procedure and is notably present in the discussion during the end of the double-discussion and the single-discussion procedure. This Group was predominantly satisfied with the outcomes of the double-discussion procedure in 2005, revealing that their sidelining by the bipartite dynamic during the single-discussion procedure is only one side of the coin. The other side is that they willingly let themselves be sidelined while the unsatisfied Employers’ Group and Japan trashed out an agreement with the Workers’ Group.

Turning to our detection of external EU coherence, the bird’s-eye view gave us a first impression of the tactical dimension of the Union’s representation during the standard-setting procedure on work in fishing. At first sight, we seemingly found that the EU Member States spoke almost exclusively on their own behalf during the 2004 and 2005 tripartite committee discussions of the double-discussion procedure, given that an almost non-existent coherent EU representation (respectively two and zero times) stood in stark contrast with a large number of independent interventions by the Member States (197 and 163). However, a closer look revealed the existence of a relatively stable and recurring coalition, which we have dubbed the Core EU Group (seven and 29). Despite not being reported as such in the records of proceedings, this group can be counted as coherent EU representation. Moreover, the bird’s-eye view indicated that governments were increasingly represented in large governmental coalitions, notably including an actively involved Government Group during the 2005 Committee. During the 2007 Committee, the focus of the Union’s representation further shifted towards coherent EU representation (14), especially when compared to the significant drop of independent interventions (51) and interventions in other configurations (one). In addition, we also found that the interventions on behalf of the Core EU Group or on behalf of the Union were predominantly handled by the Irish (2004) and German (2007) EU Presidencies, while the landlocked Luxembourg (2005) delegated its responsibilities to several EU Member States.

Having process-traced the standard-setting procedure on work in fishing, we can now extend on the preliminary impression the bird’s-eye view provided of the Union’s representation during this procedure. Firstly, focusing on the tactical dimension, Table 4.8 below categorizes
the Union’s representation on all seven key issues as either coherent, incoherent, consistent, or inconsistent.

<table>
<thead>
<tr>
<th>Symbiotic MS position(s)</th>
<th>Medical examination and certification (DD)</th>
<th>Manning and hours of rest (DD)</th>
<th>Private employment agencies (SD)</th>
<th>Accommodation (DD)</th>
<th>Port state control (SD)</th>
<th>Scope of application (DD)</th>
<th>Scope of application (SD)</th>
<th>Medical examination and certifications (SD)</th>
<th>Accommodation (SD)</th>
<th>Port state control (DD)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antagonistic MS position(s)</td>
<td>Training and minimum age (DD)</td>
<td>Private employment agencies (DD)</td>
<td>Manning and hours of rest (SD)</td>
<td></td>
<td></td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

Table 4.8 – External EU coherence during the standard-setting procedures on work in fishing

In terms of the distinction between Member States representing common or independent positions, the Table above shows that common positions (either on behalf of the Core EU Group or on behalf of the Union) were expressed on a majority of the issues during the double-discussion procedure (five compared to two), while the opposite is true during the single-discussion procedure (two compared to four). At first sight, this seems to counter our bird’s-eye view impression that coherent EU representation further increased during the latter procedure. However, it should be noted that the categorization for both procedures is influenced by the crowding out effect of the governmental majority. This majority included the EU Member States and increasingly represented itself through a spokesperson, thereby making the separate representation of common positions on behalf of the Union redundant. For example, this was the case during the double-discussion procedure on the scope of application and port state control and during the single-discussion procedure on the scope of application and accommodation. Conversely, while a common EU position was detected during the double-discussion procedure on accommodation, this refers to one intervention during the 2004 Committee, after which it quickly gave way to representation on behalf of the governmental majority. Moreover, it should be pointed out that the coherent EU representation during the double-discussion procedure was complemented by a large number of independent interventions and interventions in other categories by the Member States, which is certainly in line with our bird’s-eye view impression.

The common EU positions during the double-discussion procedure were predominantly represented on behalf of the relatively stable and recurring Core EU Group. This group was

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64 The tactical dimension of EU representation during the single-discussion procedure on training and minimum age is not included in Table 4.8, given that this issue was no longer discussed during the 2007 Committee.
predominantly represented by and represented on behalf of EU Member States, although Tables 4.4 and 4.6 (cf. Chapter 4.2.) also indicate that its membership regularly included non-EU Member States. During the single-discussion procedure, the common EU positions were exclusively expressed on behalf of the Union. As such, the membership was now mostly limited to the EU Member States, although Norway and Iceland were regularly recorded as taking part in these positions. In addition, during instances when the EU Member States were represented as part of the governmental majority, the Member States at times served as the spokesperson for this group. For example, this was the case during the double-discussion procedure on medical examination and certification, manning and hours of rest, and private employment agencies.

In terms of the distinction between the Member States representing symbiotic or antagonistic positions, Table 4.8 shows that most of the EU Member States’ independent interventions or interventions in other configurations were symbiotic to either the Union’s common position (i.e. coherent) or the positions of other Member States (i.e. consistent). This was the case during both the double-discussion procedure (five compared to two) and the single-discussion procedure (five compared to one). Having process-traced the discussion on the seven key issues, we should again point out that these symbiotic positions were often part of the governmental majority that intervened through its own spokesperson in several of these issues (cf. supra). However, while most independent interventions and interventions in other configurations were symbiotic, the Table above also reveals three instances wherein one or more EU Member States expressed positions that were antagonistic to the Union’s common position (i.e. incoherent) or the positions of other Member States (i.e. inconsistent). The single-discussion procedure on manning and hours of rest indeed saw substantial antagonism between independent interventions by the EU Member States. However, with regards to the antagonism during the double-discussion procedure on training and minimum age and private employment agencies, it should be noted that this was not aimed at the common EU position, but rather played itself out elsewhere in the discussion between independent interventions or other configurations by Member States. As such, while the EU representation on these issues is categorized as ‘incoherent’ (cf. Table 4.8 supra), it should in fact be categorized as ‘coherent, albeit supplemented by inconsistent positions’. Again, these parallel categories of representation are in line with our bird’s-eye view impression that the coherent EU representation during the double-discussion procedure was complemented by a large number of independent interventions and interventions in other categories by the Member States.

Taken together, our detection of the tactical dimension of EU representation shows that the Union was predominantly represented coherently or consistently during both the double-discussion and the single-discussion procedures, while inconsistency was a minor occurrence
and, moreover, none of the seemingly incoherent antagonistic positions were aimed directly at common EU positions. However, our detection also shows that the representation of the governmental majority had a crowding out effect. This majority included the EU Member States and increasingly represented itself through its own spokesperson, thereby making the separate representation of common positions on behalf of the Union redundant.

Secondly, focusing on the substantive dimension of EU representation, tracing the discussions on the seven key issues has shown that the Union’s goal was first and foremost to ensure that the instruments on work in fishing were compatible with the *acquis communautaire* and – if relevant – existing international standards that had been ratified by (some of) the EU Member States. Notably, this informed their siding with the governmental majority and the Workers’ Group in favor of a differentiated approach during the double-discussion procedure. Furthermore, while at times cause for confusion and extended discussions with the broader tripartite membership, the EU-specific goal of ensuring complementarity with the *acquis* and the non-EU specific goal of ensuring complementarity with existing international standards were themselves also compatible with each other. These goals – especially the former – were continuously reiterated by the EU Member States and were seldomly complemented or additionally joined by amendments that would have substantially altered the shape of the final instruments. In addition, the EU Member States were part of the governmental majority that accepted the added flexibility that was introduced in various ways by the Employers’ Group and Japan during the single-discussion procedure, given that none of this interfered with the compatibility between the *acquis* and the final instruments.

Turning to our detection of EU effectiveness in terms of goal attainment, process-tracing the key issues of the standard-setting procedure on work in fishing reveals that the Union attained virtually all of its self-proclaimed goals during the discussions on the seven key issues. However, while the final Convention has been deemed fully compatible with the *acquis* by a Council Decision and, as such, the Union was effective in achieving its most important and – arguably – only goal, we will later see that that throughout the double-discussion and single-discussion procedures a number of secondary amendments introduced by the EU Member States in various configurations were not adopted.

As we have seen during our conceptualization of EU effectiveness, detecting the Union’s goal attainment tells us little when it is done in isolation from the international context. Indeed, once we incorporate the international context in our analysis, we are able to paint a more fine-grained image of EU representation by relating its substantive dimension to the positions of third parties and, as such, pinpoint the relative nature of the goals the Union did or did not attain. To briefly reiterate, the standard-setting procedure on work in fishing took
place on a divided tripartite stage, whereupon the social partners fundamentally disagreed on
how to approach the complex nature of the fishing sector and, as a consequence, took
opposite positions at the outer ends of the tripartite stage during the double-discussion and
single-discussion procedures. Most governments found themselves somewhere in between
the positions of the social partners and increasingly coordinated and represented their
positions through the Government Group, although it is important to note that Japan and –
riding its coattails – other Asian governments stood apart from the other governments and
sided with the Employers’ Group.

Against this background, relating the substantive dimension of EU representation to the
positions of third parties reveals that the Union’s relative position predominantly leaned
toward the progressive side of the tripartite stage during the double-discussion procedure,
both as a distinguishable regional group aiming to ensure compatibility with the acquis and as
part of the governmental majority. While there are secondary instances wherein the Union
complemented its position in favor of extensive provisions by also arguing for added
flexibility to these same provisions, notably during the discussion on accommodation, its
progressive-leaning proclivities during this procedure are clear and unmistakable. However,
in this regard it should be reiterated that the EU Member States were also part of the
governmental majority when it accepted the conservative measures for added flexibility that
were introduced by the Employers’ Group and Japan during the single-discussion procedure.
While we have not traced the internal European coordination process, we have here
encountered a strong indication that the Union’s progressive-leaning position during the
double-discussion procedure and its acceptance of the conservative changes during the
single-discussion procedure were both informed by its central goal of ensuring compatibility
between the acquis and the final instruments on work in fishing.

Having situated the substantive dimension of EU representation and, thus, the nature of the
goals the Union did or did not attain within the international context of the standard-setting
procedure on work in fishing, we now turn to the causal potential of EU coherence in
relation to its effectiveness. Similar to our exploration of the a-typical procedure on maritime
labor, our capacity to draw clear conclusions on their relation is impaired to some extent by
the EU Member States being embedded within the governmental majority. However,
different from the procedure on maritime labor, both the Union’s goals and its
representation thereof are much more clearly distinguishable throughout the double-
discussion and single-discussion procedures on work in fishing. As such, based on our
process-tracing of the discussion on seven key issues, we have found that (1) EU coherence
is not a necessary condition for effectiveness within the favorable international context
found in the double-discussion procedure. In addition, while there are indications that (2)
EU coherence does add to the potential of the Union to attain its goals, (3) external
coherence is not a sufficient condition when confronted with the less favorable international context found in the single-discussion procedure.

Firstly, it might seem strange to conclude that EU coherence is not a necessary condition for effectiveness. After all, based on our detection that the tactical dimension of EU representation can predominantly (albeit far from exclusively) be categorized as coherent and our detection that the Union attained virtually all of its self-proclaimed goals, one could at first glance correlate these two unobservables and expect that the Union’s coordinated representation played a significant role in making it an effective actor during the double-discussion and single-discussion procedures on work in fishing. However, having related the detection of EU coherence and effectiveness to the international context, we have found a major qualification to this superficial correlation: the goals and objectives of the Union were embedded within or complementary to those of the progressive-leaning majority of governments. Keeping this qualification in mind, we have found strong indications that external EU coherence was not a necessary condition of effectiveness within the international context found in this procedure.

For one, while it is true that the Union effectively attained its EU-specific goal of ensuring that the final instruments on work in fishing were complementary with the acquis, a close tracing of the discussion on the key issues reveals that the Union’s goal attainment was greatly facilitated, if not determined, by the fact that the European legislation was compatible with the existing international standards that the progressive-leaning majority wanted to include in the new instruments. Notable examples include the double-discussion procedure on the scope of application, wherein the final provisions were identical to those found in the acquis, but were in fact derived from existing international standards, and the double-discussion procedure on training and minimum age, wherein the EU Member States actively needed to convince the tripartite members that their acquis-based amendments were compatible with the CLS. As such, the latter discussion serves as a clear indication that the non-EU specific goal of including the provisions certain existing international standards took precedence over including the EU-specific acquis.

Adding to our argument that EU coherence was not a necessary condition, we found that Member States intervening independently or in small coalitions were also able to effectively attain their goals during the procedures on work in fishing, provided that they introduced amendments that were in line with the majority consensus that leaned toward the progressive side of the tripartite stage. Notable examples include the double-discussion procedures on training and minimum age, wherein a small coalition between France and Greece effectively introduced a far-reaching amendments on the minimum age for fishermen, and the double-
discussion procedure on port state control, wherein a small coalition between non-EU Member State Norway and Greece effectively reshaped the provisions on this issue.

Secondly, while coherent EU representation is thus not a necessary condition, process-tracing the procedures on work in fishing also reveals some indications that coordinated interventions on behalf of the Core EU Group of formally on behalf of the Union nevertheless did add to the potential of the Union to attain its goals. For example, when comparing the 2004 and 2005 tripartite committee discussions on medical examination and certification, we find that the Core EU Group held more potential to convince the tripartite membership of its amendments during the second committee discussion than the smaller coalitions that intervened during the first discussion. In a more general sense, we found indications that amendments by smaller coalitions and independent Member States are limited in their potential to challenge the position of the progressive-leaning majority. A rare example of EU Member States leaning away from the majority to the conservative side of the tripartite stage can be found in the double-discussion procedure on the scope of application, wherein a small coalition between Denmark and the United Kingdom was not able to introduce a conservative-leaning ‘grandfather clause’ into the provisions. At the same time, a small coalition between Greece and the United Kingdom was able to introduce three progressive-leaning amendments, which goes some way toward indicating the limit potential of these small coalitions to challenge or convince the majority.

Thirdly, despite indications that EU coherence did add to the potential of the Union to attain its goals, we found that external coherence is not a sufficient condition when confronted with the less favorable international context found in the single-discussion procedure, i.e. after the non-Asian governments were sidelined by a ‘bipartite plus Japan’ dynamic, or during instances wherein the social partners came to an joint agreement during the double-discussion procedure. Indeed, whenever the social partners and/or Japan managed to come to an agreement, these actors opposed any attempts to further discuss their compromise or ‘package’ and effectively had it adopted with no or very minor changes by the non-Asian governments. Notable examples include the double-discussion procedure on the scope of application and the single-discussion procedure on almost all of the key issues. As mentioned before, this is largely explained by the fact that the non-Asian governments willingly let themselves be sidelined, given that they were generally satisfied with the failed outcome of the double-discussion procedure and did not stand in the way of a compromise between the social partners and Japan. However, during the single-discussion procedure on the scope of application Greece expressed fears that the agreement between the social partners would be introduced on a ‘take it or leave it’ basis to the 2007 Committee, which turned out to be the case.
In summary, by relating our detection of EU coherence and effectiveness to the international context found in the double-discussion and single-discussion procedures on work in fishing, we have found strong indications that external coherence is not a necessary condition for the Union to attain its goals within the favorable context found in the double-discussion procedure. Given that the EU-specific goals and objectives situated themselves within or were complementary to the progressive-leaning positions of the governmental majority and the Worker’s Group, achieving them did not necessarily require the Union to represent its position in full force. In addition, some indications do point in the direction of EU coherence adding to the potential of the Union to attain its goals, especially when these are less embedded within the majority’s progressive-leaning positions. Finally, we have found strong indications that external coherence is not a sufficient condition for the Union to attain its goals within the unfavorable international context found in the single-discussion procedure. Whenever the social partners and/or Japan managed to come to an agreement, these actors effectively blocked further, albeit minor attempts by non-Asian governments to discuss and possibly amend these compromises. Comparing these indications with our findings of the previous and the next case study will help to further explore and clarify this in the general conclusions.
5. The Standard-Setting Procedure on Domestic Work

‘The instruments before us are robust, practical and human and they hold tremendous potential for bringing domestic workers out of the shadows.’ – Ms. Toni Moore (Worker representative, Barbados) (International Labour Office, 2011g, p. 15)

‘The other wish I expressed in last year’s speech was that we focus on negotiating an instrument that can be widely ratified rather than a strong political statement that many member States cannot ratify. Unfortunately, I fear we have not met this goal.’ – Mr. John Kloosterman (Employer representative, the United States) (International Labour Office, 2011g, p. 18)

We now turn to our case study on the ILO standard-setting procedure on domestic work. We will first outline the double-discussion procedure that lead to the adoption of the 2011 Domestic Workers Convention and Recommendation, before taking a closer look at the goal that underlied this procedure, the tripartite stage whereupon the social partners and governments took their positions, and the key issues that were central to the discussion on domestic work. Subsequently, after having ‘set the stage’ of this standard-setting procedure, we will turn our focus to the EU and its Member States within this international context. Firstly, a quantitative bird’s-eye view will provide us with a preliminary impression of the tactical dimension of the Union’s representation. Secondly, a qualitative process-tracing of the discussions on the key issues will allow us to extend on this first impression and explore the causal potential of EU coherence in relation to its effectiveness by tracing its interaction with the international context found in the standard-setting procedure on domestic work.

5.1. The Tripartite Standard-Setting Procedure

5.1.1. The Tripartite Standard-Setting Procedure
The standard-setting procedure on domestic work was launched during the GB’s November 2007 session, wherein its tripartite members first discussed whether to place this issue on the agenda of the 2010 ILC (International Labour Office, 2007b, pp. 7-12). Following previous attempts dating back to 1948, standard-setting on domestic work was one of several proposals the ILO Office presented to this session of the GB. This proposal originated from
the interest in the domestic work sector in various departments of the ILO Office, of which the Bureau for Workers’ Activities (ACTRAV) would eventually take the lead and submit the proposal (Interview No. 39). After the first discussion and subsequent resubmission of the proposal on domestic work, it was further examined during the GB’s March 2008 session and placed on the agenda of the 2010 ILC as a standard-setting item.

Taking a closer look at the discussion that took place during the GB’s November 2007 and March 2008 sessions, we find that the standard-setting item on domestic work received full support from the Workers’ Group, while the Employer’s Group had its reservations. Meanwhile, the government representatives were divided, but it was nevertheless their growing support that tilted the balance in favor of including this item on the agenda of the 2010 ILC. During the November 2007 session, the tripartite members of the GB received before them four proposals by the ILO Office: (1) decent work in global supply chains, (2) social finance: microfinance for decent work, (3) the right to information and consultation in the framework of economic restructuring, and (4) decent work for domestic workers (International Labour Office, 2007b, p. 7). Among these four proposals, decent work for domestic workers was the odd one out as a standard-setting item, given that the other items were only proposed as general discussions. The GB’s tripartite members were asked to discuss which of these proposals should be further developed by the ILO Office and resubmitted to the next session in March 2008. Looking at the discussion, we find that decent work for domestic workers received full support by the Workers’ Group, which stated that it was a ‘real and contemporary issue’ (p. 8), while the Employers’ Group did not take an explicit position on this proposal, but instead expressed its preference for a general discussion on social finance. The government representatives were divided in their preferences, resulting in support for all four proposals. As a consequence, the GB decided to resubmit all four proposals for further discussion during its next session (p. 12).

During the GB’s March 2008 session, the original four proposals were resubmitted for further discussion and two additional issues for general discussion were added to the list of potential agenda items: (5) flexicurity as a tool facilitating adaptation to changes in the globalized economy and (6) youth entrepreneurship transforming jobseekers into job creators (International Labour Office, 2008, pp. 3-10). Decent work for domestic workers again received full support from the Workers’ Group, while the Employers’ Group remained

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65 Standard-setting on domestic work was supported by South Africa, the United Kingdom, Argentina, Brazil, Finland (speaking on behalf of Denmark, Iceland, Norway, and Sweden), Germany, the Russian Federation, the Bolivarian Republic of Venezuela, and Morocco (International Labour Office, 2007b, pp. 7-12). The United States and Canada preferred to deal with this item as a general discussion. The Netherlands and India stated that revising existing standards should be the main priority, rather than creating new standards. Sri Lanka, the Republic of Korea, Mexico, Singapore, France, Greece, Poland, Côte d’Ivoire, the Islamic Republic of Iran, and Malawi did not address decent work for domestic workers, but did prefer other proposals.
hesitant and suggested dealing with this issue as a general discussion, ‘[…] which would allow related subjects, such as migrant workers and child labour, to be raised at the same time.’ (p. 4) From the government side, the proposal on domestic workers received markedly more support than during the previous session of the GB. One member of the ILO Office explains this shift in terms of a successful lobbying campaign from the Workers’ Group and the election of more left-leaning governments in certain states (Interview No. 39). Peru, speaking on behalf of the Group of Latin America and Caribbean States (GRULAC), expressed the support of the entire group for this standard-setting item ‘[…] since they were a group which was highly exposed to abuse and lacked legal protection.’ (p. 5) Given this strong support by the Workers’ Group and a large number of governments, the GB decided to place decent work for domestic workers on the agenda of the 2010 ILC as a standard-setting item.

Once the GB had decided to place decent work for domestic workers on the agenda of the 2010 ILC, the double-discussion procedure on domestic work followed its typical course. First off, the ILO Office drafted an initial report outlining the issue and sent it to the governments and the social partners, along with a questionnaire asking them for feedback on various issues (International Labour Office, 2010b). The replies to this questionnaire (included in (International Labour Office, 2010c)) were then used by the ILO Office to draft a preliminary text of the Convention and the Recommendation, which served as the basis for the first discussion during the 2010 Committee on Domestic Workers (hereinafter referred to as the ‘2010 Committee’) (International Labour Office, 2010d). Based on this first discussion, a new report and questionnaire were drafted by the ILO Office and sent to the governments and the social partners for feedback (International Labour Office, 2011b). The replies to this second questionnaire (included in (International Labour Office, 2011c)) were then used by the ILO Office to draft a second preliminary text of the Convention and the Recommendation, which served as the basis for the second and final discussion during the 2011 Committee on Domestic Workers (hereinafter referred to as the ‘2011 Committee’) (International Labour Office, 2011f). The plenary session of the 2011 ILC subsequently adopted Convention No. 189 and Recommendation No. 201 on Domestic Workers (International Labour Office, 2011e). Compared to the a-typical procedure on maritime labor (cf. Chapter three) and the single-discussion reboot of the work in fishing procedure (cf.

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66 Standard-setting on decent work for domestic workers was supported by Peru (speaking on behalf of GRULAC), South Africa, Australia, Sri Lanka, Spain, the Philippines, Romania, Nigeria, Germany, Greece, Finland, Cuba, Ireland, Cameroon, Barbados, the Bolivarian Republic of Venezuela, Morocco, the Russian Federation, Italy, Pakistan, and Brazil (International Labour Office, 2008, pp. 3-10). The United States and Canada reiterated their preference to deal with this item as a general discussion. The Islamic Republic of Iran stated that revising existing standards should be the main priority, rather than creating new ones. The Netherlands, India, the United Kingdom, the Czech Republic, Malawi, France, China, and the Republic of Korea did not address decent work for domestic workers, but did prefer other proposals.
Chapter four), the standard-setting procedure on domestic work is the most typical procedure among our case studies.

The Domestic Workers Convention and Recommendation were adopted with a broad consensus during the plenary session of the 2011 ILC (International Labour Office, 2011e, pp. 42-52). The final record vote on the Convention shows 396 votes in favor, 16 against, and 63 abstentions. Similarly, the accompanying Recommendation was adopted with 434 votes in favor, 8 against, and 42 abstentions. Most abstentions and votes against the instruments came from employer representatives, along with a small number of governments. On both instruments, the EU Member States predominantly voted in favor of adoption. Only the United Kingdom and the Czech Republic abstained on both votes. While a split vote might be seen as a failure to form a coherent bloc, its importance should not be overstated. Kissack (2010, pp. 34-38) has nuanced the importance the final record vote as a parameter for EU coherence, stating that the real test lies in its representation during the committee discussions. Indeed, a split vote during the final record vote might be the result of strategic voting and free rider behavior by governments looking out for their domestic interests and, as such, does not necessarily signify incoherence during the committee discussions.

Looking beyond the adoption of the instruments, the Domestic Workers Convention entered into force on 5 September 2013, precisely one year after the ILO was notified of the second ratification by the Philippines. Since then, the number of ratifications has gradually continued to grow and, as of July 2014, the Convention has been ratified by 14 states. Among the ratifying states, we find two EU Member States (i.e. Germany and Italy), while all Member States will soon be authorized to do so by a Council Decision (Council of the European Union, 2013). In addition, exemplifying the strengthened interplay between European and international standards and their implementation (Delarue, 2013, p. 135), the Commission in its June 2012 strategy towards the eradication of trafficking in human beings ‘[...] urges the Member States to ratify all relevant international instruments, agreements and legal obligations which will make the work against trafficking in human beings more effective, coordinated and coherent.’ (European Commission, 2012, p. 4) In an accompanying footnote, the Convention on Domestic Workers is mentioned as one of these ‘relevant instruments’.

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5.1.2. The Goal of the Procedure

The goal of the standard-setting procedure on domestic work was to create instruments that would improve the working conditions of domestic workers worldwide, thereby for the first time extending the ILO’s ‘decent work for all’ slogan to include workers that are predominantly found in the informal economy. In an organization wherein the social partners represent traditional employment relations and the focus of most standard-setting procedures has consequently been on regulating formal sectors, the attempt to create standards for a mostly informal sector created a multitude of challenges for the tripartite membership. For example, compared to the strongly developed sectoral representation of the social partners in the maritime sector (cf. Chapter three), both the Employers’ and the Workers’ groups were forced to tread lightly on the question of their legitimacy to represent their respective sides in the domestic work sector. As we will see, the former group used this as an argument against setting standards on domestic work, while the Workers’ Group nevertheless pressed on and was therein supported by more specialized non-governmental organizations (NGO).

