

Social Policy at the global level: EU Member States at the ILO

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Introduction

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Introduction

Apart from this shadowy promise of peace, there is in any case no assurance...that such unions would advance social well-being. The advocates of continental unions have often argued that a universal system skips a stage in the political evolution of the world. But in our time the world has grown into a loose but living social system. If continental unions would tie up certain strands they would tear up many more, and more promising [strands of cooperation].

-from David Mitrany's *'A War-time Submission (1941): Territorial, Ideological, or Functional International Organisation'* in *The Functional Theory of Politics* (1975), p. 109.

David Mitrany, born at the end of the 19th century and writing about international cooperation in the middle of the 20th century, had very clear doubts about the positive effects of a European Union on global cooperation. His thesis was that such unions would pull the energy of leaders and the capacity of international law away from common solutions towards particular constellations of interests, and prevent more fruitful forms of global cooperation from developing. The fifty years since his comments were written have seen the creation and development of the EU.¹ Have Mitrany's reservations

¹ As the term "European Union" was not adopted until the 1993 Treaty on European Union, or Maastricht Treaty, as a way to describe all of the institutions created by the Treaties—the Commission, Council, Court of Justice, European Parliament, Court of Auditors—the EU is often referred to as "the Community" in legal writing on the ILO and GATT. Further, as the sections of the treaties dealing with competencies that relate to the mandates of the ILO and the GATT are to be found under the European Economic Community (EEC or EC) Treaty, the Commission is often referred to in legal texts as the "representative of the Communities" rather than the "representative of the Union". Wherever possible I have attempted to use the

come to pass? This paper will demonstrate that although many of his doubts about the creation of a "continental union" in Europe as a wholly positive force for international cooperation were well founded, the European Commission and EU Member States are very active in promoting cooperation in social policy at the global level.

The first purpose of this paper is to assess how EU Member States behave at the ILO. The EU is not a member of the ILO. Only states are members of the ILO, and all fifteen EU Member States are also members of the ILO. The argument presented here is that states should act to extend their national systems of social regulation under conditions of deep economic integration. States with high cost and benefit policies will lead proposals for the adoption of such policies by other states so as to reduce the possible competitive disadvantages of such policies. States with low costs are expected to resist higher standards. In order to assess a national regulation explanation of preferences for global cooperation, the number ratifications of ILO Conventions by EU Member States are compared in the first section of this paper.

The second purpose of this paper is to analyse the interaction between global and regional forms of governance in the social policy field. In what areas does the ILO have the competency to legislate, and what occurs when ILO and EU competence overlap? On a less descriptive and more analytical level, is global governance at the ILO a necessary accompaniment to regional social policy under conditions of globalisation, and if so, is it effective in plugging the gaps left by regional regulation so as to reduce competition among states on the basis of social policy? By considering such questions we assess whether European and global forms of governance are mutually supportive, or if they may work against the effective operation of one another.

The second section of this paper thus explores the both the formal and informal relations between the EU and the ILO in a historical perspective. The formal relationship between the ILO and the EU, as represented by the Commission, are highly circumscribed given that the EU is not a member of the ILO. ECJ Decisions state that the Commission and the Member States are to cooperate and express a common view on areas where the EU shares competence with the Member States. Member States continue

term EU and Union for the sake of consistency, but where it is historically or legally necessary I have used the term EEC.

to resist sharing formal competence at the ILO with the Commission. The diverse reasons for state resistance to formal Commission authority will be examined. However, in practice, in day-to-day operations of the ILO, the Member States and the Commission in fact coordinate their positions on a range of issues via several different mechanisms: the EU Presidency, regional groups, and the Industrial Market Economy Countries group (IMEC). Informal cooperation at the ILO is thus widely accepted by EU Member States.

This paper, taken as a whole, explores the interaction of regional and global level policy making in greater detail than presently provided in the literature. The multilevel governance literature describes how states no longer control the process of policy-making, as sub-national interests have mobilised themselves at other levels of governance to "pressure state executives into particular actions" (Marks and Hooghe 1996, pp. 1, 256). The analysis does not consider global level institutions, however, capping itself at the EU level. Leibfried and Pierson, two of the leading scholars on EU social policy, state: "if Member States have lost considerable control over social policy in the EU this is primarily because of processes other than the efforts of Union officials to develop social policy for a new European universe" (Leibfried and Pierson 2000, p. 275). The implication is that exogenous forces, namely competitive pressures brought to bear by globalisation as a process of liberalisation and market opening, have eroded national capacity for policy-making. No attempt is made, however, to discern what activities may be enacted beyond the EU level to counteract this trend.

Discussions about globalisation and its effects on welfare states include factors such as trade competition and the export of low-skill jobs, tax competition to reduce the non-wage labour costs for employers, and the mobility of investment capital to low standard countries (Rhodes 2001). The focus here is not on globalisation writ large, but rather on how governance at the global level may seek to address some of these challenges, and how forms of global governance interact with regional forms.

However, even when the distinction between globalisation and global governance is clear in the literature, little detail is provided about the specific operating methods of the EU Member States or the interaction of EU and ILO legislation in specific policy

areas.² Global governance is specifically addressed in Bob Deacon's work on the EU and global level social policy. While his analysis provides a good comparative overview of the EU in international institutions, his statement that the European Commission "has played no real role" at the ILO, and that at ILO meetings there is "no tradition of EU countries lobbying as a group" is simply wrong (Deacon 2001, p. 74). This paper will present evidence from over twenty interviews conducted in Geneva and Brussels with representatives from EU Member States, social partners, ILO officials, and Commission officials, as well as evidence from secondary sources, to correct Deacon's assessment.