While the goal of this procedure is similarly framed as the one of the work in fishing procedure (i.e. extend decent work to an hitherto poorly covered category of workers), it should be stressed that the Convention and Recommendation on Domestic Workers are entirely new instruments, whereas the procedure on work in fishing consolidated existing instruments. Indeed, domestic workers could not draw on existing instruments that regulate the working conditions in their sector and, moreover, are traditionally also excluded from more general legislation on both the national and international level. However, initiatives by the social partners and certain states had started to change this traditional exclusion. In this regard, the ILO Office pointed out that ‘[m]any of these initiatives would benefit from the development of international standards that can be used to improve the legal environment and enable domestic workers to benefit from the full range of protection and rights related to decent work.’ (International Labour Office, 2007c, p. 14)

In addition to the challenge brought by the ILO’s foray into the informal economy, this standard-setting procedure was underlied by several issues that are closely related to the nature of domestic work and added to the political sensitivity of the new instruments: gender, migration, and child labor. While the final Convention broadly defines ‘domestic work’ as ‘[…] work performed in or for a household or households […]’ (International Labour Office, 2011h, p. 4) and furthermore defines a ‘domestic worker’ as ‘[…] any person engaged in domestic work within an employment relationship [but] a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker’ (p. 4), these straightforward definitions conceal the gender, migration, and child labor issues that underlie the nature of domestic work (for more information on these
issues in relation to domestic work, see: Lutz, 2010). Indeed, in its proposal to the GB’s November 2007 session the ILO Office highlighted for the tripartite membership ‘[…] that domestic work is mainly performed by women, that the use of child labour is widespread and that a large part of domestic labour is performed by migrant workers.’ (International Labour Office, 2007c, p. 17) As we will see when tracing the discussions taking place during this standard-setting procedure, these issues created a politically sensitive backdrop for the tripartite members to navigate while setting new standards to regulate this sector and improve the working conditions for domestic workers.

In summary, the standard-setting procedure on domestic work intended to extend decent work to workers in this sector by creating a new Convention and Recommendation. These instruments would create a more supportive legal environment for early national initiatives to improve the working conditions in this hitherto under-regulated sector. However, the predominantly informal nature of this sector created a challenge for the tripartite members, while the underlying gender, migration, and child labor issues further added to the political sensitivity of this standard-setting procedure.

5.1.3. The Tripartite Stage

Turning to the tripartite stage whereupon the standard-setting procedure on domestic work took place, we will now outline the positions of the tripartite members relative toward one another during the discussions. Their opening and closing statements during the committee and plenary discussions provide us with an overview of how they positioned themselves vis-à-vis each other while debating the provisions of these instruments. As we will see when tracing the double-discussion procedure on the key issues, the relative positions of the governments and the social partners toward one another are subject to variation depending the specific issue under discussion. However, this overview of the tripartite stage provides the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

First off, the agenda-setting discussion that took place during the November 2007 and March 2008 sessions of the GB (cf. supra), provides a first indication of the positions of the states and the social partners on the tripartite stage. Specifically, these sessions indicated a divided tripartite stage, whereupon the Workers’ Group and a large majority of states were in favor of placing domestic work on the agenda of the 2010 ILC as a standard-setting item, while the Employers’ Group and a minority of states were opposed. However, these sessions only provide a preliminary indication, given that the GB’s sessions are geared toward agenda-setting, rather than standard-setting. In order to outline the tripartite stage whereupon the actual standard-setting took place, we need to turn to the committee discussions of the double-discussion procedure.
The General Discussion at the start of the 2010 Committee confirms the preliminary indications of a divided tripartite stage we first detected during the GB sessions. Discussing the form of the instruments, the Employers’ Group opened the debate by stating that ‘[…] regulation might not always be the key to mitigating poor working conditions and abuse faced by domestic workers.’ (International Labour Office, 2010d, pp. 4-5) According to this group, the unique and complex nature of ‘domestic workers’ precluded an overarching and unbending standard. As a result, the Employers’ Group was of the opinion that the committee should carefully consider its definition of this type of workers and ensure sufficient flexibility to allow for broad ratification and implementation, thereby hinting toward a recommendation without a convention. Conversely, the Workers’ Group stressed the opportunity before the committee to treat ‘[…] “decent work for all” [as] not just a slogan but a truly inclusive agenda, by ensuring that decent work applied to all domestic workers.’ (pp. 5-6) The group expressed its strong support for a convention supplemented by a recommendation and, moreover, explicitly took aim at the arguments of the Employer’s Group:

<table>
<thead>
<tr>
<th>Employers’ Group</th>
<th>Workers’ Group</th>
</tr>
</thead>
<tbody>
<tr>
<td>Binding instrument causes rigid labor market</td>
<td>No! Promotes robust and efficient labor market</td>
</tr>
<tr>
<td>Binding instrument leads to loss of domestic jobs</td>
<td>No! Leads to growth, job creation and poverty reduction</td>
</tr>
<tr>
<td>Difficult standard setting due to social, economic and cultural differences</td>
<td>Always the case, but ILO Members have affirmed that ILO standards are universal in the 2008 Declaration</td>
</tr>
<tr>
<td>Convention would be difficult to apply</td>
<td>Not a valid reason to deny Domestic Workers the protection they need</td>
</tr>
<tr>
<td>Domestic Workers are covered by the CLS</td>
<td>Specific standards already exist for other groups covered by the CLS</td>
</tr>
</tbody>
</table>

Table 5.1 – The counter-arguments in favor of a Convention, introduced by the Workers’ Group in response to the concerns of the Employer’s Group

As a result, the tripartite stage during the 2010 Committee was heavily divided by the social partners. As the discussion focused on the form of the instruments, the Employer’s Group (in favor of a non-binding recommendation) and the Workers’ Group (in favor of a binding Convention supplemented by a recommendation) took opposite positions on the outer ends of the stage. While representative involved in the discussion repeatedly stress that all sides agreed that domestic workers lacked sufficient protection in national law and that international regulation could help amend this situation by creating a framework for national initiatives (Interview No. 34, 37, and 38), the appropriate nature of this regulation (i.e.
Domestic Work

binding or non-binding) gave rise to diametrically opposite positions between the social partners. Indeed, the debate on the form of the instruments was so divisive that more specific provisions could only be tackled and completed the next year, after the procedure had moved beyond this divisive issue (Interview No. 34).

The government members involved in the standard-setting procedure navigated their positions in between the outer ends of the stage that were defined by the social partners. Following the opening statements of the Employers’ and the Workers’ groups, the Spanish EU Presidency, speaking on behalf of the EU Member States, considered the possibility of a convention supplemented by a recommendation, in order to provide adequate protection for domestic workers (International Labour Office, 2010d, p. 7). However, Spain also stressed that a general and flexible instrument would be preferable with a view to implementation, thereby placing the Union firmly on the middle ground between the positions of the Employers’ and Workers’ groups. It was therein supported by Norway.

Regarding the standard-setting procedure on domestic work, it is good to note that some of the Brussels-based institutions that are less closely involved in the proceedings in Geneva prepared and adopted positions on the procedure. For example, in May 2010, one month before the first committee discussion, the European Economic and Social Committee (EESC) published an opinion on the professionalization of domestic work (European Economic and Social Committee, 2010). In addition, in May 2011, one month before the second committee discussion, the Parliament adopted a resolution supporting the adoption of a convention and recommendation on domestic work (European Parliament, 2011b). While neither institutions are involved with the day-to-day discussions in Geneva, the adoption of the Parliament’s resolution was accompanied by a plenary debate and questioning of László Andor (Commissioner for the Directorate-General for Employment, Social Affairs, and Equal Opportunities (DG EMPL)) on the role of the Commission in the procedure (European Parliament, 2011a). In his reply, Andor stressed the Commission’s facilitating role in the internal coordination process between the EU Member States and

68 In this regard, it is interesting to note that our expert interviews with several representatives involved in the procedure are laced with strong language (e.g. ‘we managed to break the employers,’ ‘the workers were hell-bent on a convention’, ‘the debate was emotionally very charged’, etc.), which is perhaps indicative of just how heavily divided the tripartite stage was during the first committee discussion (Interview No. 37, 38, and 39).

69 During the 2010 Committee, the 27 EU Member States are listed to include: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (International Labour Office, 2010d, pp. 6-7). In its opening statement during the General Discussion at the beginning of the Committee, the Spanish EU Presidency additionally also spoke on behalf of: two Candidate Countries (i.e. Croatia and the former Yugoslav Republic of Macedonia), four Potential Candidate Countries (i.e. Albania, Bosnia and Herzegovina, Montenegro, and Serbia), Armenia, the Republic of Moldova, and Ukraine.
pointed out the relevance of the Convention and Recommendation for parts of Europe 2020's employment strategy (i.e. the fight against informal work), but also downplayed the Commission’s potential role as a legislator. As such, the Commission went into the second and final committee discussion with the intention to facilitate the coordination process between the EU Member States and safeguard the *acquis communautaire*, i.e. avoid having to introduce changes to European legislation in order for the Member States to be able to ratify the Convention.

Returning to the General Discussion of the 2010 Committee, we find that, similar to the EU Member States, most governments placed themselves on this middle ground between the social partners and, moreover, most of them also expressed their position as part of a UN regional group (International Labour Office, 2010d, pp. 7-11). The Bolivarian Republic of Venezuela, speaking on behalf of the GRULAC, South Africa, speaking on behalf of the Africa Group, Brazil, and the United States all leaned toward a convention supplemented by a recommendation in their interventions, while Australia, speaking on behalf of the Asia-Pacific Group (ASPAG), the United Kingdom, speaking on behalf of the Industrialized Market Economy Countries (IMEC), and Kuwait, speaking on behalf of the Gulf

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70 During the 2010 Committee, the 32 GRULAC-members are listed to include: Antigua and Barbuda, Argentina, Bahamas, Barbados, Belize, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominica, Domenican Republic, Ecuador, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, and the Bolivarian Republic of Venezuela.

71 During the 2010 Committee, the 53 Africa Group-members are listed to include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, the Central African Republic, Chad, Comoros, Congo, Côte d'Ivoire, the Democratic Republic of Congo, Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, the Libyan Arab Republic, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, the United Republic of Tanzania, Togo, Tunisia, Uganda, Zambia, and Zimbabwe.

72 During the 2010 Committee, the 44 ASPAG-members are listed to include: Afghanistan, Australia, Bahrain, Bangladesh, Brunei Darussalam, Cambodia, China, Fiji, India, Indonesia, the Islamic Republic of Iran, Iraq, Japan, Jordan, Kiribati, the Republic of Korea, Kuwait, the Lao People's Democratic Republic, Lebanon, Malaysia, Maldives, the Marshall Islands, Mongolia, Myanmar, Nepal, New Zealand, Oman, Pakistan, Papua New Guinea, the Philippines, Qatar, Samoa, Saudi Arabia, Singapore, the Solomon Islands, Sri Lanka, the Syrian Arab Republic, Thailand, Timor-Leste, Tuvalu, the United Arab Emirates, Vanuatu, Viet Nam, and Yemen.

73 During the 2010 Committee, the 37 IMEC-members are listed to include: Australia, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.
Domestic Work

Cooperation Council (GCC),\(^{74}\) leaned toward a recommendation by more vaguely supporting an instrument capable of being implemented. Further away from the middle ground, Canada was most explicitly critical of a convention and took sides with the Employers’ Group by supporting only a recommendation.

As the governments mostly took up the middle ground between the positions of the Employer’s and the Workers’ groups on the outer ends of the tripartite stage, the social partners could both claim support for their position at the end of the General Discussion. The Employers’ Group noted the repeated calls by governments for sufficient flexibility and added that ‘[…] a recommendation [would] be the most appropriate instrument to achieve this goal […]’ (pp. 18-19), while the Workers’ Group countered by stating that the majority of governments had supported the adoption of a binding convention. However, when we trace the double-discussion procedure on the form of the instrument (cf. infra), we will see that a recorded vote on this issue revealed that a large majority of the governments was in favor of a convention supplemented by a recommendation.

Following the outcome of this vote and the first committee discussion subsequently tackling the provisions on a convention supplemented by a recommendation, the Employer’s Group continued to criticize the course and direction of the standard-setting procedure on domestic work. We will trace this in more detail when focusing on the key issues of the procedure, but the continued opposition of the Employer’s Group can be read from the ILC’s Plenary Discussion on the final report of the 2010 Committee. During this discussion, Mr. Kamran Rahman (Employer Vice-Chairperson, Bangladesh) voiced his dissatisfaction with the provisional outcomes, suggesting that his group was excluded from the debates, while NGO’s in his view further disturbed the tripartite stage (International Labour Office, 2010e, pp. 34-35). Other national employer representatives voiced similar discontent with the goings-on during the 2010 Committee, with Mr. John Kloosterman (Employer representative, the United States) explicitly stating that: ‘[…] the process in our Committee broke down this year, and I hope we can fix it for next year’s discussion. [It] became a four-part discussion, involving Workers, Governments, Employers and NGOs. It is also optimistic to refer to much of the process in our Committee as a discussion.’ (p. 41) In contrast, Ms. Halimah Yacob (Worker Vice-Chairperson, Singapore) intervened on behalf of the Workers’ Group and was supportive of the provisional results, noting that strong standards and flexibility were not incompatible in her group’s view (p. 37).

The General Discussion at the start of the 2011 Committee reveals a tripartite stage that continued to be divided between the outer positions of the social partners, although the

\(^{74}\) During the 2010 Committee, the seven GCC-members are listed to include: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, and Yemen (International Labour Office, 2010d, p. 11).
Employers’ Group had been forced to let go of its opposition to a binding convention and, as a result, signaled their willingness to come to a consensus during the second committee discussion. Notably, the Employer’s Group stated that ‘[…] in 2010 his group had favoured a stand-alone recommendation in preference to a convention, with or without a recommendation. That remained the preference of the Employers’ group and employers’ organizations. […] However, they] would acknowledge and respect the decision of the Committee’s majority as to the form of the instrument. […] The goal would be to enhance the prospects of wide ratification.’ (International Labour Office, 2011f, p. 3) At any rate, during the Plenary Discussion Reporter Ms. Maria Luisa Escorl De Moraes (Government representative, Brazil) noted that the 2011 Committee had agreed not to reopen the discussion on the form of the instruments and adhere to the agreement that had been reached during the previous year (International Labour Office, 2011g, p. 12).

Following the opening statements of the social partners, the Hungarian EU Presidency, speaking on behalf of the EU Member States, reiterated their position from the previous year and again took the middle ground between the Employers’ and Workers’ Group (International Labour Office, 2011f, p. 4). It was therein explicitly supported by Switzerland. Moreover, France, speaking on behalf of IMEC, Argentina, speaking on behalf of GRULAC, South Africa, speaking on behalf of the Africa Group, the United Arab Emirates, speaking on behalf of GCC, Brazil, and the United States also expressed similar

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75 During the 2011 Committee, the 25 EU Member States are listed to include: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (International Labour Office, 2011f, p. 4).

76 During the 2011 Committee, the 34 IMEC-members are listed to include: Australia, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, the Republic of Korea, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States (International Labour Office, 2011f, p. 4).

77 During the 2011 Committee, the 24 GRULAC-members are listed to include: Argentina, Barbados, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, the Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Suriname, Trinidad and Tobago, Uruguay, and the Bolivarian Republic of Venezuela (International Labour Office, 2011f, p. 5).

78 During the 2011 Committee, the 41 Africa Group-members are listed to include: Algeria, angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, the Central African Republic, Chad, Congo, the Democratic Republic of the Congo, Côte d'Ivoire, Egypt, Eritrea, Ethiopia, Gabon, Ghana, Guinea, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, South Africa, Sudan, Swaziland, the United Republic of Tanzania, Togo, Tunisia, Zambia, and Zimbabwe (International Labour Office, 2011f, p. 5).

79 During the 2011 Committee, the six GCC-members are listed to include: Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (International Labour Office, 2011f, p. 6).
support for a strong convention and recommendation, while maintaining sufficient flexibility to allow for broad ratification (pp. 4-9). Notably, the position expressed by IMEC showed a significant, almost identical overlap with the one expressed on behalf of the EU Member States, thereby highlighting their shared membership. In addition, Australia, speaking on behalf of ASPAG,\(^\text{80}\) retained its vague position of the previous year, while Canada remained critical of the proposed instruments. During the closing statements, Canada would state that the ‘[…] technical requirements of the proposed convention needed to be considered and could potentially make it difficult for [Canada] to ratify, but [it] fully and strongly supported its principles.’ (p. 119)

Following the 2011 Committee, the final outcome of the committee discussions was submitted to the ILC’s Plenary Discussion to be voted on (International Labour Office, 2011g, pp. 12-23). The closing statements during this discussion revealed that the tripartite members had managed to come to a consensus during the second year, thereby uniting the tripartite stage over the course of the 2011 Committee. Nevertheless, several representatives expressed concern over the chances of the Convention to be ratified after adoption. The Employers’ Group noted an improvement of the tripartite proceedings during the second committee discussion, although they retained their doubts on the final outcome of the procedure. For example, Mr. John Kloosterman (Employer representative, the United States) stated his satisfaction that the tripartite system had recovered from the breakdown he himself had pointed out during the previous year, although he also feared that the committee had failed to reach an outcome that governments would be able to ratify (p. 18). Similarly, Paul MacKay (Employer Vice-Chairperson, New Zealand) stressed the pragmatism and realism that he thought the Employers’ Group had shown throughout the second committee discussion, specifically recalling the provisions on occupational safety and health, and employment agencies as difficult issues that were resolved by working together (pp. 13-15).

Speaking on behalf of the Worker Vice-Chairperson, Toni Moore (Worker representative, Barbados) expressed great satisfaction with the final text of the Convention and Recommendation, which she described as ‘[…] robust, practical and human and they hold tremendous potential for bringing domestic workers out of the darkness.’ (pp. 15-16)

Focusing on the final interventions by the EU Member States, we should point out an interesting discrepancy between the positions expressed by Marc Boisnel (Government representative, France) and Annette Warrick (Government representative, the United Kingdom) on behalf of their respective governments. While the former strongly supported

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\(^{80}\) During the 2011 Committee, the 32 ASPAG-members are listed to include: Afghanistan, Australia, Bahrain, Bangladesh, Brunei Darussalam, Cambodia, China, India, Indonesia, the Islamic Republic of Iran, Iraq, Japan, the Republic of Korea, Kuwait, Lebanon, Malaysia, Maldives, Mongolia, Nepal, New Zealand, Oman, Pakistan, Papua New Guinea, the Philippines, Qatar, Saudi Arabia, Singapore, Sri Lanka, Thailand, the United Arab Emirates, Viet Nam, and Yemen (International Labour Office, 2011f, p. 5).
the final instruments, Warrick stated that ‘[…] the United Kingdom will not be able to ratify this Convention in the foreseeable future and, on that basis, cannot vote in favour of its adoption.’ (pp. 22-23) As such, the United Kingdom took an antagonistic position compared to those of most other EU Member States, which is reflected in their abstention (along with the Czech Republic) during the final vote (cf. supra).

In summary, the standard-setting procedure on domestic work took place on a divided tripartite stage, whereupon the social partners took opposite positions on the outer ends of the stage and governments oriented their positions (quite often represented through UN regional groups) on the middle ground. The division between the Employers’ and Workers’ groups originated from the former’s opposition to a binding convention during the 2010 Committee, which was ultimately settled with a roll call vote in favor of a convention supplemented by a recommendation. During the 2011 Committee, the discussion moved on to specific provisions and the tripartite members managed to come to a consensus, thereby uniting the tripartite stage. Nevertheless, the Employer’s Group would continue to express its concerns on the final outcome of the procedure and the chances of the final Convention to be ratified after adoption. As we will see when tracing the discussion on the key issues of this procedure, the relative positions of the governments and the social partners toward one another are subject to variation depending the specific issue under discussion. However, with this overview of the tripartite stage we have provided an insight into the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

5.1.4. The Key Issues

The relative positions of the governments and the social partners on the tripartite stage and the formal and informal rules and procedures of the ILO’s standard-setting procedure together form the causal complex with which external EU coherence interacts during the standard-setting procedure on domestic workers. Against this background, we select a number of key issues that, taken together, provide us with a representative cross-section of the standard-setting procedure on domestic work. Based on their central importance for the adoption of the final instruments, the discussions on these issues provide us with an insight into the broader dynamic between the tripartite members and, moreover, allows us to explore the causal potential of external EU coherence in relation to its effectiveness within the causal complex of this standard-setting procedure.
<table>
<thead>
<tr>
<th>2010 Committee&lt;sup&gt;81&lt;/sup&gt;</th>
<th>2011 Committee&lt;sup&gt;82&lt;/sup&gt;</th>
<th>Final instruments&lt;sup&gt;83&lt;/sup&gt;</th>
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<td>Point 16</td>
<td>Art. 7</td>
<td>Art. 8</td>
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<td>Art. 13</td>
<td>Art. 13</td>
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<td>7</td>
<td>Point 15</td>
<td>Art. 14</td>
<td>Art. 14</td>
</tr>
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<td>8</td>
<td>Point 19</td>
<td>Art. 17</td>
<td>Art. 15</td>
</tr>
<tr>
<td>9</td>
<td>Point 17, 18</td>
<td>Art. 15, 16</td>
<td>Art. 16, 17</td>
</tr>
</tbody>
</table>

Table 5.2 – The key issues of the standard-setting procedure on the Domestic Workers Convention (No. 189) and Recommendation (No. 201), 2011

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<sup>81</sup> Numbering based on (International Labour Office, 2010c, pp. 417-423).

<sup>82</sup> Numbering based on (International Labour Office, 2011d, pp. 6-31).

<sup>83</sup> Numbering based on (International Labour Office, 2011h).
As a consequence of the initial resistance of the Employers’ Group against a Convention on domestic work, the first discussion during the 2010 Committee was dominated by an exchange of views on (1) the form of the final instruments, i.e. either a convention supplemented by a recommendation or solely the latter (International Labour Office, 2010d). This issue served as the central focal point around which the governments and the social partners took their positions on the tripartite stage during the first committee discussion. Moreover, given its divisive nature and the inability of the tripartite members to come to a consensus, a formal vote was ultimately needed to settle the issue. In addition to the form of the instrument, the Reporter of the 2010 Committee, Ms. Petra Herzfeld Olsson (Government representative, Sweden), highlighted (5) working time, (6) occupational safety and health, (7) social security protection, and (9) enforcement mechanisms as other key issues that ‘[…] reflected the different views among the delegates on where to strike the right balance and achieve both a meaningful and ratifiable instrument.’ (International Labour Office, 2010e, p. 34)

Compared to the first discussion, the key issues that came to the forefront in the following year were more tangible. As the discussion on the form of the instrument had been settled at the end of the first discussion, the attention of the tripartite members shifted to the issues that had remained unresolved during the first committee discussion. According to the representative of the Secretary-General who opened the 2011 Committee, these unresolved issues included: (5) working time, (6) occupational safety and health, (8) employment agencies, linguistic issues, and a detailed address of the Recommendation (International Labour Office, 2011f, p. 3). The latter two issues were discussed in light of other issues throughout the committee discussions, rather than in one specific place. After the second committee discussion had ended, the Reporter of the 2011 Committee, Ms. Maria Luisa Escorel De Moraes (Government representative, Brazil), reported that a ‘lively debate’ that had taken place on (5) working time, (6) occupational safety and health, and (9) enforcement mechanisms (International Labour Office, 2011g, p. 13). In addition, the Hungarian EU Presidency, speaking on behalf of the EU Member States, signaled a similar set of unresolved issues: (2) definitions and scope of application, (3) the right to be informed on the terms and conditions of employment, (5) working time, (6) occupational safety and health, and (8) employment agencies (International Labour Office, 2011f, p. 4). This set of unresolved issues was underscored by the French government, speaking on behalf of the IMEC (pp. 4-5). Finally, (4) written employment contracts prior to crossing national borders is included based on its central importance for the Union.

Taken together, these issues provide a representative cross-section of the standard-setting procedure on domestic work. Based on their central importance for the adoption of the final instruments, the discussions on these issues provide us with an insight into the broader
dynamic between the tripartite members and, moreover, allows us to explore the causal potential of external EU coherence in relation to its effectiveness within the causal complex of this standard-setting procedure.

5.2. A Bird’s-Eye View of EU Representation

Before turning to a qualitative process-tracing of the causal relation between EU coherence and effectiveness in the standard-setting procedure on domestic work, we first take a bird’s-eye view of the Union’s representation. Based on a quantitative overview of the interventions by EU Member States as they are reported in the record of proceedings of the 2010 and 2011 committee discussions, this bird’s-eye view serves to provide us with a first impression of how the Union and its Member States were represented during this procedure and, moreover, eventually allows us to compare its evolution across the case studies included in this dissertation. Importantly, while this quantitative overview can give some preliminary indications, it does not allow us to detect whether the independent interventions of EU Member States were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other Member States.

5.2.1. The 2010 Committee on Domestic Workers

During the 2010 Committee, the EU was represented by Spain as the then-holder of the EU Presidency and several of its other Member States. When representing the Union, these states formally spoke either on behalf of the ‘government members of Member States of the European Union’ or on behalf of the ‘EU Member States’ (International Labour Office, 2010d). The first phrasing was used once during the General Discussion at the beginning of the 2010 Committee, where it was used to clarify that this intervention was made on behalf of the governments of the EU Member States, but not the worker and employer representatives of these states (pp. 6-7). The second phrasing was used during the remainder of the committee discussion, wherein the Spanish Presidency and other Member States represented the Union by simply speaking on behalf of ‘the EU Member States’. In addition, during the first discussion five interventions by a ‘representative of the EU’ are mentioned in the record of proceedings, which refers to a representative of the Commission (pp. 79-82). Specifically, the Commission intervened in order to explain the finer points of a REIO and why it was necessary for EU Member States to include a clause on this concept in the Convention and Recommendation on Domestic Workers.