I. National ratifications of ILO Conventions by EU Member States

This section will examine the number of ILO Conventions ratified by EU Member States. Is an explanation based on national welfare state histories and resulting national patterns of regulation sufficient to explain their behaviour at the ILO? Also, since joining the EU, has the number of ratifications by Member States declined, stayed stable, or increased?

Given the historically well-developed institutional structures of the welfare state in social democratic and conservative-corporatist welfare state regimes, such as Sweden, Finland, Denmark, Germany, and the Benelux, it should be expected that these states will have ratified the most conventions. Liberal welfare states, such as the UK and Ireland, have also been very well developed since the end of WWII, and since ILO legislation is often set as framework legislation without benefit levels it is expected that they will have ratified legislation especially since 1945. States with Southern welfare state regimes, such as Spain, Portugal, Greece, are expected to have the fewest number of ratifications, given the lower level of development of their institutional structure and the fact that they were under dictatorships (Portugal until 1974, Greece until 1974, and Spain until 1975) which, it is speculated, will not have promoted international cooperation.

Table 1 illustrates the total number of ILO Conventions ratified by Member States.

² Jill Murray's study of working time legislation is one exception, but the study considers only one issue area and presents little info on national policies other than those of the UK (Murray 2001).

Table 1 Total number of ILO Convention ratifications by EU Member States

Member State	Welfare State regime type	Total number of ILO Conventions Ratified (of 184)*
Spain	Southern	128
France	Conservative-corporatist	116
Italy	Southern	108
Netherlands	Conservative-corporatist	101
Finland	Social democratic	96
Sweden	Social democratic	91
Belgium	Conservative-corporatist	89
UK	Liberal	85
Germany	Conservative-corporatist	76
Portugal	Southern	75
Luxembourg	Conservative-corporatist	75
Ireland	Liberal	73
Greece	Southern	69
Denmark	Social democratic	67
Austria	Conservative-corporatist	52
EU-15 Average		86.7

*1919 – 2001; includes Conventions that have been later revised or shelved.

Table 1 provides some surprises. The first is that welfare state regime types have very little predictive value in the number of ratifications of ILO Conventions. Regime types are not clustered together. Although two states with social democratic regime types are near the top and over the EU average (Sweden and Finland), one is near the bottom (Denmark). Two states with liberal welfare regimes are both below the EU average, but the UK with 85 ratifications is very near the average and clearly has not resisted ratifying ILO legislation. The biggest surprise, however, is that Southern welfare states have a very mixed ratification result, with two at the top of the EU in the number of ratifications (Spain at 128 and Italy at 108), and two below the EU average (Portugal at 75 and Greece at 69).

National welfare state regimes thus have very low explanatory power in explaining ILO ratification records among EU Member States. The national labour laws of the Member State—which may be more or less predisposed to international legislation in setting standards in the labour market as opposed to other legal forms, such as national

statutes and collective bargaining—is one explanation of the gap between expected and actual behaviour.³

A second explanation is that with increased EU legislation of the social field, EU Member States have found it increasingly difficult to ratify global conventions; the greater the length of EU Membership, the more embedded EU law will be in the national system and the more onerous it will be for an EU state to ratify ILO conventions.

A more accurate picture of the challenge presented by EU membership for ILO ratifications is presented by Table 2, where we control for the number of ratifications proposed in a period and the date of EU membership by examining only one period. Table 2 examines the number of ratifications of ILO Conventions proposed from 1987-2001. A total of twenty-two ILO conventions were proposed from 1987-2001, during which time four EU treaty revisions also took place (SEA, Maastricht, Amsterdam, Nice), each of which expanded the competency of the EU in social policy.

Table 2 indicates that, overall, EU Member States have performed rather poorly in ratifications since 1987. Of the three Member States that joined the EU in 1995, two have the most ratifications during the 1987-2001 period (Finland and Sweden), and Austria, which had the fewest number of overall ratifications jumped to sixth place in the 1987-2001 period.⁴ The other surprise is that the original six Member States are among those who ratified the least number of conventions from 1987-2001, with France and Belgium tied for the worst record. Despite the fact that in overall ratifications the original six Member States have a higher-than-average record of 94.1 ratifications, from 1987 they have an average of 2.8 ratifications, well below the EU-15 average of 4.5. The EU-12 have an average of 3.5 ratifications, while if the newest members are also included the EU-15 average jumps to 4.5 ratifications.

³ I am grateful to Dr. Christopher McCrudden, professor of International Labour Law at the University of Oxford, for this point.

⁴ Norway, a non-EU Member State that may provide a point of comparison, ratified a similar number of Conventions as Finland and Sweden (10) in 1987-2001. Norway also voted on becoming an EU Member State, but the proposition was rejected by a nation-wide referendum in 1994. Norway has a total of 109 ratifications as of 2001, which would place it third in the EU behind Spain and France if it was a Member State.

Table 2 Ratifications of ILO Conventions proposed 1987-2001 by EU Member States

Member State (and date joined the EU)	Number of Conventions Ratified of those proposed since 1987 (out of 22)	Number of Conventions Ratified as a % of total proposed since 1987	Rank in the EU for 1987-2001 1 = most successful (Overall rank for total number of ratifications)
Finland (1995)	12	54 %	1 (5)
Sweden (1995)	10	44.5 %	2 (6)
Spain (1986)	9	41 %	3 (1)
Ireland (1973)	7	.2 %	4 (11)
Netherlands (1958)	5	22.7 %	5 (4)
Austria (1995)	4	18.2 %	6 (14)
Denmark (1973)	4	18.2 %	6 (13)
Italy (1958)	4	18.2 %	6 (3)
Germany (1958)	3	13.6 %	7 (9)
Luxembourg (1958)	3	13.6 %	7 (10)
Portugal (1986)	2	9.1 %	8 (10)
UK (1973)	2	9.1 %	8 (8)
Greece (1981)	1	4.5 %	9 (12)
Belgium (1958)	1	4.5 %	9 (7)
France (1958)	1	4.5 %	9 (2)
EU average (all 15)	4.5		