84 During the 2010 Committee, interventions on behalf of the Union were made on behalf of all 27 EU Member States: Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, and the United Kingdom (International Labour Office, 2010d, p. 6). Interestingly, while the Latvian government is included among its peers, the list of participants to the 2010 Committee does not include a representative of this state (International Labour Office, 2010a, pp. 8-14).
Among the EU Member States formally representing the Union during the 2010 Committee, Spain was the primus inter pares as the then-holder of the EU Presidency (44 out of a total of 80 interventions). During the General Discussion at the beginning of the 2010 Committee, Spain delivered the opening statement on behalf of the EU Member States and, on this occasion, also spoke on behalf of two Candidate Countries (i.e. Croatia and the former Yugoslav Republic of Macedonia), four Potential Candidate Countries (i.e. Albania, Bosnia and Herzegovina, Montenegro, and Serbia), and Armenia, the Republic of Moldova, and Ukraine (pp. 6-7). Throughout the first discussion during the 2010 Committee, Spain was by far the most visible representative of the Union with 44 interventions (cf. Table 5.3 infra). Indeed, other EU Member States that formally spoke on behalf of the Union followed distantly with regards to their number of interventions: Portugal (nine), Sweden (seven)\textsuperscript{85}, the United Kingdom (seven), the Netherlands (six), Austria (four), Germany (one), Greece (one), and Ireland (one). In addition, Norway intervened once on behalf of the EU Member States and the EU Member States intervened two times without the record of proceedings mentioning a specific representative.

Compared to the number of independent interventions (26) and interventions in other configurations (8) (cf. Table 5.3 infra), this quantitative overview indicates that the representation of the Member States rested squarely on EU representation. While the former type of interventions refers to all interventions that are reported as being made by the EU Member States on their own behalf, the latter type of interventions refers to EU Member States speaking on behalf of other EU and/or non-EU Member States in configurations other than the Union. During the 2010 Committee, this mostly took the form of small groups of states who spoke on behalf of each other for a limited number of times.\textsuperscript{86} However, the record of proceedings also reveals that the United Kingdom twice spoke on behalf of IMEC, because there existed a considerable overlap between the latter group and the Union in terms of membership and substantive position.\textsuperscript{87}

\textsuperscript{85} It should be noted that Sweden intervened on behalf of the EU Member States six times during the 2010 Committee. The additional intervention counted in Table 5.3 comes from Sweden acting as the Union’s representative to a Working Party (International Labour Office, 2010d, p. 30).

\textsuperscript{86} During the 2010 Committee, Ireland spoke on behalf of the Czech Republic, Finland, the Netherlands, and Sweden; the Netherlands spoke on behalf of Sweden; the Netherlands spoke on behalf of Sweden and Norway; Portugal spoke on behalf of New Zealand, the Netherlands, Norway, Slovakia, and Spain; Sweden spoke on behalf of Spain and Switzerland; and Sweden spoke on behalf of the Czech Republic, Finland, Ireland, and the Netherlands (International Labour Office, 2010d).

\textsuperscript{87} During the 2010 Committee, IMEC included: Australia, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, the Republic of Korea, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom,
## Table 5.3 – Interventions by EU Member States during the 2010 Committee on Domestic Workers

<table>
<thead>
<tr>
<th>EU Member State</th>
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<th>Other configurations</th>
<th>European Union</th>
<th>Total</th>
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</tr>
<tr>
<td><strong>Spain (Rotating President)</strong></td>
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<td><strong>48</strong></td>
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<td>7</td>
<td>13</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>2</td>
<td>2 (on behalf of IMEC)</td>
<td>7</td>
<td>11</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>26</strong></td>
<td><strong>8</strong></td>
<td><strong>80</strong></td>
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5.2.2. The 2011 Committee on Domestic Workers

During the 2011 Committee, the EU was represented by Hungary as the then-holder of the EU Presidency and several of its other Member States. When representing the Union, these states formally spoke either on behalf of ‘government members of Member States of the European Union registered in the Committee’ or on behalf of ‘the EU Member States’ and the United States of America (International Labour Office, 2010d, p. 11). With the exception of Bulgaria, this list includes all EU Member States and eleven non-EU Member States.
The first phrasing was used once during the General Discussion at the beginning of the 2011 Committee, where it was used to clarify that this intervention was made on behalf of the EU Member States present in the 2011 Committee, but not those that were absent or the worker and employer representatives of these states (p. 4). The second phrasing was used during the remainder of the committee discussion, wherein the Hungarian Presidency and other Member States represented the Union by simply speaking on behalf of ‘the EU Member States’.

Among the EU Member States formally representing the Union during the 2011 Committee, Hungary took over as the primus inter pares as the then-holder of the rotating Presidency (54 out of a total of 95 interventions). During the General Discussion at the beginning of the 2011 Committee, Hungary delivered the opening statement on behalf of the EU Member States (International Labour Office, 2011f, p. 4). However, different from the previous year, this opening statement was delivered only on behalf of the Union and not on behalf of any additional states. Throughout the 2011 Committee, Hungary was by far the most visible representative of the Union with 54 interventions (cf. Table 5.4 infra). Indeed, other EU Member States that formally spoke on behalf of the Union followed distantly with regards to their number of interventions: France (eleven) the United Kingdom (ten), the Netherlands (eight), Germany (four), Spain (four), Denmark (three), and Portugal (one).

Compared to the number of independent interventions (68) and interventions in other configurations (14) (cf. Table 5.4 infra), this quantitative overview indicates that the representation of the Member States rested squarely on EU representation. While the former type of interventions refers to all interventions that are reported as being made by the EU Member States on their own behalf, the latter type of interventions refers to EU Member States speaking on behalf of other EU and/or non-EU Member States in configurations other than the Union. During the 2011 Committee, this took the form of one small and one larger group of states who spoke on behalf of each other for a limited number of times. However, the record of proceedings also reveals that several EU Member States (including

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88 During the 2011 Committee, interventions on behalf of the Union were made on behalf of 25 EU Member States: Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom (International Labour Office, 2011f, p. 4). Bulgaria and Latvia are absent from this list, which is explained by their absence from the list of representatives of the 2011 Committee (International Labour Office, 2011a, pp. 7-13). However, it should be noted that this list of representatives also does not include Ireland, while this state is nevertheless included in the list of EU Member States.

89 During the 2011 Committee, France spoke on behalf of all 27 EU Member States (listed separately and including Bulgaria and Latvia), Iceland, Japan, the Republic of Korea, New Zealand, San Marino, Switzerland, Turkey, and the United States of America; and the Netherlands spoke on behalf of the United Kingdom (International Labour Office, 2011f).
the Hungarian EU Presidency) spoke on behalf of IMEC numerous times (12), because there existed a considerable overlap between the latter group and the Union in terms of membership and substantive position. As a result, EU Member States would regularly speak on behalf of IMEC and vice-versa the United States of America on one occasion during the 2011 Committee spoke on behalf of the EU Member States along with IMEC (International Labour Office, 2011f, p. 61).

<table>
<thead>
<tr>
<th>EU Member State</th>
<th>Independent</th>
<th>Other configuration</th>
<th>European Union</th>
<th>Total</th>
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<td>Hungary (Rotating President)</td>
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<td>4 (on behalf of IMEC)</td>
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<td>Slovakia</td>
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</tbody>
</table>

90 During the 2011 Committee, IMEC included: Australia, Austria, Belgium, Canada, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Japan, the Republic of Korea, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States (International Labour Office, 2011f, p. 4). With the exception of Bulgaria, Ireland and Latvia (explained by their absence from the 2011 Committee, see: (International Labour Office, 2011a, pp. 7-13)), this includes all EU Member States and ten non-EU Member States.
Table 5.4 – Interventions by EU Member States during the 2011 Committee on Domestic Workers

<table>
<thead>
<tr>
<th></th>
<th>2010 Committee on Domestic Workers</th>
<th>2011 Committee on Domestic Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Slovenia</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Spain</td>
<td>4</td>
<td>0</td>
</tr>
<tr>
<td>Sweden</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>United Kingdom</td>
<td>21</td>
<td>10</td>
</tr>
<tr>
<td>Total</td>
<td>68</td>
<td>95</td>
</tr>
</tbody>
</table>

Compared to our bird’s-eye views of EU representation during the standard-setting procedures on maritime labor and work in fishing, the larger group of EU Member States speaking on behalf of the Union draws the attention. While Spain and Hungary continue to function as *primum inter pares* in their respective years as Rotating Presidency holder, a number of other Member States also formally spoke on behalf of the Union for a considerable number of times. Borrowing Delreux’s (2011, pp. 172-174) distinction between the Union’s voice (i.e. its common position) and its mouth (i.e. how this position is represented) for a moment, Table 5.5 (cf. infra) reveals that the Union represented its one voice through multiple mouths during the 2010 and 2011 committee discussions. Moreover, the representatives of the Union were not limited to a set of clearly defined agents (i.e. the Rotating Presidency holders and the Commission), but also and predominantly included principals (i.e. EU and non-EU Member States) speaking on behalf of the Union. To explain this larger group of representatives, a respondent closely involved with the Union’s internal coordination procedures has clarified that there exists an informal ‘division of labor’ for EU representation in ILO standard-setting, wherein the Member States take the lead on specific issues based on their expertise (Interview No. five). Interestingly, this is similar (if not identical) to the informal division of labor that was highlighted by Delreux and Karoline Van den Brande in the Union’s external environmental policy-making (Delreux & Van den Brande, 2012). In addition, it should be noted that post-Lisbon the Rotating EU Presidency is formally no longer involved in the Union’s external representation (cf. Chapter 1.3.2.). While our quantitative overview finds that this legal adjustment is not reflected in the practice of EU representation in ILO standard-setting, it is apparently an element that helps give this division of labor a firmer footing within the Union’s foreign policy system (Interview No. 15 and 16).
<table>
<thead>
<tr>
<th>Country</th>
<th>EU Representation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Greece</td>
<td>1</td>
</tr>
<tr>
<td>Portugal</td>
<td>1</td>
</tr>
<tr>
<td>Ireland</td>
<td>1</td>
</tr>
<tr>
<td>United States (non-EU Member State)</td>
<td>1</td>
</tr>
<tr>
<td>Representative of the EU (i.e. the Commission)</td>
<td>5</td>
</tr>
<tr>
<td>Norway (non-EU Member State)</td>
<td>1</td>
</tr>
</tbody>
</table>

Table 5.5 – EU representation during the 2010 and 2011 committee discussions

In conclusion, this bird’s-eye view has given us a first impression of the EU’s representation during the standard-setting procedure on domestic work. During the 2010 and 2011 committee discussions, the interventions by the Union’s Member States were focused squarely on EU representation. This was predominantly handled by Spain and Hungary as the respective EU Presidency holders, although a considerable number of these interventions were done by a larger group of EU Member States. Indeed, this quantitative overview sees a division of labor among the Member States take hold when compared to previous standard-setting procedures. Meanwhile, independent interventions and interventions in other configurations figured much less prominently in the record of proceedings. Nevertheless, it should be noted that a close connection is apparent between the Union and IMEC, who shared a considerable number of their members and representatives. Finally, it should be reiterated that this bird’s-eye view only gives us a preliminary impression of EU representation. While this quantitative overview can give some preliminary indications, it does not allow us to detect whether the independent interventions were (in)coherent with the Union’s common positions or (in)consistent with independent interventions by other EU Member States. In order to detect the nature of these interventions, we now turn to a qualitative analysis of the EU’s representation on the key issues in this standard-setting procedure.

5.3. The Causal Potential of EU Coherence in Relation to its Effectiveness

5.3.1. The Form of the Instruments

As a consequence of the strong resistance of the Employers’ Group against a Convention on domestic work, the first discussion during the 2010 Committee was dominated by an exchange of views on the form of the final instruments, i.e. either a convention supplemented by a recommendation or solely the latter. This issue served as the central focal point around which the governments and the social partners took their positions on the tripartite stage during the first committee discussion. Moreover, given its divisive nature and the inability of the tripartite members to come to a consensus, a formal vote was ultimately needed to settle the issue. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.
The replies of the tripartite members to the ILO Office’s 2010 questionnaire provide us with an indication of the positions of the governments and the social partners before the start of the double-discussion procedure (cf. Table 5.6 infra) (International Labour Office, 2010c, pp. 10-18). Compared to their 27 votes for a recommendation, the governments were slightly in favor of a convention supplemented by a recommendation (35). This slight preference becomes more pronounced when we include the governmental votes for solely a convention (6). National worker representatives were predominantly in favor of a convention supplemented by a recommendation (115), while national employer representatives indicated a preference for solely a recommendation (15). Concerning the latter, the IOE argued that

‘[a]t this stage, discussions should aim at a Recommendation at most, which is the instrument best suited to identify and promote innovative practices, which should be a key focus of any instrument rather than setting fundamental minimum standards of universal application.’ (p. 14)

In their replies, the EU Member States were slightly in favor of a convention supplemented by a recommendation, placing them in line with the global trend among government, while Cyprus, the Czech Republic, Greece, Lithuania, and the Netherlands preferred a recommendation. However, it should be noted that the replies to the 2010 questionnaire only indicate the national position of the EU Member States at the start of the procedure, before the European coordination process is started (Kissack, 2011, p. 653). As such, it stands apart from the eventual EU representation and the Union’s external coherence during the committee discussions.

<table>
<thead>
<tr>
<th></th>
<th>Governments</th>
<th>Employers</th>
<th>Workers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Convention</td>
<td>6 (1 EU MS)</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>Recommendation</td>
<td>27 (5 EU MS)</td>
<td>15</td>
<td>5</td>
</tr>
<tr>
<td>Convention supplemented by a</td>
<td>35 (8 EU MS)</td>
<td>2</td>
<td>115</td>
</tr>
<tr>
<td>Recommendation</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Convention comprising binding</td>
<td>8 (3 EU MS)</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>and non-binding provisions</td>
<td></td>
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</tbody>
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Table 5.6 – Replies by the governments and the social partners to the 2010 questionnaire when asked about the form of the instruments

During the 2010 Committee, the form of the instruments was discussed during the General Discussion at the start of the Committee and again under the second point, which simply
Domestic Work

These standards should take the form of a Convention supplemented by a Recommendation.’ (International Labour Office, 2010c, p. 417)

During the General Discussion, the debate largely revolved around the form of the instruments and illustrated that the social partners took their positions on a heavily divided tripartite stage (International Labour Office, 2010d, pp. 2-19). The Employer Vice-Chairperson opened the debate by stating that ‘[…] regulation might not always be the key to mitigating poor working conditions and abuse faced by domestic workers.’ (p. 4) According to his group, the unique and complex nature of ‘domestic workers’ precluded an overarching and unbending standard. As such, the committee should carefully consider its definition of these type of workers and ensure sufficient flexibility to allow for broad ratification and implementation. Conversely, the Worker Vice-Chairperson strongly supported a convention supplemented by a recommendation and stressed the opportunity before the committee to treat “decent work for all” [as] not just a slogan but a truly inclusive agenda, by ensuring that decent work applied to all domestic workers.’ (p. 5)

Following the opening statements by the Employers’ and Workers’ Group, the Spanish EU Presidency, speaking on behalf of the EU Member States, considered that a convention supplemented by a recommendation would provide adequate protection for domestic workers (p. 7). However, Spain also stressed that a general and flexible instrument would be preferable with a view to implementation, thereby staking out its position squarely in the middle between the Employers’ and Workers’ Group. Most regional groups and governments similarly took up their position on this middle ground between the Employers’ and Workers’ Group (pp. 7-11). In addition to Norway explicitly supporting the Union’s position, the Bolivarian Republic, on behalf of GRULAC, China, South Africa, on behalf of the Africa Group, Brazil, and the United States also favored a convention supplemented by a recommendation. Australia, speaking on behalf of ASPAG, the United Kingdom, speaking on behalf of IMEC, and Kuwait, speaking on behalf of GCC, more vaguely supported an instrument capable of being implemented. Among the most prominently involved governments, Canada and India were most explicitly critical of a convention and supported only a recommendation. During the closing statements at the end of the committee, Canada would continue to be outspoken in its criticism for some of the more detailed and prescriptive provisions in the convention, adding that these would best be moved to the recommendation (p. 121).

Toward the end of the general discussion, the role of the social partners as opposite poles on the tripartite stage was reiterated. The Employer Vice-Chairperson pointed out the repeated calls by governments for sufficient flexibility and added that ‘[…] a recommendation [would] be the most appropriate instrument to achieve this goal […]’. (p. 18) However, the Worker
Vice-Chairperson countered this by stating that the majority of member states had supported the adoption of a convention (pp. 18-19).

During the discussion on the second point (pp. 21-26), the Worker Vice-Chairperson and Employer Vice-Chairperson started the discussion after India introduced an amendment to replace ‘Convention supplemented by a Recommendation’ with ‘Recommendation’. After the social partners had argued back and forth to reiterate their opposing positions, a large number of governments intervened to again take up their position on the middle ground. These positions were in line with those expressed during the general discussion, although Saudi Arabia, speaking on behalf of GCC, clarified their vague opening statement by stating that they were in favor of solely a recommendation. Other governments continued to predominantly support a convention supplemented by a recommendation. Against this background, the EU Member States did not intervene to reiterate their position in the run-up to the final vote on this issue.

Despite the majority of governments supporting a convention supplemented by a recommendation, the Employer Vice-Chairperson continued to insist that the adoption of a convention would be premature. The Employers’ Group requested and received a vote on the Indian amendment, which was exceptional during a committee discussion and ended with a rejection of the amendment with 92,820 votes against 67,158 (pp. 24-25). Apart from Estonia abstaining, the EU Member States consistently voted against the amendment, in line with the global governmental majority. During the plenary discussion, the Reporter of the 2010 Committee Ms. Petra Herzfeld Olsson (Government representative, Sweden) highlighted this vote, stating that ‘[e]ven if our votes reflected that there were different opinions on this issue among the delegates of the Committee, and that we therefore could not take the decision by consensus, the voting made it possible for the Committee to decide on this question in a quick and transparent manner.’ (International Labour Office, 2010e, p. 33) Also during this plenary discussion, Employer Vice-Chairperson Mr. Kamran Rahman stated that his group would accept the outcome of the vote, but voiced concerns on the voting process (p. 35).

After the vote during the 2010 Committee decided the discussion on the form of the instruments, the relevant provision was moved to the Preamble, where it would remain until it was eventually included as such in the final instrument: ‘Having determined that these proposals shall take the form of an international Convention, […]’ (International Labour Office, 2011d, p. 8 and 2011h, p. 4) Given that the record vote had decided this issue, the double-discussion procedure subsequently moved beyond this discussion and shifted its focus on more tangible issues. During the General Discussion at the start of the 2011 Committee, the Employer Vice-Chairperson stated that
‘[…] in 2010 his group had favoured a stand-alone recommendation in preference to a convention, with or without a recommendation. That remained the preference of the Employers’ group and employers’ organizations. […] However, they] would acknowledge and respect the decision of the Committee’s majority as to the form of the instrument.’ (p. 3)

At any rate, during the plenary discussion Reporter Ms. Maria Luisa Escorel De Moraes noted that the committee had agreed not to reopen the discussion on this issue, as an agreement had already been reached during the previous year (International Labour Office, 2011g, p. 12).

**Issue Conclusion on the Form of the Instruments**

The final instrument – obviously – takes the form of a Convention supplemented by a Recommendation, which is stipulated in the Preamble (International Labour Office, 2011h, p. 4). This issue was settled during the 2010 Committee, where it dominated the discussion between the tripartite members. The social partners acted as opposing poles during the discussion and continued to divide the tripartite stage, with the Workers’ and Employers’ groups respectively supporting and opposing a Convention. The governments were predominantly represented through regional groups and a clear majority sided with the Workers’ Group, albeit taking the middle ground by stressing the validity of the concerns expressed by the Employers’ Group. In lieu of a consensus, the form of the instruments was settled by a record vote in favor of a Convention supplemented by a Recommendation.

Against this background, we detected that the Spanish EU Presidency coherently represented the Union’s position in favor of a convention supplemented by a recommendation. In addition, France intervened independently to state its support for the Union’s position and the United Kingdom, speaking on behalf of IMEC, similarly intervened to present a symbiotic position. During the final vote Estonia abstained, while all other EU Member States consistently voted against India’s amendment to only adopt a Recommendation. As a result, the Union was coherent during the discussion on the form of the instruments, albeit with the minor qualification that one Member State abstained from the pivotal vote.

Having process-traced the discussion on this issue, we find that the EU Member States made their coherent position clear during the General Discussion and were effective during the straightforward record vote that settled the issue, despite the minor inconsistency of Estonia abstaining from the latter vote. As part of a clear majority of governments, the Union sided with the Workers’ Group and voted for a convention supplemented by a recommendation. As such, the discussion on the form of the instruments offers a clear example of the tripartite
dynamic that is a play on a divided tripartite stage, i.e. the governments tilting the balance between the social partners on opposite ends of the stage.

5.3.2. The Definitions and Scope of Application

The definitions and scope of application were key issues during the standard-setting procedure on domestic work. In light of extending decent work to the workers in this sector, general definitions and a broad scope of application were called for. However, given the complex and politically sensitive nature of domestic work, arriving at a consensus on these issues was a challenge for the tripartite members. Indeed, while the initial report by the ILO Office stated that ‘[…] a fundamental criterion of domestic work is that it takes place in the “household”’ (International Labour Office, 2010b, p. 28), the Office was nevertheless forced to conclude that its efforts to classify and categorize this sector had come to naught, because ‘[…] the definition of occupational categories and tasks is far from airtight, and that one of the characteristics of domestic workers in many parts of the world is that the jobs they are called upon to perform in private households are difficult to delineate.’ (p. 32) As such, the definitions and scope of application would have to be settled by the tripartite members during the committee meetings of the double-discussion procedure. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

3. For the purpose of these standards:
(a) the term “domestic work” should mean work performed within an employment relationship in or for a household or households;
(b) the term “domestic worker” should mean any person engaged in domestic work for remuneration.

5. (1) The Convention should apply to all domestic workers, provided that a Member which has ratified it may, after consulting representative organizations of employers and workers and, in particular, organizations representing domestic workers and their employers, where they exist, exclude wholly or partly from its scope limited categories of workers when its application to them would raise special problems of a substantial nature.

5. (2) Each Member which avails itself of the possibility afforded in the preceding paragraph should, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organization, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Box 5.1 – The definitions and provisions on the scope of application submitted to the 2010 Committee by the ILO Office
Before the 2010 Committee, the definitions and the provisions on the scope of application were drafted by the ILO Office and submitted for consideration as the third and fifth point (cf. Box 5.1 supra) (International Labour Office, 2010c, pp. 417-418). During the first committee discussion, the governments discussed a possible narrowing of the definitions on a divided tripartite stage (International Labour Office, 2010d, pp. 26-33,44). The Netherlands, speaking on behalf of the EU Member States, introduced an amendment to insert ‘on a regular basis’ after ‘performed’ in subparagraph (a) of the third point (International Labour Office, 2010d, pp. 27-28). The intention behind this amendment was to narrow ‘domestic work’ to professional workers and exclude ‘[…] those individuals who performed domestic work sporadically.’ (p. 28) This amendment came after a similar, but more far-reaching amendment introduced by the Employers’ Group. The latter’s amendment would have defined the employer as the householder, thereby excluding from the scope of the Convention domestic workers employed by agencies. After this amendment failed to be adopted, the Netherlands, speaking on behalf of the EU Member States, introduced its own amendment to introduce a more limited narrowing of the definition.

Including ‘on a regular basis’ was supported by the Employers’ Group, while the Workers’ Group initially remained on the fence, but subsequently opposed the amendment after having requested and received some clarifications. As such, the social partners created a divided tripartite stage on which the European amendment needed to find a governmental majority in order to be adopted. The Spanish EU Presidency, speaking on behalf of the EU Member States, repeatedly explained and clarified that the intention behind this amendment was to limit the definition to professional workers and exclude individuals who performed domestic work sporadically. This argument convinced a number of other governments, notably the United States and Kuwait, speaking on behalf of GCC. However, Uruguay, South Africa, Namibia, Australia, and Brazil opposed the amendment. Notably, Namibia ‘[…] called for greater understanding among the industrialized countries of the situation in developing countries, where unskilled and poorly educated workers were very often employed to take care of children.’ (p. 28) The Union’s explanation that this was not meant by the term ‘professional’ in its amendment could not abate these concerns by the African countries.

At the suggestion of the Employer Vice-Chairperson, a Working Party was set up to discuss the second point (and, additionally, would also result in an altered version of the fifth point, which was adopted by the Committee without further discussion (p. 44)). The outcome of the Working Party united the tripartite stage behind a broadly supported text to replace the definitions that were submitted for consideration. Specifically, the new subparagraph (c) stated that ‘[…] a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a “domestic worker”’ (p. 30) and was accepted by the EU
Member States as a satisfactory translation of their amendment. An attempt by the Workers’ Group to delete this third subparagraph from the Convention and instead move it to the Recommendation, was rejected by the Employers’ Group, Australia, and Sweden, who had negotiated on behalf of the EU Member States in the Working Party.

1. For the purpose of this Convention:
   (a) the term “domestic work” means work performed in or for a household or households;
   (b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
   (c) a person who performs domestic work only occasionally or sporadically and not as a means of earning a living is not a domestic worker.