As the EU legal regime increasingly comes to resemble a federal legal system with federal and state (in this case EU and national) laws, ILO ratifications appear to be in decline. Federal systems have lower record of ILO ratifications, for example the USA with 14, Canada with 30, Switzerland with 56, and Germany with 76 as compared to an EU-15 average of 86.7 ratifications. This indicates that as the EU legal regime becomes more entrenched, Member States find it harder to ratify global social conventions.⁵

II. *EU-ILO relations: formal and informal forms of inter-institutional cooperation*

In this section the relationship between the EU and the ILO is explored from several perspectives. The first sub-section explores the formal agreements between the ILO and the EU, and ECJ case law that has added further detail, although perhaps not

⁵ A more robust conclusion cannot be drawn, however, because the demands of ILO legislation over the 1987-2001 period would have to be compared to earlier periods on some kind of legal and cost basis in order to assess whether increasingly detailed or technical ILO legislation was also an explanation for the low number of ratifications.

clarity, to the formal agreements. The second sub-section explores the day-to-day coordination amongst EU Member States at the ILO via the Presidency of the EU, and the Industrial Market Economy group (IMEC) in Geneva. The relative importance of these groups (The EU via the Presidency or IMEC) depends on whether the issue at hand is of a political, technical, or budgetary matter. EU coordination is most effective on political matters, more mixed in areas of technical cooperation, and very weak on budgetary matters.

2.1 Relations between the ILO and the EU as represented by the European Commission: Formal Agreements and ECJ Decisions

Contact between the ILO and the Commission from 1952-1972, for which there is open access to all records, is marked by an early period of intense formal cooperation and then a gradual decline to ad hoc arrangements marred by poor communication and highly dependent on the personalities involved. From 1952-1962 the importance of the ILO in providing information to the ECSC, especially on health and safety questions but also in the area of vocational training, and to the EEC on social security and labour mobility questions, is evident. In the 1952-72 period the ILO was the senior institution of the two, with a well-developed network of researchers and experts that had taken the lead in developing international legislation in the social field. By the 1970s, however, the ambitions of the EEC had surpassed those of the ILO and the inter-institutional balance between the two institutions shifted completely. Notably the stronger legal mechanism of the ECJ meant that not only was regional social legislation binding and accessible to individual citizens (unlike ILO Treaties to which states are a party), but that EU law, when it came into conflict with ILO conventions, "trumped" the global system.

1953-1973

In 1953 the ILO and the ECSC concluded their first agreement on cooperation in the promotion of social and economic progress, the improvement of living and working conditions, and the development of employment. The 1953 Agreement allowed for mutual consultation, the exchange of information and statistics, and for the ILO to be both consulted and contracted for technical assistance by the ECSC. The High Authority of the ECSC was also invited as an observer to the meetings of the Committee of the Coal Industry and the Committee of the Steel Industry of the ILO (ECSC 1953).

An ILO expert committee was asked in the mid-1950s to advise founding governments on the social competencies to be given to the European Economic Community (ILO 1956). The Ohlin Report of 1956 noted: "so long as we confine our attention to international differences in the general level of costs per unit of labour time, we do not consider it necessary or practicable that special measures to 'harmonise' social policies or social conditions should precede or accompany measures to promote greater freedom of international trade" as such differences reflect variations in productivity (ILO 1956, pp. 40-41).⁶ The persistent themes of the debate about social aspects of economic integration are present in the Ohlin Report: the fear that "competition from countries with lower labour standards and lower labour costs may be 'unfair'", that the social costs of integration may be spread unequally in society, and that countries with "more advanced labour standards" may find it difficult to raise wages or social benefits in light of international competition (ILO 1956, pp. 3-4).

Many of the Ohlin Report recommendations were included in the EEC Charter one year later, such as in Article 48 (now Article 39) on the free movement of labour, Article 118 (now Article 137) provisions for cooperation in social security, and Article 119 (now Article 141) on equal pay. The Report also suggested the use of ILO Conventions by European countries in order to solve "certain of the social problems connected with closer European economic co-operation" (ILO 1956, p. 116). The idea of using ILO Conventions as a basis for social policy in the EEC was proposed by Belgium (Belgium 1955). The Common Market Sub-committee on social issues examined the Belgian proposal, although in the end this method was not used and an independent

⁶ The chairman of this report, Bertil Ohlin (former Swedish Minister of Commerce 1944-45 and former Leader of the Liberal Party), went on to develop the highly influential Heckscher-Ohlin model of international trade, for which he won the Nobel Prize. The other members of the Group of Experts on Social Aspects of Problems of European Economic Integration were: Mr. Maurice Byé (France), Mr. T. U. Matthew (UK), Mr. Helmut Meinhold (Germany), Mr. Pasquale Saraceno (Italy), and Mr. Petrus J. Verdoorn (Netherlands). Mr. Byé (France) wrote a dissenting opinion at the end of the report questioning the assumptions of the report, notably the immobility of capital and labour. Byé described this as "the most unrealistic of all [the possible scenarios]", and suggested that the relative immobility of persons (labour) and certain goods combined with perfect mobility of capital and imperfect competition would suggest different conclusions (ILO 1956, pp. 123-124, 1). Byé noted that "the threat of a flight of capital which has already been held over earlier attempts at social progress would nullify the efforts of the trade unions and governments. Under such circumstances it would be impossible to expect willing support for plans to integrate Europe....In practice, the least ambitious social legislation would tend to be taken as the standard" (ILO 1956, p. 129).

European Commission was created to promote cooperation on social issues among the six new Member States (Sociaux 1955).⁷

In 1958, an accord signed by Walter Hallstein, President of the EEC, and David A. Morse, Director-General of the ILO, established the modalities for their cooperation. The agreement was made on the basis of a combination of Articles 117 and 229 of the Treaty of Rome (the promotion of living and working standards, and the maintenance of useful contacts with the UN and Specialised Agencies, respectively) (EEC 1958). Consultation between the International Labour Office and the Commission, the possibility of issuing invitations to representatives of the ILO and the EEC to express opinions in the fora of both Organisations, the exchange of information, and terms for technical assistance were established. In the 1958 Agreement the Commission was given the gate keeping function of inviting the ILO to any "appropriate organ of the EEC subordinate to it" (EEC 1958, Art. 5).⁸

Notably, however, no specific agreement was made on the formal observer status of the EEC at the ILO in the final Agreement, as had been made for the High Authority of the ECSC at certain Committee meetings of the ILO in areas of its competence (ECSC 1953).⁹ This situation was not officially rectified until 1989, when the standing orders of

⁷ The following ILO Conventions were suggested for possible common ratification by each of the six Member States of the soon-to-be-created EEC: No. 1 (Hours of Work in Industry), No. 52 (Holidays with pay), No. 63 (Statistics of wages and working hours), No. 81 (Labour Inspectors), No. 87 (Freedom of association the right to organize), No. 88 (Employment services), No. 95 (Protection of wages), No. 96 (Fee charging employment agencies), No. 97 (Migration for Employment), No. 98 (The right to organize and collective bargaining), No. 100 (Equal remuneration), No. 102 (Minimum standards for social security).

⁸ The invitation of the ILO to EU Committees has not been without contention. The ILO was invited to participate as an observer in several highly specific technical committees in the late 1960s and early 1970s, such as the Consultative Committee on social problems in maritime fishing and the Consultative Committee on social problems in internal transport. However, the formation of the Permanent Employment Committee in the 1970s caused a difference of opinion between the Commission, that wanted the ILO to be invited as an observer, and the Council of Ministers that did not. A 1993 exchange of letters on ILO participation in Group of 24 meetings, which are coordinated by the EU, between the ILO and Sir Leon Brittan (Vice President of the Community and Commissioner for DG1 Trade) regarding Eastern and Central Europe was "far from satisfactory" in the Director-General's (ILO) opinion (ILO 1993b). Sir Leon Brittan had noted that the "ILO will hence be actively involved in the deliberations and efforts of the Group of 24 concerning social aspects of reform programmes in the framework of country-level coordination", but gave no indication as to how this might come about (ILO 1993b, Appendix: letter from Sir Leon Brittan dated 27 May 1993). The UK government representative to the Governing Body, as written in the Minutes of the Governing Body Session, noted that her government had approved ILO participation and that it was "extremely irritating to receive a letter of this kind from the Commission" (ILO 1993b).

⁹ An early draft of the ILO-EEC Agreement found in the ILO archives did contain provisions for reciprocal representation in the form of mutual observer status, but for unknown reasons these were crossed out and

the ILO were amended to provide the Commission, acting on behalf of the EEC, observer status (Commission, Exchange of letters OJ C 24/8, 1 February 1990).

In 1961 a permanent contact committee (*Comité permanent de contact*) between the ILO and the EU was created, consisting of two European Commissioners (Social Affairs and External Relations), two members of the ILO (one of which was traditionally the Director-General), and other fonctionnaires assigned to it on an ad-hoc basis (ILO 1961; ILO 1976). The Committee was to meet up to two times annually. It also became practice for the European Commissioner for Social Affairs to meet with the ILO Director-General once a year. The ILO established an office in Brussels to facilitate cooperation and information exchange with the EU, and the Mission of the European Communities to the International Organisations in Geneva has served as the contact point for ILO-EU relations for the European Commission. The high level meetings "continue to be the most important source of communicating information from the EU to the ILO", followed by information gathering by the ILO office in Brussels, and then service-level meetings between ILO and Commission officials in both Brussels and Geneva (Interview).

Regional initiatives took precedence over ILO activity in the eyes of Member States, and new Commission initiatives, such as the 1970 tripartite conference on employment and the development of product safety standards, took little consideration of what was being done at the ILO.

Where personal relations were good between the ILO representative in Brussels and the contact point in DG V, information was exchanged in a timely fashion. When such "key figures" (*chevilles ouvrières*) of the relationship disappeared, communication could be delayed and patchy (ILO 1970b).¹⁰ The importance of person-to-person contact for EU-ILO cooperation remains, as, in the words of an ILO official in an interview in

not included in later drafts of the Agreement (ILO 1957?). A draft article permitting an ILO representative to be invited to the Economic and Social Committee (ESC) was also deleted from the draft Agreement (ILO 1957?).

¹⁰ The "key figure" identified was Mr. Vinck, fonctionnaire at the Commission. In other notes, Mr. Paul Finet of the High Authority is mentioned as a "personality" that developed co-operation between the ECSC and the ILO (ILO 1971b). Social Affairs Commissioner Coppé was described as more "conservative" in his views of social policy (ILO 1971b), and was also blasted in an ILO memo for his non-attendance at a Contact Committee meeting (ILO 1970b).

2002: "many contacts between the ILO and EU officials are based on personal contact and not a systemic relationship" (Interview).

From 1973 to today

In the mid-1970s the inter-institutional balance between the two institutions shifted completely. The ILO could provide views on highly technical matters, notably the harmonisation of the social security regimes of the new Member States in the case of migrant workers, but the idea that the ILO could serve as "an adviser and mediator in the process of mutual accommodation inside a widening community" retreated as the politics amongst the nine EEC Member States sidelined global-level intervention in their highly complicated bargains (ILO 1971b, p. 8). When the first enlargement of the EEC was negotiated in 1973, a note to the Director-General of the ILO stated: "the Communities have both the expertise and resources, and the direct means of action to promote and implement a dynamic social policy, which far exceed those of the ILO" (ILO 1971b, p. 4). ILO officials thus recognised that the EEC Treaty, combined with the intellectual resources available to the Commission and the legal capacity of the ECJ, had surpassed the policy capabilities of the ILO.