2. (1) The Convention applies to all domestic workers.
2. (2) A Member which ratifies this Convention may, after consulting representative employers’ and workers’ organizations, and, in particular, organizations representing domestic workers and those of employers of domestic workers, where they exist, exclude wholly or partly from its scope:
   (a) categories of workers who are otherwise provided with at least equivalent protection;
   (b) limited categories of workers in respect of which special problems of a substantial nature arise.
2. (3) Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Box 5.2 – The definitions and provisions on the scope of application submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted these provisions and submitted them for consideration to the 2011 Committee as articles one and two (cf. Box 5.2 supra) (International Labour Office, 2011d, pp. 8,10). The changes made by the ILO Office related to the precise wording of the articles, as it believed ‘[…] that there is room for improving the current wording which is potentially ambiguous and difficult to understand.’ (International Labour Office, 2010b, pp. 5-6) Notably, linguistic issues concerning how to refer to ‘domestic worker’ and domestic workers’ in the French and Spanish texts of the Convention and Recommendation were addressed. Also, ‘not on an occupational basis’ was replaced by ‘not as a means of earning a living’, and ‘organizations representing domestic workers and their employers’ was slightly altered to clarify its meaning. Based on the replies to the 2011
questionnaire, the ILO Office decided to include these changes in the text and submit them for consideration during the second year of the double-discussion procedure (pp. 16-22). Regarding the first article, the ILO Office in its commentary stated that all three paragraphs of article one received sufficient support, although it did note that with regards to the third paragraph ‘[…] not all respondents have considered it fully satisfactory.’ (p. 19) The second article was deemed too broad, notably by the EU Member States, leading the ILO Office in its commentary to encourage further discussion on the wording.

During the 2011 Committee, the social partners were in favor of reverting back to the outcome of the first committee discussion and installed boundaries to this effect (International Labour Office, 2011f, pp. 22-24). The United Kingdom, speaking on behalf of the EU Member States and Switzerland, started the discussion by tabling a motion to discuss these articles together, which received support from the Employers’ and Workers’ groups and several governments. However, the support of the Employers’ and Workers’ groups was predicated ‘[…] on the understanding that the purpose of the discussion was to revert as close as possible to the text that had been agreed upon by the Committee in 2010.’ (p. 22) Indeed, another motion tabled by South Africa, speaking on behalf of the Africa Group, to close the discussion altogether was opposed in order to examine the changes made by the ILO Office to the outcome of the 2010 Committee and – if necessary – revert back to the latter agreement.

During the second committee discussion, it was decided to reopen the discussion to focus on the changes implemented by the ILO Office (International Labour Office, 2011f, pp. 22-24). While the linguistic issues were referred to Drafting Committee to be implemented in the final text and the second article was adopted after a minor subamendment by the Employers’ Group (i.e. adding ‘most representative’ before ‘organizations’), the ILO Office’s alternative wording for ‘on an occupational basis’ was rejected. Notably, France and Hungary, speaking on behalf of IMEC, introduced two amendments to revert the proposals by the ILO Office back to the consensus that was agreed in the first discussion. These amendments are adopted after receiving broad support across tripartite lines.

1. For the purpose of this Convention:
(a) the term “domestic work” means work performed in or for a household or households;
(b) the term “domestic worker” means any person engaged in domestic work within an employment relationship;
(c) a person who performs domestic work only occasionally or sporadically and not on an occupational basis is not a domestic worker.

2. (1) The Convention applies to all domestic workers.
2. (2) A Member which ratifies this Convention may, after consulting with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers, exclude wholly or partly from its scope:
(a) categories of workers who are otherwise provided with at least equivalent protection;
(b) limited categories of workers in respect of which special problems of a substantial nature arise.
2. (3) Each Member which avails itself of the possibility afforded in the preceding paragraph shall, in its first report on the application of the Convention under article 22 of the Constitution of the International Labour Organisation, indicate any particular category of workers thus excluded and the reasons for such exclusion and, in subsequent reports, specify any measures that may have been taken with a view to extending the application of the Convention to the workers concerned.

Box 5.3 – The final definitions and provisions on the scope of application

Issue Conclusion on the Definitions and Scope of Application

In the final Convention, the definitions and the provisions on the scope of application are included as articles one and two (cf. Box 5.3 supra) (International Labour Office, 2011h, pp. 4,6). This issue was largely settled by a Working Party during the 2010 Committee, although the second discussion a year later revisited the provisions to undo some of the changes the ILO Office had introduced and ended up largely reverting the articles back to the outcome of the Working Party. The social partners initially created a divided tripartite stage during the 2010 Committee, leaving the governments to find a consensus on the extent to which the definitions and scope of application would be narrowed down. However, once the Working Party had decided the issue, the social partners were united in their preference to retain this outcome over the changes introduced by the ILO Office.

Against this background, we detected that several EU Member States coherently represented the Union’s position. During the 2010 Committee, the Spanish EU Presidency, the Netherlands, and Sweden represented the Union’s position. In addition, during this first discussion, Spain and the United Kingdom also intervened independently with symbiotic positions, resulting in a coherent Union without further qualifications. During the 2011 Committee, the Hungarian EU Presidency and the United Kingdom represented the Union’s position. Additionally, during this second discussion, Spain and France intervened independently with symbiotic positions and, interestingly, Hungary and France intervened on behalf of IMEC. As a result, the Union was again represented coherently, although during the second discussion it shared a close connection with positions expressed on behalf of IMEC.
Having process-traced the discussion on this issue, we find that the EU Member States representing the Union’s coherent position were strongly involved in the proceedings and were effective in achieving the Union’s goals. During the 2010 Committee, the Netherlands, speaking on behalf of the EU Member States, introduced an amendment on subparagraph (a) of point three to narrow the definition of ‘domestic work’, although less so than a preceding, but failed amendment introduced by the Employers’ Group. Defended by Spain and Sweden, speaking on behalf of the EU Member States, the amendment received support from the Employers’ Group, the United States, and Kuwait, speaking on behalf of GCC, but was opposed by the Workers’ Group, Uruguay, South Africa, Namibia, Australia, and Brazil. A Working Party was set up, which resulted in an overhaul of points three and five and, importantly, the inclusion of the Union’s amendment in a new subparagraph (c). As such, the EU was effective during the 2010 Committee. During the 2011 Committee, France and Hungary, speaking on behalf of IMEC, introduced two amendments to revert the proposal by the ILO Office back to the consensus that was agreed in the first discussion. These amendments are adopted after receiving broad support across tripartite lines, resulting in an effective Union during the 2011 Committee.

5.3.3. The Right to be Informed on the Terms and Conditions of Employment

The provisions on the right to be informed on the terms and conditions of employment was a key issue during the standard-setting procedure on domestic work. In light of extending decent work to the workers in this sector, an obligation to inform them of the specifics of their employment is a powerful tool to improve their working conditions. Indeed, in its initial report the ILO Office noted that a written employment contract is ‘[…] an important vehicle to overcome challenges to the existence of an employment relationship and its agreed terms.’ (International Labour Office, 2010b, pp. 36-39) However, given the complex nature of employment relations in this sector, formalizing these relations was wrought with political sensitivities. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The replies of the EU Member States to the ILO Office’s 2010 questionnaire provide us with an indication of the positions these states took before the start of the double-discussion procedure and the internal European coordination process (Kissack, 2011, p. 653). The EU Member States, along with the majority of states, were predominantly in favor of informing domestic workers on the name and address of the employer; the type of work to be performed; the rate of remuneration, method of calculation and pay interval; the normal hours of work; the duration of the contract; the provision of food and accommodation, if any; the period of probation, if applicable; and the terms of repatriation, if applicable
In the *acquis communautaire*, provisions on the employer’s obligation to inform employees of these conditions are found in Council Directive 91/533/EEC (Council of the European Union, 1991). However, the last point on the terms of repatriation received comparatively less support and several EU Member States expressed reservation in their replies. For example, the Netherlands stressed that this should apply only to legal employment. While the replies to the 2010 questionnaire only indicate the national positions of the EU Member States before the start of the internal European coordination process and, thus, stand apart from the eventual EU representation and the Union’s external coherence during the committee discussions, these replies do indicate the sensitive nature of these provisions (especially the terms of repatriation) among several EU Member States.

9. Effective measures should be taken to ensure that domestic workers are informed, in an appropriate and easily understandable manner, of their terms and conditions of employment, in particular:

(a) the name and address of the employer;
(b) the type of work to be performed;
(c) the rate of remuneration, method of calculation and pay interval;
(d) the normal hours of work;
(e) the duration of the contract;
(f) the provision of food and accommodation, if applicable;
(g) the period of probation, if applicable; and
(h) the terms of repatriation, if applicable.

Box 5.4 – The provisions on the right to be informed on the terms and conditions of employment submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the provisions on the right to be informed on the terms and conditions of employment were drafted by the ILO Office and submitted for consideration as the ninth point (cf. Box 5.4 supra) (International Labour Office, 2010c, pp. 418-419). During the first committee discussion, the central focus of the discussion rested on the chapeau, while the subparagraphs were mostly, though not exclusively the object of minor amendments on their precise wording (International Labour Office, 2010d, pp. 51-59). During the discussion on the chapeau of the ninth point, the Employers’ Group introduced an amendment to replace the original with ‘Domestic workers should be informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner, including, where possible, through written contract, in accordance with national

91 The national worker organizations were strongly in favor of all points included by the ILO Office, while the IOE voiced the opinion of national employer organizations that ‘[s]ome items regarding information appear valid, but specific items remain to be discussed.’ (p. 104)
laws and regulations, including where possible.’ (p. 51) Notably, this amendment added an explicit reference to written contracts, but at the same time made the provision more flexible by adding ‘where possible’. While being supported by Kuwait, speaking on behalf of GCC, this amendment was overwhelmingly opposed for its perceived weakening of the provision by the Workers’ Group, Australia, Argentina, Brazil, Canada, Congo, speaking on behalf of the Africa Group, the Philippines, the Spanish EU Presidency, speaking on behalf of the EU Member States, the United States, and the Bolivarian Republic of Venezuela, speaking on behalf of GRULAC. However, after extensive subamendments introduced by the Workers’ and Employers’ groups the social partners found a consensus and the amendment was adopted. The Spanish EU Presidency, speaking on behalf of the EU Member States, and explicitly supported by an independent intervention from France, supported the subamended version of the chapeau that was adopted. Moreover, after it expressed concerns over a subamendment introduced by the United States, the latter withdrew this amendment.

During the discussions on the subparagraphs of the ninth point, the Spanish EU Presidency, speaking on behalf of the EU Member States, introduced minor amendments that were successfully adopted or supported amendments introduced by other delegates. However, on subparagraph (h), Austria, speaking on behalf of the EU Member States, proposed to delete ‘the terms of repatriation, if applicable’ from this point or even from the Convention altogether. While the Employers’ Group supported this amendment, it was opposed by the Workers’ Group and several governments, notably the United States, South Africa, speaking on behalf of the Africa Group, Argentina, and Uruguay, which lead to Austria withdrawing the amendment. Interestingly, the Workers’ Group pointed to Council Directive 91/533/EEC (Council of the European Union, 1991), stating that ‘[s]he urged EU Member States to bear in mind that the issue had already been included in an EU directive.’ (p. 56)

6. Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws and regulations, in particular:

(a) the name and address of the employer and the worker;
(b) the type of work to be performed;
(c) the remuneration, method of calculation and periodicity of payments;
(d) the normal hours of work;
(e) the starting date and, where the contract is for a specified period of time, its duration;
(f) the provision of food and accommodation, if applicable;
(g) the period of probation or trial period, if applicable;
(h) the terms of repatriation, if applicable; and
(i) terms and conditions concerning termination of employment.
Following the first discussion, the ILO Office redrafted these provisions and submitted them for consideration to the 2011 Committee as the sixth article (cf. Box 5.5 supra) (International Labour Office, 2011d, pp. 10,12). The provisions on the right to be informed on the terms and conditions of employment continued to be a sensitive issue for the EU Member States, especially after having some of their amendments rebuffed during the 2010 Committee. In their replies to the 2011 questionnaire, several EU Member States continued in the same vein by expressing their preference to move several of these provisions to the Recommendation (International Labour Office, 2011c, pp. 27-29). Notably, Spain argued that ‘The elements contained in Article 6(a)-(i) are too extensive in some areas and too limited regarding others. The list should be included in the Recommendation.’ (p. 28) Moreover, during the General Discussion at the beginning of the 2011 Committee, the right to be informed on the terms and condition of employment was highlighted by the Hungarian EU Presidency, speaking on behalf of the EU Member States, and France, speaking on behalf of the IMEC group, as one of the key issues to be discussed during the second year of the double-discussion procedure (International Labour Office, 2011f, pp. 4-5).

During the second committee discussion, Denmark, speaking on behalf of the EU Member States, introduced an amendment to replace article 6 altogether and move subparagraphs (a) to (i) to the Recommendation, stating that this amendment was intended to make the article more flexible and give due consideration to the implementation and enforcement of the instruments (cf. Box 5.6 infra) (International Labour Office, 2011f, pp. 34-43).

| 6. (1) Domestic workers have the right to be informed of the terms and conditions of their employment. This information should be provided in an appropriate and easily understandable manner. |
| 6. (2) Each Member shall take measures to ensure that a domestic worker within a reasonable time is notified of the essential aspects of the employment relationship, preferably, where possible, in a written contract in accordance with national laws and regulations. |
| 6. (3) A Member may in law or regulations exclude certain limited cases of employment relationship from the obligation in the preceding paragraph, when it is justified on objective grounds. |

While the Employers’ Group expressed its qualified support, the amendment was overwhelmingly opposed by the Workers’ Group and a large number of governments, who
all preferred the original text. This set the tone for the discussion on the subparagraphs, in which amendments from the Union predominantly failed to be adopted. Eventually, Denmark, speaking on behalf of the EU Member States, introduced an amendment for a new paragraph at the end of article 6, which specifically intended to include this possibility for exemptions, albeit without replacing the entire sixth article. However, again faced with opposition from the Workers’ Group and several governments, Denmark withdrew the amendment.

7. Each Member shall take measures to ensure that domestic workers are informed of their terms and conditions of employment in an appropriate, verifiable and easily understandable manner and preferably, where possible, through written contracts in accordance with national laws, regulations or collective agreements, in particular:

(a) the name and address of the employer and of the worker;
(b) the address of the usual workplace or workplaces;
(c) the starting date and, where the contract is for a specified period of time, its duration;
(d) the type of work to be performed;
(e) the remuneration, method of calculation and periodicity of payments;
(f) the normal hours of work;
(g) paid annual leave, and daily and weekly rest periods;
(h) the provision of food and accommodation, if applicable;
(i) the period of probation or trial period, if applicable;
(j) the terms of repatriation, if applicable; and
(k) terms and conditions relating to the termination of employment, including any period of notice by either the domestic worker or the employer.

Box 5.7 – The final provisions on the right to be informed on the terms and conditions of employment

**Issue Conclusion on the Right to be Informed on the Terms and Conditions of Employment**

In the final Convention, the provisions on the right to be informed on the terms and conditions of employment are included under the seventh article (cf. Box 5.7 supra) (International Labour Office, 2011h, p. 8). In the course of the double-discussion procedure on this issue, the Union continued opposition to the inclusion these provisions in the Convention caused it to progressively move toward the edge of the tripartite stage. Especially once the Workers’ Group and a majority of the states found an agreement with the Employer’s group, the EU Member States stood alone with their amendments to either replace, move, or introduce added flexibility to the seventh article.

Against this background, we detected that several EU Member States coherently represented the Union’s position. During the 2010 Committee, the Spanish EU Presidency and Austria
represented the common position on point nine. In addition, during the first discussion, France also intervened independently to explicitly support the Union’s position, resulting in a coherent EU without further qualifications. During the 2011 Committee, the Hungarian EU Presidency, Denmark, France and the United Kingdom represented the common position on article six. In addition, Denmark, France, Germany, and the United Kingdom intervened independently to explicitly support the Union’s position or take symbiotic positions. As a result, the Union was again represented coherently.

Having process-traced the discussion on this issue, we find that the EU Member States representing the common positions on behalf of the Union were strongly involved in the proceeding, but were ineffective in achieving their goals. During the 2010 Committee, the Spanish EU Presidency and Austria, speaking on behalf of the EU Member States, successfully supported the amendment of the Employer’s Group on the chapeau of point nine and introduced minor amendments on the subparagraphs, but failed to have subparagraph (h) removed from the text. During the 2011 Committee, Denmark, speaking on behalf of the EU Member States, introduced an amendment to replace article nine altogether and move the subparagraphs to the Recommendation. Along with a string of amendments on the subparagraphs themselves, including an attempt to introduce a new paragraph which would have allowed exceptions, this amendment was opposed by the Workers’ Group and a large number of governments. Looking at the replies of several EU Member States to the questionnaires and the Hungarian EU Presidency highlighting these provisions as a key issue at the start of the 2011 Committee, we can conclude that the EU was ineffective in achieving its goals during the discussion on what was to them an important issue.

5.3.4. Written Employment Contracts

Written employment contracts were a key issue during the standard-setting procedure on domestic work, specifically the provision stipulating that workers in this sector had a right to such a contract prior to crossing national borders. Recalling the politically sensitive nature of domestic work, the discussion on this issue is underscored by considerations on migrant workers and their potential abuse. Indeed, the initial report by the ILO Office highlighted the revised ILO Convention No. 97 on Migration for Employment, which ‘[…] provide[s] that an employment contract is one of the documents that should be given to migrant workers prior to their departure.’ (International Labour Office, 2010b, p. 37) However, while the relevance of this provision for the new instrument was not challenged as such, it did reveal the sometimes subtle incompatibility between the ILO’s international labor standards and EU legislation. While the former are modeled for sovereign states, the Union does not always fit this mold in its guise as a REIO. Specifically, the provision that domestic workers need to have a written employment contract before crossing a national border is incompatible with the freedom of labor that is fundamental to the Union’s single market.
Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

While the provisions on written employment contracts were incompatible with the fundamental economic freedoms that underlie the Union’s single market, the replies of the EU Member States to the ILO Office’s questionnaire do not indicate them being aware of this incompatibility at this stage of the procedure. In the questionnaire attached to its initial report, the ILO Office asked members whether the Convention should ‘[…] provide that national laws and regulations should require that migrant workers receive a written contract containing minimum terms and conditions of employment that must be agreed upon prior to crossing national borders?’ (emphasis added) (International Labour Office, 2010c, pp. 182-186)

Interestingly, in their replies the EU Member States not only predominantly agreed to this (i.e. eleven yes votes out of a total of 16 replies (p. 182)), but none of them highlighted the potential incompatibility with the EU single market. Moreover, Finland even noted that Council Directive 91/533/EEC (Council of the European Union, 1991) includes a similar requirement of ‘[…] a written explanation on the terms of employment before employment begins abroad.’ (International Labour Office, 2010c, p. 182) However, it should be noted that these replies are formulated independently by the EU Member States before the internal European coordination process is started (Kissack, 2011, p. 653). As such, incompatibility with the Union’s acquis communautaire had not yet been communicated by the Commission to the Member States.

Box 5.8 – The provisions on written employment contracts submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the provisions on written employment contracts were drafted by the ILO Office and submitted for consideration as the sixteenth point (cf. Box 5.8 supra) (International Labour Office, 2010c, p. 419). During the first committee discussion, the EU Member States pursued an amendment that was very specific to their internal acquis, leading to confusion and some tension among the broader tripartite membership (International Labour Office, 2010d, pp. 78-83). Ireland, speaking on behalf of the Czech Republic,
Finland, the Netherlands, and Sweden, introduced an amendment to allow an exemption for REIOs. Given the freedom of labor within the Union’s single market, it would otherwise be ‘practically impossible’ for EU and European Economic Area (EEA) Member States to bring their legislation in compliance with the convention, in turn precluding them from ratifying. When the tripartite members asked for clarification, a representative of the EU added that ‘[…] the concept of regional economic integration organization area had already been acknowledged in the Maritime Labour Convention, 2006, and the Work in Fishing Convention, 2007 (No. 188).’ (p. 79) Importantly, the Representative of the Union was actively involved during the proceedings on this issue, i.e. replying to the questions posed by non-European delegates and providing further clarification. In unison with the Member States representing the EU or intervening independently, it played an important role in the successful adoption of the amendment.

Following the amendment introduced by Ireland, the committee discussion largely focused on which exemptions the Convention should or should not be included on these provisions. Apart from the above mentioned subamendment to include an exemption for REIOs, South Africa, speaking on behalf of the Africa Group, introduced an amendment to broaden the possible exemptions and also include ‘[…] various bilateral and multilateral agreements […] in place to allow the freedom of movement of workers.’ (p. 80) While receiving some support, this broadening of possible exemptions was heavily criticized, notably by Canada and the United States who were ‘[…] opposed […] because it was far too broad and could apply to all sorts of multilateral agreements, pertaining to trade, commerce and investments.’ (p. 81) In addition, the Representative of the Union intervened with the following response: ‘[…] multilateral agreements [can] not be compared to, and [do] not reflect, the status of cooperation that [has] been established within the European regional economic integration zone, where Member States [have] transferred sovereign authority to the supranational level.’ (p. 80) Nevertheless, South Africa, speaking on behalf of the Africa Group, continued to defend the inclusion of other exemptions, arguing that ‘[…] the proposed Convention should reflect the international reality rather than addressing specific regional issues.’ (p. 82)

At the suggestion of the Employers’ Group, the discussion on point 16 was postponed to a later session ‘[…] in order to have more time to reach consensus on the issue.’ (p. 82) This seems to have been successful, given that a broad coalition of governments introduced a subamendment immediately after the discussion resumed during the nineteenth session of the 2010 Committee. Ireland, speaking on behalf of EU Member States, Australia, Canada, New Zealand, Norway, Switzerland, the United States, and the Africa Group, introduced a subamendment that would extensively revise the first paragraph. Notably, the requirement of a written employment contract prior to crossing national borders would apply ‘[…] without prejudice to (1) regional bilateral or multilateral agreements, (2) the rules of a regional
economic integration area, where applicable, to migrant domestic workers.’ (p. 82) After an explanation by the Representative of the Union that this subamendment would safeguard the rights of domestic workers within such areas, the Workers’ and Employers’ Groups also expressed their support, adding their weight to the already broad support among governments. Subsequently, the subamendment was adopted.

7. (1) National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer or contract of employment addressing the terms and conditions of employment referred to in Article 6 prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

(2) The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under regional, bilateral or multilateral agreements, or within the framework of regional economic integration areas.

(3) Members shall cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

Box 5.9 – The provisions on written employment contracts submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted these provisions and submitted them for consideration to the 2011 Committee as the seventh article (International Labour Office, 2011d, p. 12). During the second committee discussion, the debate on article seven no longer touched upon the issues relevant to safeguarding the economic freedoms of the EU single market (International Labour Office, 2011f, pp. 43-47). Based on the subamendment that was adopted at the end of the first discussion, the ILO Office drafted the second paragraph of article seven (cf. Box 5.9 supra), which ensured compatibility between the Union’s single market rules and these provisions of the Convention. While the first paragraph was amended during the second discussion, this crucial second paragraph was not discussed further and thus remained unchanged.

8. (1) National laws and regulations shall require that migrant domestic workers who are recruited in one country for domestic work in another receive a written job offer, or contract of employment that is enforceable in the country in which the work is to be performed, addressing the terms and conditions of employment referred to in Article 7, prior to crossing national borders for the purpose of taking up the domestic work to which the offer or contract applies.

(2) The preceding paragraph shall not apply to workers who enjoy freedom of movement for the purpose of employment under bilateral, regional or multilateral agreements, or within the framework of regional economic integration areas.
(3) Members shall take measures to cooperate with each other to ensure the effective application of the provisions of this Convention to migrant domestic workers.

(4) Each Member shall specify, by means of laws, regulations or other measures, the conditions under which migrant domestic workers are entitled to repatriation on the expiry or termination of the employment contract for which they were recruited.

Box 5.10 – The final provisions on written employment contracts

**Issue Conclusion on Written Employment Contracts**

In the final Convention, the provisions on written employment contracts are included under the eight article (cf. Box 5.10 supra) (International Labour Office, 2011h, p. 8). The discussion on possible exemptions for REIOs and other bilateral or multilateral agreements was settled during the 2010 Committee, wherein the EU Member States played a central role by introducing an amendment to this effect and subsequently building support among the broader tripartite membership. While the amendment created some confusion and tension among the broader tripartite membership, repeated clarifications and consultations eventually succeeded to unify the tripartite stage.

Against this background, we detected that several EU Member States and a Representative of the Union (i.e. the Commission) coherently represented the Union's position. During the 2010 Committee, Ireland and Sweden intervened on behalf of the EU Member States and smaller coalitions. In addition, a Representative of the EU was actively involved in explaining the common position to non-EU delegates, while the Netherlands, Ireland, Sweden, Norway (involved in the discussion on written employment contracts as part of the EEA), and Estonia also intervened independently to support the EU’s position. As a result, the Union was represented coherently.