Concrete examples of the interaction between EEC and ILO legislation support the observation of the growing dominance of EEC over ILO legislation. In 1979 the Council, acting on the basis of a Commission proposal (Commission 1979), granted the Commission the authority "to participate in the negotiations concerning the revision of ILO Convention No. 67 on hours of work and rest periods" as Council Regulation 543/69 partially covered areas up for renegotiation in the ILO. The importance of the EEC in adopting or rejecting amendments to the Convention, and the poor representation of developing countries, led to the new Convention (No. 153) being "by and large compatible with Community legislation" but also to the unwillingness of developing countries "to vote in favour of such strict provisions" (Council 1979a). Exceptions were therefore added to the Convention. However, Member States could not agree to ratify Convention No. 153 in common via the Council. In the end, only Spain ratified. There was also "considerable political reaction from employers' and workers' delegations at the Conference" to Commission participation. Member States request that the Commission

adopt "a low profile" in order "to avoid the impression that it was trying to dominate the Conference by voting as a bloc" (Council 1979b).

In 1991 the ECJ ruled that the ILO Convention No. 89 on Night Work (Women) was incompatible with Article 141 (*ex 119*) of the Consolidated Treaties and Directive 76/207/EEC on equal treatment in employment 1991 (ECJ 1991).¹¹ The ILO Convention was struck down by the nine Member States who had ratified it without any prior notification or discussion with the International Labour Office. Notably, in light of future EU enlargement, ILO Members from Central Europe (Czech Republic, Slovakia) have also denounced Convention No. 89 in 2001.

Member States also proved unwilling to submit a common response to the ILO in 1990 on the preparation of Convention No. 170 on safety in the use of chemicals. The Commission referred the matter to the ECJ with the view that Member States were, in the case of Convention No. 170, required to inform the ILO that the European Community institutions had exclusive competency in this matter under Art. 118a (now Article 137) (Betten 1993a, p. 246).

The European Commission also asked the ECJ for an advisory opinion on the competence of the EU to ratify Convention No. 170. This would, ideally, create a situation where ILO Conventions have common effect across all EU Member States with the possibility of an ECJ decision should they fail to implement them.¹² Making ILO Conventions part of enforceable EU law "would prevent Member States from evading or denouncing their provisions by retreating behind their own constitutional systems", since the ILO must rely on national courts to implement Conventions (Rhodes 1991a p. 16). Ratifying ILO Conventions in common via an ECJ-enforceable Directive would not only provide a pan-EU enforcement mechanism, but would also create coherence amongst the Member States in regard to their international obligations in the social policy field. At

¹¹ It should be recalled that it is "standing case law of the Court that EC Member States cannot undertake international commitments which would be in conflict with (or even affect) Community law" (Betten 1993a, p. 255). While Article 141 and judgements by the ECJ hold that a ban on night work for women in industry should no longer be permitted as part of rules on equal treatment, the 1958 ILO Convention No. 89 on Night Work (Women) (Revised) sets different guidelines for the work of women at night than those for men (Valticos 1993, p. xix). This ruling "was later softened" in Case C-158/91 *Levy* (Betten 1993a).

¹² Such a complex process would have to be supervised by the Commission, as the ILO will "not concern itself with disciplining any Member States which failed to respect these Community arrangements" (ILO 1994, para. 7).

present, there is very patchy ratification of ILO Conventions by Member States, as demonstrated in section I of this paper.

The ECJ ruled that "ILO Convention No. 170 is a matter which falls within the joint competence of the Member States and the Community" but that the institutions of the EU and the Member States have "the requirement of unity in the international representation of the Community" (ECJ 1993). In cases where Member States have retained some competence "the right to speak [at an international organisation] will be exercised by the Presidency [of the EU] and not by the Commission" (Frid 1995, p. 195). Given that any legislation composed of minimal rules, as ILO legislation is, is to be considered an area of joint competence according to the ECJ opinion, the assignment of competencies with regards to leadership, representation, coordination, and ratification between the Commission and the Member States on ILO Conventions remained ambiguous (ECJ 1993).

In practice, however, the Member States have proven unwilling both to submit a common response to ILO Conventions in areas where they share competence with the EU, and to permit the use of EU mechanisms to ratify Conventions. The growing strength of EU law is demonstrated by the fact that Member States have been reluctant to ratify ILO Conventions in common via an EU mechanism and thus be held accountable at the ECJ for their enforcement.

National trade unions have also proved unwilling to speak with a single voice at the ILO as they do at the EU level via the ETUC, nor are national trade unions willing to feed a common position to the Commission. This is perhaps surprising given the support the Commission has given to trade unions through the EU Social Dialogue. Union representatives have explained, however, that given the very weak nature of EU level concertation, they are not willing to delegate policy making to the Commission at the global level (Interviews). Strong national unions have also noted that they do not want their position diluted by European coordination (Interviews)

Employers have also resisted giving UNICE a formal role in the ILO employer's group.¹³ For UK employers this is no doubt reflective of their desire to avoid exposing

¹³ Informal contacts are kept by employer representatives who are both ILO delegates and members of national associations that are UNICE members. The ILO employers' group also liaises with the

themselves to the possibility that UNICE coordination would lead to calls for a single employers' position at the ILO, where the CBI would once again be isolated. The great resistance of unions and employers to presenting a single voice at the global level in the ILO is perhaps the clearest indication of the continuing diversity of national practices in the social field, and the resilience of national traditions in the representation of labour market participants.