Having process-traced the discussion on this issue, we find that the EU Member States and the Representative of the Union were strongly involved in the proceedings and were effective in achieving their goal. During the 2010 Committee, Ireland, speaking on behalf of the Czech Republic, Finland, the Netherlands, and Sweden introduced a key amendment that would allow states within a REIO to be exempted vis-à-vis each other from the provision on written employment contracts. A Representative of the EU, Ireland, the Netherlands, and Sweden, the latter alternating between speaking on behalf of the Czech Republic, Finland, Ireland, and the Netherlands, and speaking on behalf of the EU Member States, subsequently explained this amendment to non-EU Member States. After the discussion was postponed to allow for consultations and resumed during a later session, Ireland, speaking on behalf of the EU Member States, Australia, Canada New Zealand, Norway, Switzerland, the United States, and the Africa Group, submitted a subamendment that was successfully adopted after having received the support from the Employers’ and the Workers’ groups. As a result, the EU was effective during the 2010 Committee.
5.3.5. Working Time

The provisions on working time were the ‘single most contentious issue’ (Oelz, 2014, p. 160) during the standard-setting procedure on domestic work. In light of extending decent work to the workers in this sector, regulating working time would be used as an instrument to overcome the exceptions many national legislators made for domestic workers. Indeed, in its initial report, the ILO Office found ‘[…] significant differences between generally applicable working time standards and those that concern domestic workers.’ (International Labour Office, 2010b, p. 49) However, the complex nature of domestic work makes regulation on working time a difficult issue to regulate. For example, it involves ‘[…] a definite grey area between work and home when domestic workers “live in” – and this can undermine the key objective of working time law.’ (p. 46) Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

In his overview of the standard-setting procedure on domestic work, Martin Oelz (2014, pp. 159-160) (ILO Office, Conditions of Work and Equality Department) notes that the tripartite stage was divided on working time: ‘Though there was agreement on the need to ensure a reasonable limit on working hours and adequate rest periods for domestic workers, different views were expressed on the type of international standards appropriate for this purpose.’ (p. 160) In this regard, the replies of the tripartite members to the ILO Office’s 2010 questionnaire provide us with an indication of their starting positions just before the committee discussions of the double-discussion procedure. Replying to the questionnaire attached the initial report of the ILO Office, a large majority of the governments (i.e. 54 yes votes of total of 67 replies (International Labour Office, 2010c, p. 152)) and national worker organizations (i.e. 123 yes votes out of a total of 125 replies (pp. 154-155)) voted in favor of including provisions on working time in the Convention. The national employer organizations were more hesitant (i.e. 7 no votes out of a total of 12 replies (p. 153)), which the IOE clarified by stating that ‘[e]mployment models based on measured hours of work do not apply to domestic work.’ (p. 154) Similar replies can be found on subsequent questions whether periods of standby should be regarded as hours of work and whether the Convention should included a provision on 24 consecutive hours of rest (pp. 159-165). While the IOE did reply that the latter was a ‘valid issue for discussion’ (p. 164), these replies give us a first indication of the divided tripartite stage, although a majority did favor the inclusion of this issue in the Convention.

Similar to the discussion manning and hours of rest during the standard-setting procedure on work in fishing (cf. Chapter four), the EU was actively involved in the discussion on working time provisions due to the extensive legislation on this issue that is found in the acquis communautaire. Specifically, the Union and its Member States oriented their position on the tripartite stage in function of ensuring the compatibility between the final Convention and
Directive 2003/88/EC on certain aspects of the organization of working time (European Parliament & Council of the European Union, 2003). As we will see, during the discussion this Directive was used as an argument to introduce greater flexibility into the provisions of this Convention, i.e. the Union argued that the specific nature of domestic work requires flexible provisions on certain provisions, thereby attempting to bring the instrument in line with the acquis that already provided for such flexibility.

12. (1) Each Member should take measures to ensure that the normal hours of work, overtime, compensation, periods of daily rest, weekly rest and paid annual leave of domestic workers are not less favourable than those applicable to other wage earners.

12. (2) Weekly rest shall be at least 24 consecutive hours in every seven-day period.

12. (3) Periods during which domestic workers are not free to dispose of time as they please and remain at the disposal of the household in order to respond to possible calls should be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice.

Box 5.11 – The provisions on working time submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the provisions on working time were drafted by the ILO Office and submitted for consideration as the twelfth point (cf. Box 5.11 supra) (International Labour Office, 2010c, p. 419). This point was divided in three paragraphs, each of which dealt with a different aspect of working time. Respectively, the first paragraph included the general working time provisions, the second paragraph weekly rest, and the third paragraph standby time. During the first committee discussion, the EU Member States shaped the debate with a number of amendments that intended to bring the draft provisions in line with the Union’s acquis, but where therein predominantly rebuffed by the Workers’ Group and a majority of non-EU Member States (International Labour Office, 2010d, pp. 61-67).

During the discussion on the first paragraph, the Spanish EU Presidency, speaking on behalf of the EU Member States, introduced an amendment to add ‘unless a difference can be justified on objective grounds’ at the end of the first paragraph (International Labour Office, 2010d, pp. 61-63). According to Spain, this amendment would make the provision more flexible and allow it to account for the specific nature of domestic work in terms of working time. To illustrate this point, Spain provided the exclusion of family workers from the Union’s own Directive 2003/88/EC on working time (European Parliament & Council of the European Union, 2003). This amendment was in line with the independent replies from the EU Member States to the 2010 questionnaire (International Labour Office, 2010c, pp. 152-155). While they were predominantly in favor of including working time in the
Convention, they often qualified their favorable replies by adding the need for more flexibility, based on the specificity of domestic work. The amendment introduced by the Spanish EU Presidency intended to introduce such flexibility, but was withdrawn after it received critical reactions from the Workers’ Group, Australia, South Africa, speaking on behalf of the Africa Group, and the United States during the 2010 Committee. The Employers’ Group stayed on the fence regarding the amendment, asking the Union to clarify what ‘on objective grounds’ meant, but refrained from stating its own opinion on the matter.

During the discussion on the second paragraph, the Netherlands, speaking on behalf of the EU Member States, introduced a minor amendment to replace ‘in every’ with ‘per each’ and a more substantive amendment to add the following to the second paragraph: ‘When providing this rest period, each Member may lay down a maximum reference period stipulated in national law and collective agreements.’ (International Labour Office, 2010d, p. 63) The first amendment was adopted without much discussion (although, at the suggestion of the ILO Office, the paragraph later reverted back to its original wording (International Labour Office, 2011c, p. 42)), but the inclusion of a ‘maximum reference period’ was withdrawn after criticism from the Workers’ Group and several government representatives, while the Employers’ Group did not take a position on the matter. Notably, the Worker Vice-Chairperson stated that ‘[…] the amendments were very specific to the EU, and […] even within that grouping, no agreement had been reached on this specific issue in the context of the EU Working Time Directive.’ (International Labour Office, 2010d, p. 64) This was mirrored in the questions posed by the United States, who asked for clarification on the term. This lead the Netherlands, speaking on behalf of the EU Member States, to explain that while the term was EU specific, ILO legislation also allowed similar exceptions to the basic rule of 24 hours of rest in every seven-day period.

During the discussion on the third paragraph, the United Kingdom, speaking on behalf of the EU Member States, and Norway supported an amendment by the Employers’ Group that would replace the third paragraph with a more flexible one (International Labour Office, 2010d, pp. 64-67). However, the amendment was withdrawn after criticism from the Workers’ Group, South Africa, speaking on behalf of the Africa Group, the United States, Argentina, Australia, and the Bolivarian Republic of Venezuela, speaking on behalf of Chile and Ecuador. Subsequently, the United Kingdom and Sweden, speaking on behalf of the EU Member States, introduced and argued in favor of an amendment that would move the third paragraph to the Recommendation. This proposal received support from the Employers’ Group, but was withdrawn after the Workers’ Group, the United States, South Africa, speaking on behalf of the Africa Group, and Australia argued in favor of retaining it in the Convention.
10. (1) Each Member shall take measures to ensure that the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave of domestic workers are not less favourable than those provided for workers generally in accordance with national laws and regulations.

10. (2) Weekly rest shall be at least 24 consecutive hours in every seven-day period.

10. (3) Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national practice.

Box 5.12 – The provisions on working time submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted these provisions and submitted them for consideration to the 2011 Committee as the tenth article (cf. Box 5.12 supra) (International Labour Office, 2011d, p. 14). In their replies to the 2011 questionnaire by the ILO Office, the EU Member States consistently brought forward the same concerns regarding the provisions on working time (International Labour Office, 2011c). Interestingly, we find that this lead the ILO Office to pick up on these concerns and use them in its redrafted provisions for the second committee discussion. As such, the EU Member States influenced the ILO Office’s drafting process in-between committee discussions by consistently expressing the same concerns, albeit independently. During the second committee discussion, the EU Member States again shaped the debate with a number of amendment that intended to bring the draft provisions in line with the Union’s acquis, wherein they now succeeded (International Labour Office, 2011f, pp. 51-56).

During the discussion on the first paragraph, the Netherlands, speaking on behalf of the EU Member States, introduced an amendment that proposed to replace the entire first paragraph with a new one (cf. Box 5.13 infra) (International Labour Office, 2011f, p. 51).

Each Member shall promote, as far as possible, equal treatment between domestic workers and workers generally in relation to the normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations and/or collective agreements, taking into account the special characteristics of domestic work.

Box 5.13 – The amendment to replace the first paragraph of Article 10 submitted to the 2011 Committee on behalf of the EU Member States by the Netherlands
Notably, the first paragraph would no longer ensure that domestic workers are treated ‘no less favourably’ than workers generally, but rather promote a more flexible ‘equal treatment’ between these two groups. Similar to the previous committee discussion, this amendment met with resistance from the Workers’ Group (who introduced a further subamendment) and a number of government representatives (who stated that they preferred to original text of the paragraph). Notably Australia, Brazil, Canada (although sharing the Union’s wish for greater flexibility), and South Africa, speaking on behalf of the Africa Group, were opposed. The amendment did receive support from the Employers’ Group, although they also introduced a further subamendment. However, rather than withdrawing the amendment, France intervened and, on behalf of the EU Member States, introduced a further subamendment after consultations with the tripartite membership. The outcome of these consultations received broad support from all tripartite partners and was quickly adopted.

During the discussion on the second paragraph, the Netherlands, speaking on behalf of EU Member States, introduced an amendment that would again replace ‘in every’ with ‘per each’ after the ILO Office had reverted the second paragraph back to its original wording in between the first and second committee discussion (International Labour Office, 2011f, pp. 53-54). The amendment would also add the following sentence to the paragraph: ‘Weekly rest may be accumulated in a period not exceeding 14 days.’ While this was similar to its amendment from the previous year, the Union dropped the EU-specific ‘maximum reference period’ and did not refer explicitly to its own labor legislation in its argumentation. The Workers’ Group subsequently introduced a subamendment that would delete this sentence, but would also do away with ‘in every seven-day period’ altogether. According to a representative of the Secretary-General, this would in principle allow the exception to the basic rule that was sought by the Union. After this clarification, the Netherlands, speaking on behalf of the EU Member States, and supported independently by the United Kingdom and Germany, agreed to this subamendment, which was adopted after it received considerable support from the Workers’ and Employers’ Group, and a large number of non-EU Member States.

During the discussion on the third paragraph, the EU Member States did not represent a common position and, apart from a minor independent intervention by the United Kingdom, were even completely absent from the discussion that ultimately led to the third paragraph being adopted as part of the final Convention (International Labour Office, 2011f, pp. 54-56). This is surprising, given that the Employers’ Group and India introduced amendments to delete the third paragraph, which was identical to what the EU Member States tried to achieve during the 2010 Committee. However, EU legislation did make an appearance during the discussion when the Workers’ Group defended the paragraph by ‘[…] stating that it was not unusual to treat standby time as hours of work. [For example], the
2003 EU Working Time Directive specified that working time meant “any period during which the worker is working, at the employers disposal and carrying out his activity or duties.” (p. 55) Indeed, despite the Union’s earlier attempts to have this paragraph moved to the Recommendation, it was never incompatible with its internal legislation on working time. Moreover, the latter was now used as an argument to retain the provision in the final Convention.

This compatibility might explain why the EU Member States did not further pursue their attempts to have the third paragraph moved to the Recommendation after being rebuffed during the 2010 Committee. In their independent replies to the 2011 questionnaire, the issue was hardly commented on and took a backseat to the first and second paragraph (International Labour Office, 2011c, pp. 39-42). As an exception, the Czech Republic stated in its reply that '[a]rticle 10(3) seemingly provides that any time the worker is available is to be considered as working time. This is incompatible with national legislation, which does not consider on-call duty outside the workplace as working time.’ (p. 39) However, in its commentary the ILO Office replied by stating that ‘[…] the current text of Article 10(3) provides that the periods in question shall be regarded as hours of work to the extent determined by national laws or regulations, collective agreements or any other means consistent with national law and practice.’ (p. 42) Again, this established that there was no incompatibility between the third paragraph of Article 10 in the final Convention and the Union’s acquis.

10. (1) Each Member shall take measures towards ensuring equal treatment between domestic workers and workers generally in relation to normal hours of work, overtime compensation, periods of daily and weekly rest and paid annual leave in accordance with national laws, regulations or collective agreements, taking into account the special characteristics of domestic work.

10. (2) Weekly rest shall be at least 24 consecutive hours.

10. (3) Periods during which domestic workers are not free to dispose of their time as they please and remain at the disposal of the household in order to respond to possible calls shall be regarded as hours of work to the extent determined by national laws, regulations or collective agreements, or any other means consistent with national practice.

Box 5.14 – The final provisions on working time

**Issue Conclusion on Working Time**

In the final Convention, the provisions on working time are included under the tenth article (cf. Box 5.14 supra) (International Labour Office, 2011h, p. 10). Against the background of a divided tripartite stage, the EU Member States shaped the discussion on this issue with
numerous amendments that aimed to bring the working time provisions in this Convention in line with the *aquis*. This took the form of introducing more flexibility in the three paragraphs of Article 10 and, as such, the Union found support from the Employer’s Group, but was initially opposed by the Workers’ Group and a majority of governments. During the second committee discussion, this opposition continued to some extent, but was overcome through consultations and other ways of finding a compromise.

Against this background, we detected that several EU Member States represented the common position on behalf of the Union. During the 2010 Committee, the Spanish EU Presidency, the Netherlands, the United Kingdom, and Sweden represented the common EU position on the different paragraphs of the twelfth. During this first discussion, no other Member States intervened independently or in other configurations, resulting in a coherent Union without further qualifications. During the 2011 Committee, the Netherlands and France represented the common EU position during the discussion on the tenth article. Additionally, during this second discussion France, the United Kingdom, and Germany intervened independently, but took symbiotic positions in support of the Union. As a result, the Union was again coherent without further qualifications.

Having process-traced the discussion on this issue, we find that the EU Member States representing the Union’s common position were strongly involved in the proceedings and evolved from being ineffective to effective in achieving their goals. During the 2010 Committee, the EU Member States introduced four amendments on behalf of the Union. A minor amendment on the precise phrasing of the second paragraph was adopted, while three substantive amendments were withdrawn after they met with resistance from a majority of states and the Workers’ Group. As such, the EU was ineffective during the 2010 Committee. During the 2011 Committee, the EU Member States introduced two amendments on article ten. Both amendments were adopted after being subamended, either by an EU Member State or the Workers’ Group. As a result, the EU was effective during the 2011 Committee.

5.3.6. **Occupational Safety and Health**

The provisions on occupational safety and health were a key issue during the standard-setting procedure on domestic work. In its initial report, the ILO Office noted that ‘[i]n most of the ILO member states surveyed, domestic workers are not covered by occupational safety and health legislation.’ (International Labour Office, 2010b, p. 61) According to the report, this exclusion stems from the household nature of domestic work, which ‘[…] tends to be perceived as safe and non-threatening.’ (pp. 61-62) However, the ILO Office counters this perception with some basic figures on work-related accidents suffered by domestic workers and the underlying risks they have to contend with in their profession. In light of the goal to extend decent work to this sector, these figures lead the ILO Office to conclude ‘[…] that there is a need for public policies on the occupational safety and health of domestic workers.’
Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The replies of the tripartite members to the ILO Office’s 2010 questionnaire provide us with a preliminary indication of the positions taken by the governments and the social partners before the start of the double-discussion procedure. Asked whether ‘[...] the Convention [should] provide that each Member should take measures to ensure equality of treatment between domestic workers and other wage earners in respect of OSH’ (International Labour Office, 2010c, p. 166), a large majority of the governments (i.e. 53 yes votes out of a total of 66 replies (p. 166) and national worker representatives (i.e. 122 yes votes out of a total of 125 replies (pp. 169-170)) voted in favor of including provisions on occupational safety and health in the Convention. The national employer organizations were more hesitant (i.e. only five yes votes out of a total of twelve replies (p. 168)). However, while a large majority was in favor of providing safe and health working conditions for domestic workers, the tripartite members differed on whether equal protection to other workers was feasible given the specific nature of domestic work. Notably, the IOE replied that ‘[a] domestic employer is not capable of assuming full occupational safety and health capacity and responsibility as applicable to general employment [...]’ (p. 169).

Similarly, the EU Member States (as always, replying independently before the start of the European coordination process) were in favor of including provisions on occupational safety and health, but also expressed concerns whether it was possible to grant domestic workers equal protection to other workers (pp. 166-168). This position relates to the extensive legislation on occupational safety and health that is found in the acquis communautaire, wherein Council Directive 89/391/EEC provides a framework for measures to encourage improvements in the safety and health of workers at work (Council of the European Union, 1989). While the legislation based on this framework provides extensive protection for workers, the third article of the directive has always excluded ‘domestic servants’ (p. 4) from the scope of application, making it difficult for EU Member States to extend (i.e. provide equal) protection to this group of workers.

15. (1) Each Member should take measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to other wage earners in respect of:
   (a) occupational safety and health; and
   (b) social security protection, including with respect to maternity.

15. (2) The measures referred to in paragraph (1) above may be applied progressively.
Before the 2010 Committee, the provisions on occupational safety and health were drafted by the ILO Office and submitted for consideration as the fifteenth point, which also included the provisions on social security protection under the same chapeau (cf. Box 5.15 supra) (International Labour Office, 2010c, p. 419). During the first committee discussion, the debate focused on the first paragraph of Point 15, while the subparagraphs and the second paragraph remained unchanged after having received little or no attention (International Labour Office, 2010d, pp. 74-78). Importantly, The Spanish EU Presidency, speaking on behalf of the EU Member States, introduced an amendment that intended to replace the wording of first paragraph so as to avoid it stipulating the need to extend equal protection to domestic workers. Specifically, ‘Each Member should take measures, with regard to the specific characteristics of domestic work, to set up appropriate conditions of protection for domestic workers in respect of’ was introduced as a replacement for ‘conditions no less favourable than those applicable to other wage earners’ found in the original. This amendment divided the tripartite stage, receiving support from the Employers’ Group, Switzerland, and New Zealand, but facing much bigger opposition from the Workers’ Group and some major governments such as the United States, Canada, Australia, and South Africa, speaking on behalf of the Africa Group. This opposition originated from concerns over what was deleted and the potential dilution of the provisions on occupational safety and health. After first defending the objectives of the amendment, Spain, speaking on behalf of the EU Member States asked and received confirmation from the Representative of the Secretary-General that the original paragraph ‘[…] did not [imply identical measures], but that an equivalence of conditions was intended.’ (p. 76) Spain subsequently withdrew the amendment, but ‘[…] reserved the right to revisit the issue in the second reading of the instrument in 2011.’ (p. 76) In addition, the Netherlands intervened to have its independent position on record, which was symbiotic with the Union’s position.

13. (1) Each Member shall take appropriate measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of occupational safety and health.

(2) The measures referred to in the preceding paragraph may be applied progressively.

Following the first discussion, the ILO Office redrafted the provisions on occupational safety and health and submitted them for consideration to the 2011 Committee as the thirteenth article (cf. Box 5.16 supra) (International Labour Office, 2011d, p. 14). Following
their withdrawn amendment during the 2010 Committee, the replies of the EU Member States consistently highlighted their discontent with the wording of the article on occupational safety and health, as it did not allow for sufficient flexibility to take into account the specificities of domestic work (International Labour Office, 2011c, pp. 46-49). This concern was almost exclusively highlighted by EU Member States, with only Switzerland also voicing this concern in its reply. In its subsequent commentary, the ILO Office noted that ‘[…] a considerable number of respondents pointed out that, given the specific setting in which domestic work is performed, the current text of Article 13 raised difficulties as far as occupational safety and health is concerned.’ (p. 48) As a result, the ILO Office suggested to discuss new wording during the 2011 Committee and, following a suggestion by Greece, to create separate articles for occupational safety and health and social security protection.

During the second committee discussion, the discussion focused on the first paragraph of Article 13, which – importantly – now dealt exclusively with occupational safety and health provisions (International Labour Office, 2011f, pp. 62-63). Spain, speaking on behalf of the EU Member States, introduced an amendment that would replace this paragraph with the following:

‘Every domestic worker has the right to a safe and healthy working environment. Each member shall take, in accordance with national law and practice, appropriate measures, with due regard to the specific characteristics of domestic work, to promote the occupational safety and health of domestic workers.’ (p. 62)

Similar to the first discussion, Spain, on behalf of the EU Member States, argued to take into account the specificities of domestic work and introducing sufficient flexibility in the provisions on occupational safety and health. Subamendments by the Workers’ Group (effective, notably replacing ‘promote’ by ‘ensure’) and Employers’ Group (ineffective, notably attempting to replace ‘ensure’ by ‘towards ensuring’) were introduced, of which the second was rebuffed by the Workers’ Group, South Africa, on behalf of the Africa Group, and Australia. After briefly defending its subamendment and despite receiving support from Canada, the Employers’ Group stated that they could support the Workers’ subamendment, under the condition that the ‘progressive implementation’ stipulated in the second paragraph was retained. After the Employer’s Group signaled its agreement, the amendment by the EU Member States, subamended by the Workers’ Group, received broad support and was adopted by the tripartite members, notably also receiving additional support from the

92 Interestingly and perhaps unsurprisingly, the wording of this amendment shows a distinct overlap with the proposal formulated by the ILO Office in its commentary on the replies it received from the tripartite members (International Labour Office, 2011c, p. 49).
government members of Australia, South Africa, on behalf of the Africa Group, and the United Arab emirates, on behalf of the GCC.

However, at the end of the discussion, the United Kingdom intervened independently to express an antagonistic position, stating that it ‘[…] could not back the proposal – even if EU Member States did – and preferred the words “toward ensuring”, which reflected the agreed objective, while not imposing an absolute standard.’ (International Labour Office, 2011f, p. 63) Recall that it was the Employers’ Group that had introduced a subamendment to replace ‘ensure’ with ‘toward ensuring’. However, by this time the Employers’ Group had stated that it did not oppose the Workers’ Group subamendment and this compromise was almost unanimously supported by the tripartite membership. The United Kingdom seems to have continued to stand by the subamendment introduced by the Employers’ Group, but was isolated both among its European and non-European peers in the Committee.

13. (1) Every domestic worker has the right to a safe and healthy working environment. Each Member shall take, in accordance with national laws, regulations and practice, effective measures, with due regard for the specific characteristics of domestic work, to ensure the occupational safety and health of domestic workers.

(2) The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Box 5.17 – The final provisions on occupational safety and health

Issue Conclusion on Occupational Safety and Health

In the final Convention, the provisions on occupational safety and health are included under the thirteenth article (cf. Box 5.17 supra) (International Labour Office, 2011h, p. 12). Spain, speaking on behalf of the EU Member States, shaped the discussion with amendments that intended to introduce more flexible wording for these provisions, notably to avoid extending equal protection to domestic workers. During the 2010 Committee, when the provisions on social security and occupational safety and health were included under the same point, the first amendment in this regard divided the tripartite stage and was withdrawn in the face of large opposition. During the 2011 Committee, when the provisions on social security and occupational safety and health were disentangled, a different amendment with a similar intent was adopted with broad tripartite support after having received some minor subamendments.

Against this background, we detected that one EU Member State represented the common positions on behalf of the Union. During the 2010 Committee, the Spanish EU Presidency represented the common EU position on the fifteenth point. During this first discussion, the
Netherlands also intervened to have its independent, but symbiotic position placed on record. Together, this resulted in coherent Union representation without further qualifications. During the 2011 Committee, Spain again served as the representative of the common positions during the discussion on the thirteenth article. Additionally, during this second discussion the United Kingdom intervened independently and took an antagonistic position against the common position. As a result, the Union’s representation was coherent, but with the counter-intuitive qualification that there was one antagonistic position.

Having process-traced the discussion on this issue, we find that the EU Member State representing the common positions on behalf of the Union was strongly involved in the proceedings and evolved from being ineffective to effective in achieving its goals. During the 2010 Committee, the Spanish EU Presidency introduced one amendment on behalf of the Union, which aimed to replace the first paragraph of Point 15 with a more flexible one. While the Employers’ Group and a few governments supported the amendment, it was nevertheless withdrawn due to the Workers’ Group and a large majority of the governments preferring the original text. During the 2011 Committee, Spain again introduced an amendment to replace the paragraph with a more flexible one, which was adopted with broad, tripartite support after having received minor subamendments. As a result, the EU was effective during the second committee discussion on occupational safety and health. In this regard, it is important to note that the Union’s second amendment overlapped with a proposal that was suggested by the ILO Office in-between the committee discussions and – even more important – the provisions on social security had been moved to a separate article and would thus not be affected by the amendment.

5.3.7. Social Security Protection

The provisions on social security protection were a key issue during the standard-setting procedure on domestic work. In light of extending decent work to workers in this sector, ‘[i]t was recognized early on that owing to economic and social changes in society, social protection for domestic workers could no longer be achieved through the personal relationship between the worker and the family.’ (Oelz, 2014, p. 163) However, the complex and politically sensitive nature of domestic work made social security protection a difficult issue to regulate, notably because the discussion was underscored by considerations on migrant workers. Indeed, in its initial report, the ILO Office highlighted these considerations by stressing the role of the ‘sending countries’ (International Labour Office, 2010b, p. 61).

As we have seen before (cf. Chapter 3.3.4.), this migratory dimension makes the acquis communautaire relevant for the discussion, despite the exclusive competence of EU Member States in terms of social security (Tortell, et al., 2009, p. 122). Specifically, the provisions on equal treatment and non-discrimination for workers across national borders are relevant for workers in the domestic work sector. Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.
15. (1) Each Member should take measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to other wage earners in respect of:
(a) occupational safety and health; and
(b) social security protection, including with respect to maternity.
15. (2) The measures referred to in paragraph (1) above may be applied progressively.

Box 5.18 – The provisions on social security protection submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the provisions on social security protection were drafted by the ILO Office and submitted for consideration as the fifteenth point, which also included the provisions on occupational safety and health under the same chapeau (cf. Box 5.18 supra) (International Labour Office, 2010c, p. 419). Given that these two issues were part of the same point, the debate during the first committee discussion was identical to the one on occupational safety and health (cf. supra) (International Labour Office, 2010d, pp. 74-78). Notably, the Spanish EU Presidency introduced an amendment on behalf of the EU Member States, which aimed to replace the first paragraph of Point 15 with a more flexible one. The amendment divided the tripartite stage. While the Employers’ Group and a few governments supported the amendment, it was nevertheless withdrawn due to the Workers’ Group and a large majority of the governments preferring the original text.

14. (1) Each Member shall take appropriate measures, with due regard to the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.
14. (2) The measures referred to in the preceding paragraph may be applied progressively.

Box 5.19 – The provisions on social security protection submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted the provisions on social security protection and submitted them for consideration to the 2011 Committee as the fourteenth article (cf. Box 5.19 supra) (International Labour Office, 2011d, p. 16). As we have seen before when tracing the discussion on occupational safety and health (cf. supra), the replies of the EU Member States to the 2011 questionnaire consistently highlighted their discontent with the wording of the article on social security protection and occupational safety and health, as it did not allow for sufficient flexibility to take into account the specificities of domestic work (International Labour Office, 2011c, pp. 46-49). As a result, the ILO Office suggested to discuss new wording during the 2011 Committee and, following a suggestion by Greece, suggested to create separate articles for social security protection and occupational safety and health.
During the second committee discussion, France, speaking on behalf of the EU Member States, introduced an amendment that would overhaul the first paragraph and bring it close to the final article on occupational safety and health (cf. supra) (International Labour Office, 2011f, pp. 64-66):

‘Each Member shall take measures, with due regard to the specific characteristics of domestic work and in accordance with national laws and regulations, to ensure that domestic workers have access to social security protection, including with respect to maternity.’ (p. 64)

Specifically, the amendment would delete a part of the ILO Office’s draft proposal (i.e. ‘ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally’) and replace this part with more flexible wording (i.e. ‘in accordance with national law and regulations’). It should be noted that France, speaking on behalf of the EU Member States, reintroduced this amendment after Australia first withdrew it, the latter stating that it was withdrawing its amendment ‘[…] in view of previous discussions on a similar issue and to avoid reopening a difficult debate.’ (p. 64) Indeed, while the amendment did receive support from Canada, a large majority of the tripartite membership was united in their opposition to discussing this amendment, even after France reintroduced it. The Workers’ and Employers’ groups were both opposed to the amendment and where therein joined by Bangladesh, Indonesia, Algeria, Argentina, the Philippines, and South Africa, speaking on behalf of the Africa Group.

Confronted with this broad opposition, France withdrew its amendment to overhaul the first paragraph and introduced two amendments that similarly attempted to introduce more flexible wording in the article, but in a piecemeal fashion. Firstly, France, speaking on behalf of a large coalition of governments, notably including the EU Member States, Iceland, Japan, the Republic of Korea, New Zealand, San Marino, Switzerland, Turkey, and the United States, introduced an amendment that would add ‘in accordance with national laws and regulations’ after ‘measures’ in the first paragraph, but this time without deleting the provision on equivalence to workers generally. This amendment was successfully adopted after receiving broad support across tripartite lines

Secondly, France, speaking on behalf of the EU Member States, introduced an amendment to replace ‘conditions that are not less favourable than those applicable to workers generally’ with ‘decent conditions’. However, the Workers’ and Employers’ groups opposed this amendment based on their unfamiliarity with the term ‘decent conditions’. France then withdrew the amendment, asking the secretariat of the consequences of retaining this part of
the article. The representative of the Secretary-General replied that ‘[…] the interpretation would be provided by the Committee once the Convention had been adopted [and that s]he could not speculate what the meaning [of the phrase] was.’ (p. 66)

14. (1) Each Member shall take appropriate measures, in accordance with national laws and regulations and with due regard for the specific characteristics of domestic work, to ensure that domestic workers enjoy conditions that are not less favourable than those applicable to workers generally in respect of social security protection, including with respect to maternity.

14. (2) The measures referred to in the preceding paragraph may be applied progressively, in consultation with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers.

Box 5.20 – The final provisions on social security protection

**Issue Conclusion on Social Security Protection**

In the final Convention, the provisions on social security protection are included under the fourteenth article (cf. Box 5.20 supra) (International Labour Office, 2011h, p. 12). The discussion on this issue was closely linked to the debate on occupational safety and health, as the latter shared the same article with social security protection during the 2010 committee discussion. During this first discussion, we have previously seen that an amendment by the Spanish EU Presidency, speaking on behalf of the EU Member States, divided the tripartite stage and failed to introduce more flexible wording (cf. supra). During the 2011 Committee, the provisions on social security protection and occupational safety and health were disentangled and were each placed in a separate article. However, while Spain effectively introduced more flexible wording in the article on occupational safety and health, Article 14 on social security protection largely withstood similar amendments. Indeed, the united tripartite stage was opposed to even discussing such an amendment with regards to social security protection.

Against this background, we detected that several EU Member States represented common position on behalf of the Union. During the 2010 Committee, the Spanish EU Presidency represented the common EU position on the fifteenth point. During this first discussion, the Netherlands also intervened to have its independent, but symbiotic position placed on record. Together, this resulted in coherent Union representation without further qualifications. During the 2011 Committee, France intervened on behalf of the EU Member States to introduce and defend two amendments that failed to be adopted. In addition, France also intervened on behalf of a larger coalition of states, notably including the EU Member States, Iceland, Japan, the Republic of Korea, New Zealand, San Marino, Switzerland, Turkey, and the United States, to introduce an amendment that was successfully
adopted. In addition, the Netherlands intervened independently with a symbiotic position. As a result, the Union was represented coherently during the 2011 Committee.

Having process-traced the discussion on this issue, we find that the EU Member States representing the common position on behalf of the Union were strongly involved in the proceedings, but remained ineffective in achieving their goals. During the 2010 Committee, the Spanish EU Presidency introduced one amendment on behalf of the Union, which aimed to replace the first paragraph of Point 15 with a more flexible one. While the Employers’ Group and a few governments supported the amendment, it was nevertheless withdrawn due to the Workers’ Group and a large majority of the governments preferring the original text. During the 2011 Committee, the EU Member States were again strongly involved in shaping the proceedings, but were ineffective in achieving their goals. During this second discussion, France, speaking on behalf of the EU Member States, re-introduced an amendment that would overhaul the first paragraph and replace its wording with that of the final article on occupational safety and health. While this received support from Canada, the Workers’ and Employers’ groups were both opposed to the amendment and where therein joined by Australia, Bangladesh, Indonesia, Algeria, Argentina, the Philippines, and South Africa, speaking on behalf of the Africa Group. Confronted with the broad opposition, France withdrew its amendment to overhaul the first paragraph and introduced two amendments that similarly attempted to introduce more flexible wording in the article, but in a piecemeal fashion. The first amendment, introduced on behalf of a larger coalition of governments, notably including the EU Member States, Iceland, Japan, the Republic of Korea, New Zealand, San Marino, Switzerland, Turkey, and the United States, was successfully adopted after receiving broad support across tripartite lines, but the second amendment, introduced on behalf of the EU Member States, was withdrawn after it faced opposition from both the Employers’ and the Workers’ groups. As a result, the EU was ineffective during the 2011 Committee, with the exception of a modest amendment that was introduced on behalf of a larger coalition of governments.

5.3.8. Employment Agencies

The provisions on employment agencies were a key issue during the standard-setting procedure on domestic work. In its initial report, the ILO Office highlighted that ‘[a]lthough employment agencies may hold out the promise of a formal domestic work relationship, their reliability can vary greatly […] and standard setting for domestic workers needs to bear this in mind.’ (International Labour Office, 2010b, pp. 69-71). However, recalling the complex and politically sensitive nature of domestic work, the discussion on this issue was underscored by considerations on migrant workers. Indeed, the Office highlighted the potential for abuse when these agencies are involved in cross border labor migration of domestic workers. In this context, the report highlights Convention No. 181 on Private Employment Agencies, which calls for members to ‘[…] adopt all necessary and appropriate
measures to protect and prevent abuses of migrant workers recruited or placed in its territory by private employment agencies.’ (p. 69) Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

The discussion on this issue took place on a tripartite stage that started off divided. The replies of the tripartite members to the ILO Office’s 2010 questionnaire provide us with an indication of the positions the governments and the social partners before the start of the double-discussion procedure. Asked whether the Convention should include provisions to protect domestic workers from abusive practices of employment agencies, a large majority of the governments (i.e. 62 yes votes out of a total of 67 replies (International Labour Office, 2010c, p. 177)) and national worker representatives (i.e. 122 yes votes out of a total of 125 replies (p. 180)) voted in favor of including provisions on employment agencies in the Convention. The national employer representatives were less partial to this suggestion (i.e. only four yes votes out of a total of ten replies (p. 179)). Notably, the IOE failed to see the relevance of this issue, as ‘employees remaining employed by an agency are not domestic workers.’ (p. 179) While the EU Member States were also predominantly in favor of including provisions on employment agencies (i.e. 14 yes votes out of a total of 15 replies (p. 177)), they made remarks similar to those of the IOE. However, it should be noted that the replies to the 2010 questionnaire only indicate the starting positions of the states and the social partners at the beginning of the double-discussion procedure.

19. Each Member should take measures to ensure that domestic workers recruited or placed by employment agencies, in particular migrant domestic workers, are effectively protected against abusive practices.

Box 5.21 – The provisions on employment agencies submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the provisions on employment agencies were drafted by the ILO Office and submitted for consideration as the nineteenth point (cf. Box 5.21 supra) (International Labour Office, 2010c, p. 420). During the first committee discussion, the debate took place on a divided tripartite stage, whereupon both the social partners and the states were divided on whether to delete or extend these provisions (International Labour Office, 2010d, pp. 89-95). Crucially, the United States introduced an amendment intended to extend Point 19 into a list of more detailed paragraphs on the responsibilities of employment agencies (International Labour Office, 2010d, pp. 89-95). The Workers’ Group supported the amendment, while the Employers’ Group (which had originally introduced an amendment to delete Point 19, albeit later withdrawing it) simply stated that it was not opposed to its adoption. The government representatives were divided on the issue. While one group (i.e. Canada, Japan, Norway, the Spanish EU Presidency, speaking on behalf of the EU Member States, and the United Kingdom) opposing the amendment on grounds that
a Convention ‘[…] should not include too much detail and be too prescriptive.’ (p. 90), a second and larger group (i.e. Argentina, Australia, Brazil, Columbia, the Dominican Republic, Indonesia, the Philippines, South Africa, speaking on behalf of the Africa Group, and Uruguay) supported the amendment. Eventually, the Chair consulted with the Workers’ and Employers’ Group before announcing a majority supported the amendment. After its adoption, Canada, Japan, Norway and the EU Member States ‘[…] reiterated their reservations about the adopted amendment and wanted them to be placed on record.’ (p. 91)

17. (1) Each Member shall take measures to ensure that domestic workers recruited or placed by an employment agency, including migrant domestic workers, are effectively protected against abusive practices, including by establishing the respective legal liability of the household and the agency.

17. (2) Each Member shall take measures to:
(a) establish criteria for the registration and qualifications of employment agencies, including disclosure of information on any relevant past violations;
(b) carry out regular inspections of employment agencies to ensure compliance with relevant laws and regulations, and provide for significant penalties for violations;
(c) provide accessible complaint mechanisms for domestic workers to notify authorities of abusive practices; and
(d) ensure that fees charged by employment agencies are not deducted from the remuneration of domestic workers.

Box 5.22 – The provisions on employment agencies submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted the provisions on employment agencies and submitted them for consideration to the 2011 Committee as the seventeenth article (cf. Box 5.22 supra) (International Labour Office, 2011d, p. 16). After having been rebuffed in their opposition during the first discussion, the EU Member States continued to express the concerns in their replies to the 2011 questionnaire (International Labour Office, 2011c, pp. 50-53). Repeatedly, the EU Member States highlighted the too detailed and prescriptive nature of the subparagraphs, which most of them liked to move to the Recommendation or deleted altogether. As a result, the consistent replies by EU Member States lead the ILO Office in its commentary to call for further discussion in the second year.

During the second committee discussion, the debate took place on a united tripartite stage, whereupon the social partners introduced a joint-amendment and together with the government representatives came to a consensus through the introduction of subamendments (International Labour Office, 2011f, pp. 70-73). The joint amendment was formally introduced by the Employer’s Group as the ‘[…] the finely balanced result of careful deliberations [with the Workers’ Group and some governments], to address the
problems regarding the original text of Article 17.’ (p. 71) Drawing on the 1997 Convention on Private Employment Agencies, the joint amendments laid the basis for the final provisions (cf. Box 5.23 infra) and was finalized through a number of subamendments by the social partners and the government representatives. Against this background, the Hungarian EU Presidency, speaking on behalf of the EU Member States, effectively introduced a subamendment changing the language in various paragraphs of the article and, along with the majority of the tripartite partners, supported the adoption of the final outcome. However, we also find that the Netherlands took an antagonistic position against the Union's position. While the Hungarian EU Presidency and the United Kingdom, speaking on behalf of the EU Member States, opposed a Namibian amendment that subsequently failed to be adopted, the Netherlands intervened independently to express its support for said amendment.

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<th>15. (1) To effectively protect domestic workers, including migrant domestic workers, recruited or placed by private employment agencies, against abusive practices, each Member shall:</th>
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<td>(a) determine the conditions governing the operation of private employment agencies recruiting or placing domestic workers, in accordance with national laws, regulations and practice;</td>
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<td>(b) ensure that adequate machinery and procedures exist for the investigation of complaints, alleged abuses and fraudulent practices concerning the activities of private employment agencies in relation to domestic workers;</td>
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<td>(c) adopt all necessary and appropriate measures, within its jurisdiction and, where appropriate, in collaboration with other Members, to provide adequate protection for and prevent abuses of domestic workers recruited or placed in its territory by private employment agencies. These shall include laws or regulations that specify the respective obligations of the private employment agency and the household towards the domestic worker and provide for penalties, including prohibition of those private employment agencies that engage in fraudulent practices and abuses;</td>
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<td>(d) consider, where domestic workers are recruited in one country for work in another, concluding bilateral, regional or multilateral agreements to prevent abuses and fraudulent practices in recruitment, placement and employment; and</td>
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<tr>
<td>(e) take measures to ensure that fees charged by private employment agencies are not deducted from the remuneration of domestic workers.</td>
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| 15. (2) In giving effect to each of the provisions of this Article, each Member shall consult with the most representative organizations of employers and workers and, where they exist, with organizations representative of domestic workers and those representative of employers of domestic workers. |
Issued Conclusion on Employment Agencies

In the final Convention, the provisions on employment agencies are included under the fifteenth article (cf. Box 5.23 supra) (International Labour Office, 2011h, pp. 12,14). The discussion on these provisions initially took place on a divided tripartite stage during the 2010 Committee, but the tripartite members moved toward a consensus after the social partners opened the 2011 Committee with a joint amendment on this issue. As such, the provisions on employment agencies were first retained and even extended by the Workers’ Group and a slight majority of governments against the opposition of the Employers’ Group and a slight minority of governments (including the EU Member States), before being overhauled and finalized the next year on the basis of the 1997 Convention on Private Employment Agencies.

Against this background, we detected that several EU Member States represented common positions on behalf of the Union. During the 2010 Committee, the Spanish EU Presidency and the Netherlands represented the common positions on the nineteenth point. During this first discussion, the United Kingdom also intervened independently in support of the common position, resulting in a coherent Union representation without further qualifications. During the 2011 Committee, the Hungarian EU Presidency and the United Kingdom represented common positions during the discussion on the seventeenth article. During this second discussion, the Netherlands antagonistically intervened independently in support of a Namibian amendment, which the Union had previously opposed. As a result, the Union’s representation was coherent, but with the counter-intuitive qualification that there was one antagonistic position.

Having process-traced the discussion on this issue, we find that the EU Member States representing common positions were involved in the proceedings, although predominantly by responding to proposals from other representatives, rather than shaping the debate with their own amendments. From this secondary role, they evolved from being ineffective to effective in achieving their goals. During the 2010 Committee, the Spanish EU Presidency, speaking on behalf of the EU Member States, failed to oppose an amendment by the United States (supported by the Workers’ Group and a majority of states) to retain and even extend the provisions on employment agencies. After having been rebuffed in their opposition during the first discussion, the EU Member States continued to express the concerns in their replies to the 2011 questionnaire. However, during the 2011 Committee, the Hungarian EU Presidency and the United Kingdom, speaking on behalf of the EU Member States, supported and subamended the successfully adopted joint-amendment by the social partners and opposed a failed subamendment by Namibia. Importantly, the joint-amendment that laid the basis for the final outcome was itself based on the 1997 Convention on Private
Employment Agencies and overhauled the provisions that were discussed during the first year, which was acceptable to the EU Member States. As a result, the EU was effective during the discussion on employment agencies.

5.3.9. Compliance and Enforcement

The compliance and enforcement provisions were a key issue during the standard-setting procedure on domestic work. Recalling the complex nature of domestic work, the discussion on this issue was underscored by considerations on ‘[…] the need to protect the privacy of households [i.e. the employers in this sector], while at the same time providing for a role of labour inspectorates when it comes to ensuring compliance with laws regulating domestic work.’ (Oelz, 2014, p. 167) Indeed, in its initial report the ILO Office noted that ‘[…] the CEACR has repeatedly recalled the need for effective, accessible, complaints mechanisms and procedures to ensure redress for domestic workers, including migrant workers.’ (International Labour Office, 2010b, p. 72) Notably, the report highlighted labor inspection as a particularly challenging issue in this regard (pp. 72-74). Against this background, we will now explore the causal potential of EU coherence in relation to its effectiveness.

17. Each Member should take measures to ensure that domestic workers have affordable and easy access to fair and effective dispute settlement procedures.

18. Each Member should put in place arrangements that are suited to the specific context of domestic work to ensure compliance with national laws and regulations applicable to domestic workers.

Box 5.24 – The compliance and enforcement provisions submitted to the 2010 Committee by the ILO Office

Before the 2010 Committee, the compliance and enforcement provisions were drafted by the ILO Office and submitted for consideration as the seventeenth and eighteenth point (cf. Box 5.24 supra) (International Labour Office, 2010c, p. 420). During the first committee discussion, both points were discussed on a relatively united tripartite stage, whereupon the tripartite members formed a consensus by subamending amendments by Portugal, speaking on behalf of the EU Member States, on Point 17 and the Employers’ Group on Point 18 (International Labour Office, 2010d, pp. 85-89).

During the discussion on Point 17, the debate revolved around an amendment introduced by Portugal, speaking on behalf of the EU Member States, to replace the existing text with the following: ‘Each Member should take measures to ensure that domestic workers have access to fair and effective dispute settlement procedures that are no less favourable than those available to other wage earners.’ (p. 85) According to Portugal, the new text was intended ‘[…] to preserve the principle of non-discrimination in access to justice, […] which applied to all citizens, not only domestic workers.’ (p. 85) Serving as a jumping-off point, the Union’s
amendment led to a long discussion in which several subamendments on the precise wording of Point 17 were discussed. Ultimately, the end result was adopted as subamended with broad support across the tripartite lines and preserved the principle introduced by the Union in its original amendment.

During the brief discussion on Point 18, an amendment by the Employers’ Group was adopted as subamended by the Workers’ Group (International Labour Office, 2010d, p. 89). The social partners quickly came to an agreement on simplifying the language of this point, without changing its meaning. Subsequently, the amendment (as subamended) was adopted after having received supported from the Philippines, South Africa, speaking on behalf of the Africa Group, and Spain. At the start of the discussion, the United Kingdom, speaking on behalf of the EU Member States, withdrew an amendment before it could be discussed, which would have replaced the eighteenth point with: ‘Each Member should ensure that the specific context of domestic work is taken into consideration when ensuring compliance with national laws and regulations applicable to domestic workers.’ (p. 89)

15. Each Member shall take measures to ensure that all domestic workers, either by themselves or through a representative, have access to courts, tribunals or other dispute resolution procedures under conditions that are not less favourable than those available to workers generally.

16. Each Member shall establish effective means of ensuring compliance with national laws and regulations for the protection of domestic workers.

Box 5.25 – The compliance and enforcement provisions submitted to the 2011 Committee by the ILO Office

Following the first discussion, the ILO Office redrafted these provisions and submitted them for consideration to the 2011 Committee as the fifteenth and sixteenth article (cf. Box 5.25 supra) (International Labour Office, 2011d, p. 16). During the second committee discussion, both points were again discussed on a relatively united tripartite stage, whereupon the tripartite members formed a consensus by subamending amendments by the Hungarian EU Presidency, speaking on behalf of IMEC, on Article 15 and the Employers’ Group and the Hungarian EU Presidency, speaking on behalf of the EU Member States, on Article 16 (International Labour Office, 2011f, pp. 66-69).

During the discussion on Article 15, the Hungarian EU Presidency, speaking on behalf of IMEC, introduced an amendment to this article, which would include ‘in accordance with national law and practice’ after ‘to ensure’ (International Labour Office, 2011f, pp. 66-67). After receiving support from the Workers’ and Employers’ groups, Algeria, Brazil, Canada, and the United Arab Emirates, speaking on behalf of GCC, this amendment was adopted
without further discussion. Later on during this discussion, the Hungarian EU Presidency, speaking on behalf of the EU Member States, also supported the successfully adopted amendment by the Workers’ Group to include ‘effective’ before ‘access to courts’.

During the discussion on Article 16, the Employers’ Group introduced an amendment to include ‘and accessible complaint mechanisms and’ after ‘effective’ at the beginning of the discussion (International Labour Office, 2011f, pp. 67-69). This amendment was supported by the Worker’s Group and, after clarification from the Representative of the Secretary-General, also by Algeria, Brazil, Ecuador, the Hungarian EU Presidency, speaking on behalf of the EU Member States, New Zealand, the Philippines, South Africa, speaking on behalf of the Africa Group, and the United States. Subsequently, the Hungarian EU Presidency, speaking on behalf of EU Member States, introduced its own amendment to Article 16, which would add ‘In establishing these means, due respect shall be given to the privacy of both the domestic worker and the household members.’ (p. 68) This amendment aimed at alleviating earlier concerns for the right to privacy when allowing labor inspections in the workplace of domestic workers, i.e. private households, which is similar to the intention behind the amendment that was withdrawn by the United Kingdom during the 2010 Committee. Together with privacy amendment from the Workers’ and the Employers’ groups, the Union’s amendment served as the basis for informal, tripartite discussions and resulted in two new paragraphs. These paragraphs were adopted with broad support across tripartite lines. Moreover, the third paragraph reflected the essence of the EU’s amendment.

16. Each Member shall take measures to ensure, in accordance with national laws, regulations and practice, that all domestic workers, either by themselves or through a representative, have effective access to courts, tribunals or other dispute resolution mechanisms under conditions that are not less favourable than those available to workers generally.

17. (1) Each Member shall establish effective and accessible complaint mechanisms and means of ensuring compliance with national laws and regulations for the protection of domestic workers.

17. (2) Each Member shall develop and implement measures for labour inspection, enforcement and penalties with due regard for the special characteristics of domestic work, in accordance with national laws and regulations.

17. (3) In so far as compatible with national laws and regulations, such measures shall specify the conditions under which access to household premises may be granted, having due respect for privacy.
Issue Conclusion on Compliance and Enforcement

In the final Convention, the compliance and enforcement provisions are included under the sixteenth and seventeenth article (cf. Box 5.26 supra) (International Labour Office, 2011h, p. 14). The discussion on these provisions was characterized by a relatively united tripartite stage, whereupon the tripartite members formed a consensus by subamending amendments that were introduced by either the governments (often one of the EU Member States) or one of the social partners.

Against this background, we detected that several EU Member States represented common positions on behalf of the Union. During the 2010 Committee, Portugal and the United Kingdom represented common positions on points 17 and 18 (International Labour Office, 2010d, pp. 85-89). In addition, during this first discussion, France and Spain also intervened independently with symbiotic positions, resulting in a coherent Union without further qualifications. During the 2011 Committee, the Hungarian EU Presidency represented common positions on articles 15 and 16 (International Labour Office, 2011f, pp. 66-69). In addition, Hungary also intervened on behalf of IMEC. As a result, the Union was again represented coherently, although during the second discussion it shared a close connection with positions expressed on behalf of IMEC.

Having process-traced the discussion on this issue, we find that the EU Member States representing the common positions on behalf of the Union were strongly involved in the proceedings and were effective in achieving their goals. During the 2010 Committee, Portugal, speaking on behalf of the EU Member States, introduced an amendment to Point 17, which intended to preserve the principle of non-discrimination in access to justice for all citizens. While the precise wording was debated at length, the amendment served as the jumping-off point and was ultimately adopted with broad support across tripartite lines. In addition, it should be noted that the United Kingdom, speaking on behalf of the EU Member States, withdrew an amendment to Point 18 before it could be debated. During the 2011 Committee, Hungary, speaking on behalf of IMEC, introduced an amendment to Article 15, which intended to make the article more accommodating to different national legislation. This amendment was quickly adopted with broad support across tripartite lines. In addition, the Hungarian EU Presidency, speaking on behalf of the EU Member States, introduced an amendment to Article 16, which intended to protect the privacy of domestic workers and employers and, as such, had a similar intent as the amendment the United Kingdom withdrew the year before. Together with the privacy amendment of the Workers’ and the Employers’ groups, the Union’s amendment served as the basis for informal, tripartite discussions. These consultations resulted in two new paragraphs, which were adopted with broad support across tripartite lines and, moreover, reflected the essence of the
EU’s initial amendment. As a result, the Union was effective during the discussion on the compliance and enforcement provisions.