Interviews with national government representatives and national submission to the ECJ indicate that Member States have a range of opinions on the enhancement of formal EU coordination at the ILO. Member States such as France, Germany, and the UK have cited legal reasons (competence, and the fact that the EU is not a member of the ILO) for their opposition to formal Commission leadership on ILO issues (ECJ 1993, para. IV; 1995, p. 302). France and Denmark have also opposed formal Commission coordination of submissions to the ILO because of the autonomous role of the social partners in developing ILO legislation provided in the ILO Constitution (Council 1986, p. 3 Annex II). Greece, however, is willing to see greater EU coordination at the ILO (Interviews). This may be explained by both its traditionally weak administrative practices, and the weak development of social partners that would oppose such a delegation of powers.

Parallel to the unresolved difficulties of formal Union representation at the ILO, problems of inter-institutional cooperation between the ILO and the EU have persisted. An ILO review of technical cooperation in 1988 noted three main problems hindering cooperation: the "strong preference" of the Commission for executing agencies based in the EEC, the complexity of EEC rules and procedures that often conflict with those of the ILO, and the decentralisation and fragmentation of decision making in the EEC between different DGs that the ILO found hard to cope with (ILO 1988a). This review led to an initiative to revitalize the ILO-EU relationship through the enhancement of the activities of the permanent contact committee and the formal recognition of the EU's observer

International Organisation of Employers (I.O.E.) which has many members that are also members of UNICE. European members of the I.O.E. meet as a group once a year and the UNICE Secretariat also attends. Informal links that transmit information are thus certainly present, although UNICE members have made it clear that they do not want the UNICE Secretariat acting in their common interest at the ILO. Employers are "only in Geneva to the extent that the ILO may inspire the Commission and European legislation" and so wish to keep tabs on ILO activities (Interview).

status, as represented by the Commission (Commission 1990). Still, more than a decade after this review, an ILO official cited the difficulties of tracking issues between DGs (on enlargement questions, for example)¹⁴, and the lack of budgetary and financial compatibility as two continuing problems in ILO-EU relations (Interview).

The most recent exchange of letters in 2001 produced the same rhetoric of the importance of ILO-EU cooperation, and indicated the more advanced stage of social policy legislation at the regional level. Specific initiatives of ILO-EU cooperation are an information exchange on the EES with the ILO Employment and Development Office, "targeted collaboration" on social protection issues, and "the possible dissemination of the lessons from the European experience with social dialogue to other regions of the world" (Commission 2001b).

The ILO's Global Employment Agenda (GEA), launched in November 2001, has an overlap with the EU in one key personality, Allan Larsson, former Swedish Minister of Finance, former DG at the Social Affairs Directorate in Brussels, and a leader in the development of the GEA. One official speculated: "Mr. Larsson may be trying to do for the ILO what he did for Europe" (Interview). Notably, however, the EU Member States have not coordinated their position on this initiative, viewing it as one that will largely affect developing countries and provide a link to the UN Millennium goals on poverty reduction (Interview). In employment, social protection, and social dialogue, then, the EU has advanced to a deeper stage of integration than the ILO, facilitated by a more cohesive and much smaller membership, and by a more robust set of institutions.

Where the ILO maintains leadership is the promotion of core labour standards¹⁵, an area in which it is well poised to exercise leadership given its global membership. The 2001 exchange of letters noted a "strong common interest" in promoting "labour

¹⁴ Examples are a series of technical assistance projects executed by the ILO in Poland, Bulgaria and Russia with EU funding from PHARE and TACIS, in 1992 and 1993 (Frid 1995, p. 282), and the joint EU-ILO Conference on sectoral social dialogue for the EU accession countries held in Prague in November 2001 (ILO 2002). The ILO also provides technical assistance on adaptation to the labour market sections of the *acquis communautaire* in the accession countries (Interview). Still, "because of differences in financial and other regulations between the ILO and the EU only a few ILO projects receive EU funding" (ILO 2002).

¹⁵ The 1998 ILO Declaration on Fundamental Principles and Rights at Work identified five core labour standards¹⁵ covered by eight ILO Conventions. These are: freedom of association and the right to bargain collectively (Convention Nos. 87 and 98), the elimination of all forms of forced or compulsory labour (Convention Nos. 29, 105), the effective abolition of child labour, especially in its worst forms (Convention Nos. 138, 182), and the elimination of discrimination in respect of employment and occupation (Convention Nos. 100, 111) (ILO 1998, Article 2 (a-d)).

standards and human rights...alongside economic development and trade liberalisation" via the ILO's 1998 Charter on Fundamental Principles and Rights at Work and the EU Charter of Fundamental Rights (Commission 2001b).

All EU Member States have ratified the core labour standards (Germany and Belgium being the last to do so, in early 2002). The initiative to have as many states as possible ratify the Declaration has been "wildly successful" (Interview).¹⁶ Extra-budgetary financing has been provided by the UK and Germany, amongst others, for both technical assistance relating to the promotion of the Declaration and programmes to reduce and eliminate the worst forms of child labour.

In addition, the European Commission has referenced the ILO's core labour standards in its own GSP (Generalised System of Preferences) regime¹⁷, and has insisted on a reference to the work of the ILO in WTO Ministerial Declarations. The fact that a common EU submission on labour standards was made to the WTO Doha Ministerial in 2001 is a clear example of European Commission "upgrading" of the Member States positions; taken individually Member State opinion is varied in its opposition and support for WTO-ILO cooperation, but as coordinated in Brussels by the Commission via the weekly 133 committee meeting, the position of the EU Member States is greater than the sum of its parts. Via Commission coordination and leadership of the Doha negotiations the EU presented a clear desire for enhanced cooperation between the ILO and the WTO, taking the lead in the WTO membership on this issue (Interviews). Less enthusiastic Member States, notably the UK, permitted the Commission to voice this opinion with the knowledge that the WTO membership would not approve of a strengthened WTO-ILO

¹⁶ In the words of one ILO official: "Although I have a philosophical objection to some Conventions being named 'rights' and thus more important than others, I have no marketing objective" (Interview).