5.4. Case Conclusion

The goal of the standard-setting procedure on domestic work was to create new instruments that would improve the working conditions of domestic workers worldwide, thereby for the first time extending the ILO’s ‘decent work for all’ slogan to include a group of workers that are predominantly found in the informal economy and, moreover, predominantly consist of vulnerable migrant women and (to some extent) children. As such, these instruments would create a more supportive legal environment for early national initiatives to improve the working conditions in this hitherto under-regulated sector. Despite the complex and politically-sensitive nature of this issue, the Domestic Workers Convention and Recommendation were adopted with broad tripartite support after having followed a typical double-discussion procedure. Following its adoption during the 2011 ILC, the Convention entered into force in September 2013 and has received 14 ratifications to date.

The standard-setting procedure on domestic work took place on a divided tripartite stage, whereupon the social partners took opposite positions on the outer ends of the stage and governments oriented their positions (quite often represented through UN regional groups) on the middle ground. The division between the Employers’ and Workers’ groups originated from the former’s conservative opposition to a binding convention during the 2010 Committee, which was ultimately settled with a roll call vote in favor of the Workers’ Group progressive preference for a convention supplemented by a recommendation. During the 2011 Committee, the discussion moved on to specific provisions and the tripartite members managed to come to a consensus, thereby uniting the tripartite stage. Nevertheless, the Employer’s Group would continue to take conservative positions and, ultimately, express its concerns on the outcome of the procedure and the chances of the final Convention to be broadly ratified after adoption.

Turning to our detection of external EU coherence, the bird’s-eye view gave us a first impression of the tactical dimension of the Union’s representation during the standard-setting procedure on domestic work. This quantitative overview indicated that, during the 2010 and 2011 tripartite committee discussions, the interventions by the EU Member States were focused squarely on representing common positions on behalf of the Union (respectively 80 and 95 times). Especially when compared to the much smaller number of independent interventions (26 and 68) and interventions in other configurations (eight and 14), the focus on representing common positions is clearly indicated by the bird’s-eye view. In this regard, it should also be noted that several of the interventions in other configurations were made on behalf of IMEC (two and twelve). In addition, we also found that interventions on behalf of the Union were predominantly handled by Spain and Hungary as
the then-holders of the EU Presidency, but that they were therein joined by a larger group of Member States. Indeed, this quantitative overview reveals a division of labor among a group of eight or nine Member States, although EU Presidency-holders Spain and Hungary still clearly functioned as the *primus inter pares* among these representatives.

Having process-traced the standard-setting procedure on domestic work, we can now extend on the preliminary impression the bird’s-eye view provided of the Union’s representation during this procedure. Firstly, focusing on the tactical dimension, Table 5.7 below categorizes the Union’s representation on all nine key issues as either coherent, incoherent, consistent, or inconsistent.

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<tr>
<th>Symbiotic MS position(s)</th>
<th>Common EU position</th>
<th>Independent MS position(s)</th>
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<td>Definitions and scope of application</td>
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<td>The right to be informed</td>
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<td>Written employment contracts</td>
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<th>Antagonistic MS position(s)</th>
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<td>Occupational safety and health</td>
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<td>Employment agencies</td>
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Table 5.7 – The external coherence of EU representation during the standard-setting procedure on domestic work

In terms of the distinction between Member States representing common or independent positions, the Table above shows that common EU positions were represented during the discussion on all nine key issues. While independent interventions and interventions in other configurations existed alongside these positions, this serves to confirm our bird’s-eye view’s impression that the EU Member States were focused squarely on representing common positions. Looking at who represented the Union, tracing the discussion on these issues naturally also confirms that the Union’s positions were mostly represented by the Spanish and Hungarian EU Presidencies, while a number of other EU Member States and a Representative of the Union (i.e. the latter intervening on behalf of the Union during the discussion on written employment contracts, when exclusive EU competences were in play) were also actively involved in representing positions on behalf of the Union. As such, we re-encounter the division of labor between the EU Member States when tracing the discussion on the nine key issues.
The common EU positions were predominantly represented on behalf of only the EU Member States, without the representative additionally also speaking on behalf of an extended membership of non-EU Member States. However, having traced the discussion on the nine key issues, we find that certain exceptions should be noted. For one, during the discussion on social security, France intervened on behalf of an extended membership when expressing a common EU position on behalf of the Union, Iceland, Japan, the Republic of Korea, New Zealand, San Marino, Switzerland, Turkey, and the United States. More important in this regard, interventions on behalf of IMEC can at times be considered as *de facto* EU representation, meaning that the Union’s common position was represented through the extended membership of this group. For example, during the 2011 committee discussion on the definitions and scope of application, the Hungarian EU Presidency and France intervened on behalf of IMEC to defend an effectively adopted common EU position from the year before. While it should be stressed that not all interventions on behalf of IMEC can simply be equated with common EU positions, examples like these show they can at times indeed be considered as *de facto* EU representation due to their overlapping membership and almost identical positions.

In terms of the distinction between the Member States representing symbiotic or antagonistic positions, Table 5.7 shows that most of the EU Member States’ independent interventions or interventions in other configurations were symbiotic to the Union’s common position. Having traced the discussion on these issues, we find that these interventions mostly consisted of Member States intervening independently to agree (often explicitly) with the common EU positions or, as we just mentioned, being part of similar positions expressed on behalf of IMEC. However, while most independent interventions or interventions in other configurations were symbiotic, the Table above also reveals three instances wherein one or more EU Member States expressed positions that were antagonistic to the Union’s common position. On the form of the instruments, Estonia abstained from the pivotal vote that settled this issue at the end of the 2010 Committee, while the other EU Member States voted in line with the common position in favor of a convention supplemented by a recommendation. On occupational safety and health, the United Kingdom intervened independently to state that it could not agree with the final outcome at the end of the 2011 Committee, even if Spain had agreed on behalf of the Union. On employment agencies, the Netherlands intervened independently to support a Namibian amendment, which the Hungarian EU Presidency and the United Kingdom had previously opposed on behalf of the Union. Importantly, while Estonia’s abstention meant that it did not directly antagonize the Union’s common position, the independent interventions by the United Kingdom and the Netherlands were directly antagonistic against the common positions that were represented on behalf of the Union. In this regard, it should be noted that the United Kingdom later also expressed its discontent with the final instruments
(stating it could not ratify the Convention ‘in the foreseeable future’) during the Plenary Session of the 2011 ILC and, in addition, that both the United Kingdom and the Czech Republic abstained from the final vote on the adoption of the Convention and Recommendation.

Secondly, focusing on the substantive dimension of EU representation, tracing the discussions on the nine key issues has shown that the Union’s common positions were in favor of a binding Convention supplemented by a non-binding Recommendation, but repeatedly aimed to introduce more general wording and flexibility in the former so as to ensure compatibility with the *acquis*. This position was already established by the Spanish and the Hungarian EU Presidencies during the General Discussions at the start of the 2010 and 2011 tripartite committee discussions, but tracing the discussions on the nine key issues adds further substance to these general positions. Notable examples include the Union’s attempts to narrow the definitions and scope of application, halt the further extension of provisions on the right to be informed and employment agencies, and its efforts to introduce more flexible wording in the provisions on working time, occupational safety and health, and social security.

Turning to our detection of EU effectiveness in terms of goal attainment, process-tracing the key issues of the standard-setting procedure on domestic work reveals that the Union attained its goals on almost all of the nine key issues. However, while the final Convention has been deemed fully compatible with the *acquis communautaire* by a Council Decision, the Union nevertheless failed to attain its self-proclaimed goals during the discussion on two of these issues: the right to be informed and social security. Specifically, during the discussion on the former, the Union failed to have these provisions moved to the non-binding Recommendation and, during the discussion on social security, the Union failed to overhaul the provisions in order to introduce more flexibility regarding the responsibilities that would be imposed upon of ratifying governments.

Given the institutional set-up of the double-discussion procedure, the Union’s goal attainment is mainly determined by its ability to find compromises during the tripartite committee discussions. However, tracing the discussions on working time, occupational safety and health, and social security has shown that consistent replies by the EU Member States to the ILO Office’s questionnaires can greatly influence the latter’s drafting process before and in-between these committees. For example, based on their consistent expression of discontent with 2010 Committee’s outcome on occupational safety and health and social security, the ILO Office redrafted these provisions by placing them in separate articles and suggested that the discussion should continue on the precise wording. While the final outcome was still decided during the 2011 Committee, this shows that other stages of the
double-discussion procedure (and, importantly, the Union’s representation therein) are relevant in this regard.

As we have seen during our conceptualization of EU effectiveness, detecting the Union’s goal attainment tells us little when it is done in isolation from the international context. Indeed, once we incorporate the international context in our analysis, we are able to paint a more fine-grained image of EU representation by relating its substantive dimension to the positions of third parties and, as such, pinpoint the relative nature of the goals the Union did or did not attain. To briefly reiterate, the standard-setting procedure took place on a tripartite stage that was divided by the opposite positions taken by the social partners, i.e. the Employer’s conservative stance in opposition of a binding Convention and the Worker’s progressive position in support of a binding instrument. In between these outer ends of the stage, the governments (often represented as part of their respective UN Regional Group) oriented their positions on the middle ground and leaned toward either a conservative (e.g. EU, ASPAG, IMEC, GCC, and – especially – Canada) or a progressive (e.g. GRULAC, Africa Group, Brazil, and the United States) position. While we should again stress that the positions of the governments and the social partners varied depending on the issue under discussion, these general positions provided the foundation on which the tripartite members built their issue-specific positions and oriented themselves toward one another.

Against this background, relating the substantive dimension of EU representation to the positions of third parties reveals that the Union leaned toward the conservative side of the tripartite stage. While the Spanish and the Hungarian EU Presidencies placed the Union firmly in the middle between the social partners during the General Discussions at the start of the 2010 and 2011 tripartite committee discussions, tracing the discussions on the key issues has revealed that the Union’s issue-specific common positions often leaned toward the conservative side of the tripartite stage. For example, the Union’s attempts to narrow the definitions and scope of application, halt the further extension of provisions on the right to be informed and employment agencies and its efforts to introduce more flexible wording in the provisions on working time, occupational safety and health, and social security placed the Union in opposition to the progressive stance of the Worker’s Group and, moreover, quite often also in opposition to a progressive-leaning positions of the majority of governments.

While we have not traced the internal European coordination process, we have nevertheless encountered strong indications for some of the reasons behind the Union’s conservative-leaning common positions on domestic work. Firstly, the *acquis communautaire* drove the EU to argue for more flexibility on several key issues. For example, during the discussion on occupational safety and health, the Union was opposed to providing ‘equal’ protection to domestic workers. This can be related to Council Directive 89/391/EEC, which excludes
this type of workers from the extensive protection almost every other type of European worker enjoys in this regard. As such, the explicit responsibility to provide equal protection would entail a significant investment for ratifying EU Member States, leading the Union to argue for more flexible wording. Secondly, we have encountered repeated indications that several EU Member States were opposed to the adoption of a binding Convention on domestic work. While only Estonia abstained from the pivotal roll call vote on the form of the instruments, the United Kingdom, the Czech Republic, and others expressed their discontent at other times in the procedure and can be assumed to have influenced the internal European coordination process to this end.

Having situated the substantive dimension of EU representation and, thus, the nature of the goals the Union did or did not attain within the international context of the standard-setting procedure on domestic work, we now turn to the causal potential of EU coherence in relation to its effectiveness. Based on our process-tracing of the discussion on nine key issues, we have found that the Union’s external coherence can be seen as a necessary, but insufficient condition for effectiveness within the international context found in this procedure.

Firstly, in the international context found in the procedure on domestic work, the Union’s external coherence is a necessary condition for effectiveness in terms of goal attainment. For example, the discussions on the definition and scope of application, written employment contracts, working time, and occupational safety and health all illustrate how a coherent Union was able to push through its amendments by means of repeated consultations, (sub)amendments, and Working Parties, despite the initial opposition of the Workers’ Group and a majority of the governments. Especially when the governments are themselves evenly divided, like during the discussion on the definitions and scope of application, the external coherence of the Union allows it to throw enough weight behind its common position and influence the final outcome.

At first sight, our detection of EU incoherence during three discussions in which the Union effectively attained its self-proclaimed goals (i.e. the form of the instruments, occupational safety and health, and employment agencies) seems to fly in the face of our assessment that external coherence is a necessary condition within this international context. However, having process-traced the discussion on these issues, we have found that the Union’s incoherence, while very clearly detectable, did not affect the final outcomes. For example, during the discussion on occupational safety and health, the United Kingdom’s antagonistic position took aim directly at the Union’s common position, but this came after the final outcome on these provisions had been settled. As such, it is more appropriately seen as an example of an EU Member State showing its non-cooperative side to appease domestic
interests after first having cooperated on the final outcome (Kissack, 2010, p. 36). Similarly, the Union’s external incoherence on the form of the instruments and employment agencies did not affect the final outcome of these issues.

Secondly, in the international context found in the procedure on domestic work, the Union’s external coherence is an insufficient condition for effectiveness in terms of goal attainment. For example, during the discussion on the right to be informed, the Union’s opposition to an extension of these provisions increasingly isolated the Union as it opposed the progressive stance of the Workers’ Group and a majority of the governments and, after a compromise was found at the end of the 2010 Committee, the Employers’ Group. Similarly, during the discussion on social security, the Union’s amendments aimed at more flexible wording increasingly isolated the Union on the tripartite stage. In both instances the EU was ultimately ineffective in attaining its self-proclaimed goals. As such, the discussion on the right to be informed and social security have shown that coherently representing a conservative-leaning position is not sufficient when this position causes the Union to become gradually isolated on the tripartite stage.

In summary, by relating our detection of EU coherence and effectiveness to the international context found in the double-discussion procedure on domestic work, we have found strong indications that the Union’s external coherence can be seen as a necessary, but insufficient condition for effectiveness. Given that the Union’s goals and objective leaned toward the conservative side of the tripartite stage and, as such, stood apart from the progressive--leaning majority, external coherence was clearly necessary, though not sufficient to achieve its goals. Comparing these indications with our findings of the previous two case studies will help to further explore and clarify this in the general conclusions.
6. General Conclusions

This doctoral dissertation has explored the causal potential of EU coherence in relation to its effectiveness in international institutions, specifically by tracing the former’s interaction with the international context found in the ILO standard-setting procedures on maritime labor, work in fishing, and domestic work. The underlying research objective of this exploratory effort has been to question and extend on the dominant folk theory that equates the Union’s coherence and effectiveness in international institutions. In these general conclusions, we will present our predominantly empirical contribution to the research field on the Union in international institutions, wherein this dissertation has situated itself by building on the combination of the one voice debate and the recent incorporation of the international context. Firstly, we will present our findings on the tactical and substantive dimensions of EU representation and the Union’s effectiveness. Notably, our conceptual equipment has detected that the external coherence of the Union’s representation has gradually increased across the three procedures under investigation and that the EU has virtually always attained its self-proclaimed goals. Secondly, given that these isolated detections tell us little about the causal relation between these detectable unobservables, we will subsequently relate them to the varied international contexts found in the three ILO standard-setting procedures. Notably, our comparison has found that finds that EU coherence is not always a necessary, nor by itself a sufficient condition for the Union to be effective in ILO standard-setting. Although external coherence does contribute to the Union’s effectiveness, this is first and foremost determined by how this causal factor interacts with the international context in which it finds itself. Finally, we will generalize our findings on the causal relation between EU coherence and effectiveness beyond the ILO standard-setting procedure and conclude by suggesting promising avenues for further research.

6.1. EU Coherence

Comparing our detection of the tactical dimension of EU representation across the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that the Union’s external coherence has gradually increased over the ten year period that started in 2001 with the adoption of the Geneva Accord and ended in 2011 with the adoption of the Convention and Recommendation on Domestic Workers. Having process-traced these procedures with particular attention to the goings-on in their tripartite committee discussions, our sophisticated piece of conceptual equipment has allowed us to detect this evolution in great detail. To briefly reiterate, our conceptual equipment is able to
detect the tactical dimension of EU representation as more of a continuum, rather than as a strict dichotomy (cf. Table 2.1, found in Chapter 2.2.1.). Specifically, by distinguishing between on the one hand the EU Member States representing common or independent positions and on the other hand between the Member States representing symbiotic or antagonistic positions, we have categorized this dimension as a four quadrant structure, wherein coherence, consistency, incoherence, and inconsistency all have a place.

Firstly, the gradual increase of the Union’s external coherence refers to our detection that the focus of EU representation increasingly shifted toward common positions, which were expressed either on behalf of the relatively stable and recurring coalition that we have dubbed the Core EU Group or formally on behalf of the Member States. Specifically, while common positions were only represented a limited number of times and at a late stage of the a-typical procedure on maritime labor, ten years later this had changed considerably and EU representation was focused squarely on representing common positions throughout the double-discussion procedure on domestic work. In between, during the double-discussion and single-discussion procedures on work in fishing, the Member States were predominantly, albeit far from exclusively represented through common positions.

Looking at who represented these common positions on behalf of the Core EU Group or formally on behalf of the EU Member States, we have found that even though the EU Presidencies are not the only representatives of these positions, they are clearly the primus inter pares within the group of representatives. During the procedures on maritime labor and work in fishing the respective presidency-holders would act as the near-exclusive representative of common positions, except for the landlocked Luxembourg (first half of 2005) and Austria (first half of 2006), who both delegated their responsibilities to other Member States. During the double-discussion procedure on domestic work the situation changed slightly and we detected a group of eight or nine Member States that divided the representation of common positions among them, although the Spanish (first half of 2010) and Hungarian (first half of 2011) Presidencies remained the primus inter pares within this group of representatives. This is similar, if not identical, to the informal division of labor that was highlighted by Delreux and Van den Brande (2012) in the Union’s external environmental policy-making. In addition, a limited number of times during the tripartite committee discussions a ‘representative of the EU’ (i.e. the Commission and, after Lisbon, formally the Delegation) intervened under its guise as a de facto observer to clarify issues related to the Union’s exclusive competences.

In addition, the comparative diminishing of independent interventions and interventions in other configurations further emphasizes that the focus of EU representation increasingly shifted toward common positions. Given the high level of discretion the Member States
enjoy as full members of the ILO, they are at liberty to represent their positions independently or in other configurations during the tripartite committee discussions. Based on our bird’s-eye view of EU representation during the three standard-setting procedures, we have found that these types of interventions comparatively declined in relation to the common positions over the ten year period under investigation. Specifically, while the Member States expressed a substantial number of these types of interventions during the atypical procedure on maritime labor and the double-discussion procedure on work in fishing, this greatly diminished during the single-discussion procedure on work in fishing and the double-discussion procedure on domestic work. The sharp fluctuations indicate that this evolution is partly related to procedure-specific factors, e.g. the sharp decline between the double-discussion to the single-discussion procedure on work in fishing mostly signifies that the Member States were already satisfied with the outcome that failed to be adopted during the 2005 ILC. Nevertheless, the comparative decline of independent interventions and interventions in other configurations still serves to emphasize the extent to which the focus of EU Member States shifted toward representing common positions.

With regards to interventions in other configurations, it should be noted that common EU positions were to some extent crowded out by the representation of the governmental majority through a so-called Government Group. This group included the EU Member States alongside the governmental majority and often represented itself through its own spokesperson, thereby making separate common positions on behalf of the Union redundant. The crowding out effect was most clearly present during the procedures on maritime labor and work in fishing, wherein such a Government Group was represented. During the procedure on domestic work, this effect could also be detected in the form of IMEC representation, albeit to a far lesser extent. Nevertheless, while the crowding out effect did influence our detection of the tactical dimension of EU representation and, as such, slightly distorts our cross-case comparison, the gradual shift of EU representation toward common positions across the three standard-setting procedures remains unmistakable.

Secondly, the gradual increase of the Union’s external coherence refers to our detection that independent interventions and interventions in other configurations have remained predominantly symbiotic as the focus of EU representation shifted toward common positions. Indeed, these types of interventions have always been predominantly symbiotic with the positions of other Member States (i.e. consistent) and the Union’s common positions (i.e. coherent) throughout the period under investigation and, importantly, have thus remained so as the focus of EU representation shifted to the latter. Antagonistic positions creating either inconsistent or incoherent representation did occur during every standard-setting procedure, but these were generally a minor occurrence and almost never
General Conclusions

went beyond one or two Member States expressing their dissatisfaction. However, this is not to say that substantial antagonism between Member States was completely unheard of. Several examples during the procedures on maritime labor and work in fishing saw a sizeable number of Member States turn part of the tripartite committee discussion on a key issue into an intra-European discussion.

Extending on the instances wherein we have detected incoherent EU representation, it is interesting to note that only during the procedure on domestic work did the antagonistic positions of Member States directly antagonize the Union’s common positions. Or, in fact, that this happened at all. While we have also detected incoherence during the procedures on maritime labor and work in fishing, we have already seen that these were instances wherein independent Member States took inconsistent positions vis-à-vis each other on issues where a common position was represented in parallel to this antagonism. As such, these earlier instances are better categorized as ‘coherent, albeit supplemented by inconsistent positions’. However, during the double-discussion procedure on domestic work, we detected two instances of genuine incoherence, i.e. wherein the antagonistic positions of Member States directly antagonized the Union’s common position. While this is perhaps the result of EU representation decidedly shifting to common positions and thereby infringing upon the high level of discretion the Member States traditionally enjoy during ILO standard-setting procedures, we have also referred to Kissack’s (2010, pp. 35-38) assessment that Member States at times show their non-cooperative side during the final stages of this procedure. Importantly, according to Kissack this is not intended to halt the adoption of an instrument, but rather to appease their domestic interests by having it on record that they did not agree with the final outcome. Having process-traced the discussions wherein instances of genuine incoherence occurred, this does seem to have been the case. For example, at the end of discussion on occupational safety and health during the double-discussion procedure on domestic work, the United Kingdom intervened not to reopen the discussion, but rather to have it on record that it ‘[…] could not back the proposal – even if EU Member States did […]’ (International Labour Office, 2011f, p. 63)

Comparing the substantive dimension of EU representation during the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that the Union first and foremost aimed to ensure that the adopted instruments were compatible with the existing European legislation found in the *acquis communautaire*, thereby confirming the Union’s ‘[…] usual role of simply ensuring full legal [compatibility] with EU legislation.’ (Tortell, et al., 2009, p. 118) We will further extend on the Union’s substantive position when we relate it to the international context (cf. infra), but our findings in all three procedures unmistakably point in the direction of the *acquis* serving as a foundation on which the Member States oriented their (common) positions. This does not mean that the Union will
never take legislative action to adjust the *acquis* as a result of an adopted ILO instrument, nor
does it mean that the national preferences of the Member States do not play a significant role
in deciding the substantive dimension of EU representation. For example, regarding the
former, the Commission initiated consultations to this end following the adoption of the
2006 MLC (pp. 122-125) and, in general, is ‘closing the circle’ by increasingly expanding its
involvement in the European follow-up of ILO standard-setting procedures (Interview No.
28 and 40). Nevertheless, during the tripartite committee discussions, the Member States
clearly oriented their (common) positions within the confines of the existing European
legislation. Notably, during the a-typical procedure on maritime labor, the *acquis* allowed the
EU Member States to favor broad definitions and an inclusive scope of application, while
also strongly advocating for strict compliance and enforcement mechanisms. During the
double-discussion procedure on work in fishing, the *acquis* informed their decision to side
with the governmental majority and the Workers’ Group in favor of a differentiated
approach to the instruments, while conversely it also allowed them to accept the added
flexibility that was introduced by the Employers’ Group and Japan during the subsequent
single-discussion procedure. Finally, despite being in favor of a binding Convention
supplemented by a Recommendation during the double-discussion procedure on domestic
work, the *acquis* influenced the Member States as they made repeated calls for more general
wording and added flexibility in the common EU positions.

Taken together, we have detected that the Union’s external coherence has gradually increased
over the ten year period during which the standard-setting procedures on maritime labor,
work in fishing, and domestic work took place. As such, our detection of the tactical
dimension of EU representation confirms and gives a detailed insight into Delarue’s practice-
based assessment that a tangible ‘EU identity’ has also emerged within the tripartite
committee discussions of the ILO standard-setting procedure (Delarue, 2013, p. 133). While
we have not deliberately looked into possible explanations, this gradual increase is fully
compatible with the broader increase of common EU representation in international
institutions since the 1990s, which has been explained in various ways ranging from identity
formation to functional pressures (Jørgensen, et al., 2011, p. 616). Translating this evolution
to the ILO, scholars have so far only pointed to an intensification of the inter-organizational
relations between the Commission and the ILO Office following the demise of the social
clause in the WTO (Orbie & Tortell, 2009a, pp. 6-7). However, given that our findings
confirm Delarue’s practice-based assessment, we have shown that a parallel intensification
has also taken place for the Union as an actor within the ILO standard-setting procedure. In
addition, given that we have detected the gradual increase of the Union’s external coherence
since the turn of the century, we can infer that that the entry into force of the Treaty of
Lisbon at best offers only a partial explanation for this evolution. The Treaty’s streamlining
of the internal coordination process and external representation has facilitated the Union’s
emerging identity in the ILO standard-setting procedure, but clearly did not cause the initial start of this gradual process.