¹⁷ Regional avenues of integrating core ILO labour standards are not uncontested, however. The EU's attempt to integrate ILO standards in its qualifications for GSP has resulted in a request for consultations by Thailand and India at the WTO in 2001 and 2002—the first step in a possible formal complaint to the WTO Dispute Settlement Body (WTO 2001a; WTO 2002); without a dispute settlement forum for third countries provided in the EU's institutions, developing country governments have taken their complaints about the EU's integration of ILO labour standards into GSP to the global level. Specifically, India has argued that GATT rules only permit setting qualifications on GSP that "facilitate and promote the trade of developing countries" and that "respond positively to the development, financial, and trade needs of developing countries", and that EU tariff preferences that introduce ILO core labour standards "cannot be reconciled with these two requirements" (WTO 2002). Consultations have not yet been concluded, but clearly regional approaches to integrating core ILO labour standards are not immune to protests by developing countries using the institutional mechanisms available to them at the WTO.

relationship. Where the EU, and specifically the Commission, has clear powers of representation it uses these to present a common position on global social governance.

Still, despite these fruitful areas of cooperation, in the words of one Commission official: "states are jealous of their international role and they don't want to share it with us [the European Commission]" (Interview). In other words, despite the enhancement of the EU's remit in social policy in successive Treaty revisions, Member States resist transplanting formal regional cooperation in social policy to the global level.¹⁸ Given the opacity of the ECJ's ruling in 1993 and the "unsavoury" option of further "litigation over their [Commission vs. Council] competence in matters relating to the ILO", only negotiation between all parties concerned will create effective solutions to the challenges of EU representation at the ILO (ESC 1995). In practice, this is exactly what is occurring on an informal and case-by-case basis in Geneva, with coordination of the Member States led by the EU Presidency.

2.2 Informal coordination at the ILO: The Presidency, regional groups, and IMEC

The ILO Constitution would not prevent several Member States from expressing their views through a regional representative, but no formal agreement on EU representation of Member States at the ILO has been forthcoming (Frid 1995, p. 295). The reluctance of Member States to cede formal competence to the Commission contrasts with day-to-day practices at the ILO. In fact, the Member States coordinate via three mechanisms: the EU Presidency, formal regional groups, and the Industrial Market Economy Countries group (IMEC). New ILO legislation is also discussed in Brussels via the coordinating unit in DG Employment and Social Affairs. In comparison with instructions from Brussels via the 133 Committee on trade matters, however, coordination on social policy in Brussels is very low. As a result, there is little contact between the ILO and the European Parliament (Interview). The majority of coordination thus occurs in Geneva.

The country holding the Presidency of the EU "has a great role to play in coordinating positions and reading out the position of the EU to the ILO meetings"

¹⁸ It is interesting to note that Member States have also resisted expanding the competence of the Commission on new trade issues at the WTO, where operating as a bloc is far more established, on issues such as trade in services (Meunier and Nicolaidis 1999). Exceptions to the Commission's leadership of trade policy at the WTO are negatively listed, however, and are very few in number when compared to the lack of any areas of exclusive EU competence in the social field.

(Interview). Presidency leadership of EU coordination is also necessary because as at times the right of the Commission representative to speak for the EU has been questioned by social partners from the Member States, including those of the UK and France.¹⁹ The Presidency chairs meetings of Member States held in Geneva. These are considered to be Council, or intergovernmental meetings. Such regular meetings are held either just before, or just after IMEC meetings (discussed below).

The Presidency can also take the initiative to put issues on the agenda for discussion by the Member States. At a technical level, for example, the proposed ILO Maternity Convention (No. 183 of 2000) was discussed heavily in internal Commission meetings and amongst Member States to create proposals for the Convention. Effective EU technical cooperation may have backfired with regards to the ILO's goals, however, for the resulting legislation "was too detailed for the majority of ILO Member States" (Interview). Italy is the only EU Member to have ratified Convention No. 183. A similar outcome occurred when EU Member States tried to coordinate on the proposed ILO Convention on Part-time Work (No 174 of 1994). Coordination got "bogged down in the Social Affairs Committee" over disagreements as to whether an ILO Convention could be effectively enforced (Interview). In the end, only four Member States ratified the Convention.²⁰ Still, the EU-level social partners used the ILO Convention as a key reference document during Social Dialogue negotiations.²¹

Presidency coordination of a common EU position is most effective on high-level political questions, such as the treatment of trade unions in Colombia, sanctions against Myanmar (Burma), and support for the implementation of core labour standards especially on child labour. A coordinated text is presented on these issues by the

¹⁹ The spokesman of the workers' delegation raised a query as to the status in which the Commission addressed the Conference, and when the Commission proposed amendments to the Convention under discussion (No. 170 concerning the use of chemicals at work) the employers' representative challenged the Commission's capacity to do so (Meeting of the Committee on Safety in the Use of Chemicals at Work at the 77th Session of the International Labour Conference, June 1990 Geneva). The Chair of the Committee referred these queries to the legal advisor to the ILO for discussion at future session (Frid 1995, pp. 299-300).

²⁰ Finland, Italy, Luxembourg, Netherlands.

²¹ The European Parliament, in its opinion on the Social Dialogue Framework Agreement on Part-time Work noted that, in its assessment, the ILO Convention provided a higher standard of protection for part-time workers than the EU Directive (Parliament 1997). There is no doubt, however, that the Directive on Part-time work approved by the EU Council of Ministers provides a much more robust enforcement mechanism via the ECJ.