Interestingly, this finding places us in opposition to Kissack’s quantitative assessment that the Union’s ‘relevance’ (i.e. common representation by the EU Presidency on behalf of the Member States) in tripartite committees has not shown a significant increase over the past two decades (Kissack, 2011, p. 656). Indeed, in the 2011 special issue of the *Journal of European Integration* in which this assessment was published, the ILO is actually found to stand out as one of the few international institutions in which the Union’s relevance failed to show a significant increase since the 1990s (Jørgensen, et al., 2011, p. 616). Looking into the possible reasons behind these opposite findings, we believe that our sophisticated piece of conceptual equipment has allowed us to detect the Union’s representation in ILO standard-setting in more detail and with greater accuracy than Kissack’s purely quantitative detection. Specifically, while Kissack’s quantitative overview of EU representation since 1973 relied on the same records of proceedings which we have used for our qualitative analysis of the past decade (cf. Chapter 2.1.3.), he did not count interventions on behalf of the relatively stable and recurring Core EU Group as relevant (whereas we have established that these should be included as detections of external coherence) and he did not account for the crowding out effect of the Government Group during the procedures on maritime labor and work in fishing. Moreover, Kissack stopped short of including the procedure on domestic work, wherein we most clearly detected the shift to common EU representation. Taking this into consideration, we believe that our conceptual equipment has allowed us to more accurately detect the evolution of EU representation in ILO standard-setting and, moreover, that the balance is increasingly tipping in favor of our interpretation of the source material.

### 6.2. EU Effectiveness

Comparing our detection of EU effectiveness across the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that the Union was virtually always effective in achieving its self-proclaimed goals on the key issues of these procedures. To briefly reiterate, we have conceptualized EU effectiveness as goal attainment (i.e. the second dimension of effectiveness), which we found could most reliably be detected by a straightforward comparison between the Union’s self-proclaimed goals and objectives during the tripartite committee discussions and the final provisions found in the adopted ILO instruments. Firstly, in terms of ensuring that the adopted instruments were compatible with the *acquis*, we found that the Union was always able to attain this central goal during the three procedures. In this regard, the Union’s effectiveness can be read both from our process-tracing of the discussions on the key issues and, in addition, from the fact that the

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93 The numeric details of Kissack’s overview can be found in an earlier publication of his, see: (Kissack, 2009a, pp. 71-73).
Council has requested or authorized the EU Member States to ratify all of the adopted conventions. Secondly, in terms of the goals and objectives the Member States oriented on the European legislation found in the acquis, we found that they were predominantly, albeit far from exclusively effective in achieving these. Notably, the 2006 MLC includes broad definitions, an inclusive scope of application, and has strict compliance and enforcement mechanisms, the 2007 Work in Fishing Convention is characterized by a differentiated approach to the fishing sector, and the 2011 Convention on Domestic Workers includes various provisions that allow the governments a large degree of flexibility for its implementation and enforcement.

While we have not explicitly looked into the non-Eurocentric third (i.e. the Union’s contribution to the effectiveness of an international institution) and fourth (i.e. the effectiveness of an institution regardless of the EU’s role therein) dimension of effectiveness, we have glanced that the ILO’s effectiveness in terms of standard-setting is not as clear-cut as either its detractors or its proponents would have us believe, nor that we can simply assume that the Union is always particularly helpful. As a side note, let us briefly look at the ratifications of 2006 MLC, the 2007 Work in Fishing Convention, and the 2011 Domestic Workers Convention after they were adopted at the end of their respective procedures. Firstly, regarding the ILO’s effectiveness in terms of standard-setting, a look at the ratifications of the adopted instruments indicates that its success-rate varies greatly. While the 2006 MLC came into force despite the high threshold and while its ratifying members currently represent 80 percent of the world’s gross shipping tonnage, the 2007 Work in Fishing Convention has not yet come into force and the ratifications of the 2011 Domestic Workers Convention are off to a slow start, despite the fact that the lower thresholds have allowed it to already enter into force. Secondly, regarding the Union’s contribution, a look at the ratifications by the EU Member States indicates that they have mostly helped to increase the number of ratifications of the 2006 MLC, while despite authorization by the Council they seem to be in no hurry to ratify the 2007 Work in Fishing Convention or the 2011 Domestic Workers Convention. Again, we should stress that we have not explicitly looked into these dimensions of effectiveness and that we are fully aware that the ratification rate of these instruments is a severely limited parameter for their assessment when it is used in isolation, but as a first glance it does establish that both dimension of effectiveness are not as clear-cut as is sometimes assumed.

6.3. The Causal Potential of EU Coherence in Relation to its Effectiveness

So far, these isolated detections of EU coherence and effectiveness have told us little about their causal relation in the international context found in the ILO standard-setting procedure. While it is interesting in its own right to detect that the external coherence of EU
representation has gradually increased across the three procedures under investigation and that the Union has virtually always attained its self-proclaimed goals, little can reliably be inferred from these isolated detections in terms of how they are related to one another. At first sight, one could perhaps infer that the Union’s coherence must have played an important role in terms of its goal attainment (especially given that the positions of the EU Member States were predominantly consistent even before the focus of their representation shifted to common positions), thereby seemingly confirming the dominant folk theory on their causal relation. However, without a better insight in the causal ‘how’ of this relation, we have no way of accounting for the alternative causal pathways through which this outcome might have occurred. Indeed, without being able to account for the possibility of equifinality, inferring the causal ‘what’ from a superficial correlation between these isolated detections does not lead us to a reliable conclusion.

In order to gain an insight in the causal how of the relation between EU coherence and effectiveness, we have process-traced the discussions on key issues of the standard-setting procedures on maritime labor, work in fishing, and domestic work. Specifically, this has allowed our conceptual equipment to detect the Union’s coherence and effectiveness not in a vacuum, but rather in relation to the international contexts found in these procedures. By relating our detection of EU coherence and effectiveness to the international contexts found in these procedures, we are able to paint a more fine-grained image of these detectable unobservables and – importantly – to individuate, rather than isolate the causal potential of the Union’s coherence in relation to its effectiveness by comparing their relation within the varied contexts found in these procedures. To briefly reiterate, we have conceptualized the international context as an interaction between the formal rules and procedures found in the ILO standard-setting procedure and the broader political constellation (cf. Figure 2.2, found in Chapter 2.2.3.). While the ILO’s tripartite structure serves as the organizing principle that sets the stage for the discussions between the governments and the social partners, it are the relative positions of these tripartite members that determine the dynamic that underlies a standard-setting procedure. Specifically, their positions determine whether a discussion takes place on a divided or a united tripartite stage and whether a discussion takes place on a conservative or a progressive stage. In addition to these relative categories, the dynamic behind a procedure is not only determined by the positions of the tripartite members, but also by the involvement of the governments and the social partners. All three have to be involved in the discussion in order to speak of a tripartite, rather than a bipartite stage.

Comparing the international contexts found in the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that the contexts in which we have detected EU coherence and effectiveness indeed vary greatly from one procedure to the next. Before providing an outline, we should reiterate that the positions of the governments
and the social partners also varied depending on the key issue under discussion, thereby creating stages that were to some extent in constant flux or à géométrie variable within the same procedure. However, our outline of the international contexts found in the three procedures provides the foundation on which the tripartite members built their issue-specific positions and generally oriented themselves toward one another.

Firstly, while the procedure on maritime labor took place on a relatively united tripartite stage, the procedures on work in fishing and domestic work conversely took place on a clearly divided stage. During the a-typical procedure on maritime labor, the relative unity on the tripartite stage derived from the shared conviction of the social partners that a new instrument was necessary and, moreover, their shared analysis on how to move forward in this regard (i.e. consolidate the existing instruments, with attention to the enforcement and amendment of the resulting Convention). As such, a structural alliance between the social partners played an important role during this procedure by creating a relatively united tripartite stage. Conversely, during the double-discussion and single-discussion procedures on work in fishing and the double-discussion procedure on domestic work, the social partners strongly disagreed on how to approach the complex nature of the fishing sector and whether the domestic work sector would benefit from a binding Convention. As a consequence, during both procedures the social partners took opposite positions and created divided tripartite stages.

Secondly, while during the procedure on maritime labor the governments (often represented as the Government Group) found themselves joining the alliance between the Workers’ and the Employer’s groups on a relatively united tripartite stage and, thereby, created a stage that clearly leaned toward the creation of a progressive instrument, during the procedures on work in fishing and domestic work the governments found themselves somewhere in between the positions of the social partners on a divided tripartite stage. Specifically, during the procedure on work in fishing, the governmental majority (often represented as the Government Group) leaned toward the Workers’ Group on the progressive side of the stage, although it is important to note that Japan and other Asian governments clearly stood apart from the other governments and sided with the Employers’ Group. As we have seen, this caused the progressive-leaning stage of the double-discussion procedure to invert itself and start leaning toward the creation of a more conservative instrument during the single-discussion procedure. During the procedure on domestic work, the governments (often represented as part of their respective UN Regional Group) were divided and leaned toward either the Employers’ Group on the conservative side of the stage (e.g. EU, ASPAG, IMEC, GCC, and – especially – Canada) or the Workers’ Group on the progressive side (e.g. GRULAC, Africa Group, Brazil, and the United States), but on the whole created a stage that leaned toward the creation of a progressive instrument.
Thirdly, while the procedures on maritime labor and domestic work took place on a tripartite stage from start to finish, the procedure on work in fishing gradually, but decisively evolved toward a bipartite dynamic. Specifically, non-Asian governments were progressively sidelined in the course of the procedure, as the tripartite dynamic of the double-discussion procedure was replaced by a ‘bipartite plus Japan’ dynamic between the social partners and Japan during the single-discussion procedure.

Against this background, relating the substantive dimension of EU representation to these international contexts reveals that the Union took varied positions on these tripartite stages. Figure 6.1 (cf. infra) provides an overview of this variation, although we need to stress that, while the resulting dynamics on these stages can and will be compared (cf. infra), our use of relative categories does not allow us to directly compare the nature of the tripartite stages or the position of any tripartite member thereupon. To briefly reiterate, ‘conservative’ and ‘progressive’ are not seen as fixed categories to pinpoint the position of a tripartite member compared to a single standard, but rather as relative categories to pinpoint the position of a member in relation to those of the other tripartite members during a specific procedure. Similarly, ‘divided’ and ‘united’ are also not seen as fixed categories, but rather as relative categories to pinpoint how far apart the positions of the tripartite members were vis-à-vis each other during a specific procedure. As such, while the dynamic that results from the interaction of these categories can and will be compared (cf. infra), this means that it is not possible to make a direct comparison between the nature of the different tripartite stages (i.e. directly compare their unity/division or their progressive/conservative nature) or the position of any tripartite member thereupon (i.e. directly compare how progressive/conservative they were).
During the a-typical procedure on maritime labor, the Union was part of the governmental majority that joined the alliance between the social partners on the relatively united tripartite stage. Specifically, the Union’s common positions in favor of broad definitions and an inclusive scope of application for the 2006 MLC and in favor of strict compliance and enforcement mechanisms found the EU Member States on the same page as most of their tripartite partners. Similarly, during the double-discussion procedure on work in fishing, the EU was again part of the governmental majority that leaned toward the Workers’ Group on the progressive side of the divided stage and, during the single-discussion procedure, accepted the conservative measures for added flexibility that were introduced by the Employers’ Group and Japan. While there are secondary instances wherein the Union also argued for added flexibility to the final provisions, its progressive-leanig proclivities as part of the governmental majority are clear and unmistakable during these procedures. However, during the double-discussion procedure on domestic work, the Union leaned toward the
Employers’ Group on the conservative side of the divided tripartite stage and, as such, leaned away from the progressive-leaning governmental majority. While the Spanish and the Hungarian EU Presidencies placed the Union firmly in the middle between the social partners during the General Discussions at the start of the 2010 and 2011 tripartite committee discussions, tracing the discussions on the key issues of this procedure has revealed that the Union’s issue-specific common positions often leaned toward the conservative side of the tripartite stage.

Recalling our findings on the internal role of the *acquis* (cf. supra), relating the substantive dimension of EU representation to the international context provides an illustration of how the European legislation found in the *acquis* served as the foundation on which the EU Member States oriented their (common) positions during these standard-setting procedures. For example, while the Union’s progressive leaning position during the double-discussion procedure on work in fishing and its acceptance of conservative measures during the subsequent single-discussion procedure might at first sight seem to conflict with each other, tracing these procedures has revealed that both were informed by its central goal of ensuring compatibility between the *acquis* and the final instruments on work in fishing. Similarly, we have found strong indications during the procedures on maritime labor and domestic work that ensuring compatibility with the *acquis* was the Union’s prior goal and served as the foundation for how the Member States positioned their (common) positions in relation to the international contexts found in these procedures.

Having situated the substantive dimension of EU representation and, thus, the nature of the goals and objectives the Union did or did not achieve within the international contexts found in the standard-setting procedures on maritime labor, work in fishing, and domestic work, we are now able to individuate the causal potential of the Union’s coherence in relation to its effectiveness by comparing their causal ‘how’ within these three procedures, rather than having to rely on their isolated detection. Specifically, through this comparison we have found that (1) external coherence is not always a necessary condition for the Union to achieve its goals and objectives and that (2) external coherence is by itself not a sufficient condition for the Union to achieve its goals and objectives, although it nevertheless clearly adds to the potential of the Union to achieve its goals and objectives.

Firstly, comparing our findings on the causal relation between EU coherence and effectiveness in relation to the varied international contexts found in the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that external coherence is not always a necessary condition for the Union to achieve its goals and objectives. During the procedures on maritime labor and work in fishing, we have found that external coherence is not a necessary condition for the Union to achieve its goals and
objectives. While the dynamics of these procedures were different, i.e. a relatively united tripartite stage whereupon the majority leaned toward the progressive side compared to a divided stage whereupon the majority also leaned toward the progressive side, the Union’s goals and objectives were always embedded within or compatible with those of the progressive-leaning majority. Tracing the causal relation between EU coherence and effectiveness against this background, we have found that this created opportunities for governments representing their position independently or in small coalitions to decide the final outcome included in the adopted instruments, albeit provided that their suggestions were in line with the compromise the tripartite majority was already converging on. Either by introducing (sub)amendments during the tripartite committee discussions or by shaping the Government Group’s positions during intra-governmental consultations, we have found examples of the EU Member States being able to achieve their self-proclaimed goals independently or in small coalitions.

Conversely, during the procedure on domestic work we have found that external coherence is a necessary condition for the Union to achieve its goals and objectives. Similar to the double-discussion procedure on work in fishing, this procedure played itself out on a divided stage whereupon the majority again leaned toward the progressive side. However, this time the Union leaned toward the Employers’ Group on the conservative side of the divided tripartite stage and, as such, leaned away from the progressive-leaning majority. Tracing the causal relation between EU coherence and effectiveness against this background, we found that the external coherence of the Union was necessary for it to throw enough weight behind its common positions and influence the final outcome by drawing it closer to its own goals and objectives. Indeed, given that its substantive position leaned away from the progressive-leaning majority on the divided tripartite stage, external coherence became a necessary condition for the Union to still attain its goals.

Secondly, comparing our findings on the causal relation between EU coherence and effectiveness in relation to the varied international contexts found in the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that external coherence is by itself not a sufficient condition for the Union to achieve its goals and objectives. During the a-typical procedure on maritime labor, we found preliminary indications that a bipartite package deal between the social partners might constrain the causal potential of the Union’s coherence to influence the final outcome. Specifically, once the Workers’ and the Employers’ groups were able to come to a compromise on social security, independent interventions and small coalitions of governments had little hope of further discussing or altering the outcome of this bipartite agreement, which in turn casted serious doubt on the causal potential of EU coherence to make a difference in this context. However, given the difficulties to draw clear conclusions on the causal relation between EU
coherence and effectiveness, we also indicated that these preliminary indications needed to be further explored and clarified by comparing them to our findings from the other two procedures.

During the single-discussion procedure on work in fishing, we seemingly found clearer indications as the ‘bipartite plus Japan’ dynamic sidelined the non-Asian governments (obviously including the EU Member States) and considerably constrained the causal potential of these governments, coherent or otherwise, to further discuss or influence the final outcome. However, given that the non-Asian governments were predominantly satisfied with the outcomes of the double-discussion procedure, these seemingly clear indications needed to be qualified by the fact that the non-Asian governments willingly let themselves be sidelined while the unsatisfied Employers’ Group and Japan trashed out an agreement with the Workers’ Group. Given this qualification, we again indicated that these indications needed to be further explored and clarified by comparing them to our findings from the final standard-setting procedure.

During the double-discussion procedure on domestic work, we found the clearest confirmation that the causal potential of the Union’s coherence is by itself not sufficient to further discuss or influence bipartite package deals between the social partners. While necessary to throw enough weight behind its common positions as they leaned away from the progressive-leaning majority during this procedure, we found several instances wherein the Union’s external coherence did not suffice once a compromise between the social partners had been found. On the divided tripartite stage of the procedure on domestic work, this meant that the Union found itself relatively isolated on the conservative side of the stage. Although as a qualification it should be noted that the Union nevertheless achieved its central goal of ensuring that the final instruments were compatible with the European legislation found in the acquis, tracing the causal relation between EU coherence and effectiveness during the procedure on domestic work nevertheless clearly confirms the preliminary indications from the procedures on maritime labor and work in fishing that the Union’s coherence is not sufficient by itself to influence bipartite package deals between the social partners.

However, comparing our findings on the causal relation between EU coherence and effectiveness in relation to the varied international contexts found in the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that even though external coherence is by itself not a sufficient condition for the Union to achieve its goals and objectives, it nevertheless does clearly add to the causal potential of the Union to achieve its goals and objectives. During the double-discussion procedure on work in fishing, we found preliminary indications that common positions held more potential to convince the
broader tripartite membership than independent interventions or interventions in small coalitions, especially in rare instances wherein Member States leaned away from the majority position. During the double-discussion procedure on domestic work, these preliminary findings were strengthened as external coherence became a necessary condition for the Union to achieve its goals and objectives while its Member States more often leaned away from the majority position.

To conclude, having individuated the causal potential of EU coherence in relation to its effectiveness by comparing our findings on their relation during the standard-setting procedures on maritime labor, work in fishing, and domestic work, we have found that the causal ‘how’ of their relation plays out differently in these procedures. While our isolated detections of the Union’s coherence and effectiveness did not show much variation and, moreover, seemingly confirmed the simplistic causal relation that underlies the dominant folk theory, relating them to the international contexts found in these procedures has revealed the complexity and variation of how this causal relation played itself out. Specifically, depending on the interaction between the dynamic on the tripartite stage and the Union’s relative position thereupon, the EU could achieve its goals through different causal pathways, wherein external coherence was at times indeed a necessary condition (i.e. during the procedure on domestic work), but at other times opportunities also existed for independent interventions and interventions in small coalitions (i.e. during the procedures on maritime labor and work in fishing).

Adding to this point, we have also found that EU coherence is by itself not a sufficient condition for the Union to achieve its goals and objectives, specifically in cases wherein a bipartite package deal between the social partners constrained the potential for the governments to further discuss or influence the final outcome (i.e. during the procedures on maritime labor and work in fishing), especially when the Union found itself in a relatively isolated position on the stage (i.e. during the procedure on domestic work). This finding serves to highlight that any causal factor only holds as much potential as its interaction with the international context will allow, making it critically important process-trace the causal how of the relation under investigation. While we have found that EU coherence clearly adds to the Union’s potential to achieve its self-proclaimed goals and is at times even a necessary condition, it is first and foremost how the Union’s external coherence is related within the interaction between the dynamic on the tripartite stage and the Union’s relative position thereupon that determines the extent to which it can causally contribute to the Union’s goal attainment.

These conclusions contribute to the second wave of the one voice debate by establishing a more complex causal relation between EU coherence and effectiveness than was hitherto
General Conclusions

assumed by the dominant folk theory. However, generalizing these findings beyond the ILO standard-setting procedure is a difficult task in the absence of comparative case study research across different international institutions. The ‘heterogeneity of the multilateral system’ (Kissack, 2010, pp. 5-7) combined with the unique tripartite structure of the ILO makes the generalization of our findings particularly difficult. For example, in contrast to the findings of Macaj (2011) and K. Smith (2010) on EU coherence in the HRC, we have not seen the Global South ‘soft balancing’ (p. 235) against common EU positions because they were represented coherently. Rather, the presence of the social partners in the ILO standard-setting procedure seems to keep tensions between the governments from different regions in check and, thus, helps avoid the polarization found in the HRC. Conversely, similar to the findings by D.C. Thomas (2012) on EU coherence in the international negotiations on the mandate of the ICC, we have seen that the Union’s external coherence is necessary, but by itself insufficient when its position is counterbalanced by third parties. Taken together, the point of these brief examples is that generalizing our findings beyond the ILO standard-setting procedure is a difficult task that requires a structural comparison of the causal potential of EU coherence in different international institutions. While such a comparison is beyond the reach of this doctoral dissertation, it should nevertheless be pointed out that our findings have been joined by other, recently published contributions to the second wave of the one voice debate, notably including Conceição-Heldt and Meunier (2014), Lisanne Groen and Niemann (2013), Oberthür and Rabitz (2014), and A.R. Young (2014). These contributions similarly incorporate the international context as the best way forward for this debate and – importantly – their comparison should allow the one voice debate to gradually move beyond the realm of folk theories and push our insight in the causal relation between the Union’s coherence and effectiveness in the direction of more well-developed theories, especially now that early attempts at a theoretically-driven approach to the debate are also emerging (e.g. Kissack, 2012 and Marangoni & Raube, 2014).

6.4. Epilogue

After all is said and done, it might bear relevance to briefly reflect on the Union’s nature as a global social actor. Is the European social model the guiding beacon for other regions it is often assumed to be and, more specifically, is it carried out as such in ILO standard-setting? While we have not deliberately looked into this question, throughout our research we have glanced that one cannot simply see the Union as a progressive social actor on the global stage and leave it at that. While tracing the causal relation between EU coherence and effectiveness in ILO standard-setting, we have found that the Union was part of the governmental majority that leaned toward to Workers’ Group on the progressive side of the tripartite stage during the procedures on maritime labor and work in fishing. Indeed, the Union’s substantive position and role during the former procedure is often referred to as evidence of its progressive stance on bringing about a social dimension of globalization and its willingness to let its economic interests be trumped by its social values (Riddervold, 2010 and
Tortell, et al., 2009). However, we have also found that the Union stood apart from the progressive-leaning governmental majority and leaned toward the Employers’ Group on the conservative side of the tripartite stage during the procedure on domestic work. As we have seen, this does not mean that the Union was conservative in absolute terms, but in relative terms it held the progressive-leaning majority back by arguing for more flexible provisions and a more limited scope. Either as the result of the European legislation found in the acquis (cf. supra) or – as one ILO Official suggested (Interview No. 34) – caused by the effects of the global financial, economic, and social crisis that were at the time acutely felt in Europe, the Union’s position during the latter procedure tells us there’s more to its nature as a global social actor than one could suspect from only looking only at its much-promoted and indeed progressive contribution to the 2006 MLC.

Lastly, we turn to future research and this dissertation’s contribution thereto. The research field on the EU in international institutions is presently undergoing a fast-paced evolution, which is driven forward by a flurry of edited volumes and special journal issues that continuously push the boundaries of the field. However, while several promising avenues for further research have opened up in recent years, scholars still have some way to go to fully explore the insights and consequences that are contained within these avenues. In this doctoral dissertation, we have built on the combination of two such avenues: the one voice debate and the structural incorporation of the international context. As a result, we have been able to make a predominantly empirical contribution to the second wave of the one voice debate, notably by exploring and establishing a more complex causal relation between EU coherence and effectiveness than was hitherto assumed by the dominant folk theory. As we have just seen, we have therein been joined by several authors that have recently published contributions that similarly incorporate the international context as the best way forward for this debate (cf. supra). Nevertheless, more remains to be done and without a proper-follow-up these contributions risk taking their place among the many and ‘largely unconnected attempts’ (Koops, 2013, p. 71) that have characterized this field of research.

In this regard, we welcome the research agenda for the one voice debate that was launched by Conceição-Heldt and Meunier as an instrument to shape and focus the ‘[…lively discussion in the years to come.’ (Conceição-Heldt & Meunier, 2014, p. 976) However, influenced by the critical realist approach that has served as a meta-theoretical footing for the research design of this dissertation, we do find fault with some of the prescriptions for future research that are offered by these authors. Importantly, this agenda asks what would be the best way to design controlled comparisons in order to isolate the relevant conditions found in the international context. While we do agree that comparing the causal potential of EU coherence in two or more international institutions is an undertaking that is appearing at the horizon as an increasingly feasible and useful way forward (cf. supra, also mentioned in the
broader research agenda of Jørgensen and Laatikainen 2013a, p. 7), we do not agree that isolating causal factors should be the goal. In this dissertation we have geared our use of the comparative case study (within one institution) and process-tracing methods toward individuating, rather than isolating the causal potential of EU coherence in relation to its effectiveness. Our general conclusions have demonstrated the benefits of this critical realist approach (cf. supra). Indeed, within the open international context wherein a myriad of causal factors interact in complex and unpredictable ways, attempting to isolate one or even several factors by looking at their covariance seems like a fool’s errand, especially when compared to the knowledge that can be derived from ‘[…] individuating] the variety of ways that causal factors and the complexes into which they are arranged play out in practice […].’ (Jackson, 2011, p. 111) While the contribution of this dissertation to the exploration of the causal potential of EU coherence in relation to its effectiveness has primarily been of an empirical nature, it might just be that our excursion to the meta-theoretical level holds the key to shape and focus research on the Union in international institutions in years to come.
### Annex – Expert Interviews

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