Presidency, after consultation with the Commission in Brussels and/or Geneva, and Member States suggest amendments. EU meetings are also held during the International Labour Conference to adjust the statement to any new developments. Non-EU ILO and IMEC members have rated EU cooperation as "most often effective on issues of foreign policy and political issues" (Interview). The EU Accession states also often associate themselves with the EU position on political matters.²²

Still, nothing holds the Member States to this common EU position for, in practice, the Member State holding the Presidency of the EU presents a common view on behalf of all EU governments but voting by Member States is "not always coherent" with that view (ILO 1993a, p. 2). In addition, after EU statements read by the Presidency, government representatives from EU Member States may stand to support the EU position but also add their own comments and priorities. The prospect that Presidency leadership could somehow be reversed to make way for sole Commission leadership at the ILO are thus "gloomy", as Member States still enjoy having the ability to make their own independent interventions at the International Labour Conference (Interview).

Much depends on the leadership of the state holding the Presidency. Belgium promoted improved cooperation amongst EU states at the ILO during its Presidency of the EU Council in the second half of 2001. The Belgian Presidency met bilaterally with representatives from other IMEC states to inform them that "IMEC needed to take a back seat to EU coordination at the ILO" (Interview). Belgium's status as a small state that could be enhanced via increased regional cooperation, and the pro-integrationist ideology of successive Belgian governments, explain its interest in greater EU coordination. Given that the Belgian Presidency (and indeed any Presidency) is only six months long, however, this initiative in Geneva had little effect on the daily practice of relations in which position are sketched out on an issue-by-issue basis and which leaves Member States free to amplify issues in addition to the EU position.

²² EU Accession states are "consulted but do not take place in coordination meetings" in Geneva as of the time of writing (2002) (Interview). Consultation takes place before the International Labour Conference, and "it is up to them [the representatives of the Accession states at the ILO] to associate themselves with us" by stating their association with the EU position during their national intervention. All candidate countries "are treated equally", according to the Commission, with no division between first-round and second-round enlargement states (Interview). Other EU Member States feel that the Commission "pressures the CEECs" (Central and Eastern European Countries) and "gives them their position rather than consulting or sharing information with them" (Interview).

Formal regional groups also exist in the ILO (Asia and Pacific, Europe, Africa, and The Americas). These groups are permitted under Article 38 of the ILO constitution and have tripartite representation. Regional groups may make resolutions or submit reports to the Governing Body. In the European Regional Group the Commission sends a delegation, is recognised to speak in its own right, and promotes the EU agenda concerning labour market reform (ILO 2000a).

The Industrial Market Economy Countries (IMEC) crosscuts these regional groups. Given its diverse and economically powerful membership, the IMEC position is usually the most influential of the groups permitted in the ILO. IMEC was formed at the ILO in the late 1970s in reaction to the threatened departure of the US from the ILO.²³ A smaller group of states to provide direction and management to the agenda of the ILO was proposed by Canada²⁴, and a representative from Canada usually chairs the meetings. IMEC is an informal group that, nonetheless, has developed recognition because of its membership. IMEC has twenty-seven members including all EU Member States, the United States, Canada, Australia, Japan, and New Zealand. The group meets "to take a common position in various ILO committees, on policy areas, and organisational issues" (Interview).

IMEC meets once a month at the Mission level in between Governing Body sessions which take place in March and November. It meets every day at the ILO during the Governing Body, and during the once-yearly International Labour Conference. At the Governing Body and Conference session the numbers reach as high as one hundred persons as senior Heads of Delegation take part.

The chair of the IMEC group makes interventions and common statements in the Governing Body on political issues, and on technical issues to committees such as on standard setting. It is in the Governing Body of the ILO that IMEC proves to be more effective than the EU (which has four permanent members of the ILO Governing Body—Germany, France, the UK, and Italy—in addition to any elected members). On programme, budgetary, and administrative issues dealt with in the Governing Body

²³ I am grateful to Mr. Don MacPhee at the Canadian Mission in Geneva, Chair of IMEC (2002), for his detailed explanation of IMEC procedures.

²⁴ John Mainwaring, then Director of International Relations at Labour Canada, was largely responsible for the conception and creation of IMEC.

"IMEC is more influential than any regional groupings" (Interview). The relative importance of IMEC is also affected by the fact that not all Member States are equal in the Governing Body; the four largest EU Member States have much greater influence in the Governing Body and are not inclined to cooperate regionally on budgetary issues. There is "no EU coordination on finance or budgetary issues" in the Governing Body (Interview).²⁵ EU coordination is thus weakest on financial or budgetary questions.

Often the IMEC and the EU position is very similar such that the positions "are not duplicate, but overlap" (Interview). This can present difficulties for EU Member States who "are faced with two coordinating bodies" (Interview). However, the UK "would rather work with US and Japan rather than as a [European] bloc" on certain issues (Interview).

Ultimately, informal cooperation and coordination amongst EU Member States depends on the issue; there is great variation in the level of cooperation between EU Member States depending on the subject involved. On political questions, EU Member States are quite well organised with a common position, while on technical interventions the picture is more mixed and reflects national priorities and preferences for social policy organisation. This is reflected in the high variation of ILO Convention ratifications amongst Member States. Finally, on financial questions there is little EU coordination, reflecting the systemic weakness of the EU as a result of its small budget that can only support global ventures, such as the promotion of the ILO Declaration on Fundamental Rights, in a very limited way.

Conclusions: Global governance in the social policy field and the EU

This paper has demonstrated that some of Mitrany's fears about the impact of a European Union have indeed come to pass. Since the 1970s, EU legislation has surpassed that of the ILO in importance to EU Member States, with the effect that national contributions at the ILO are in part determined by the existence of regional legislation. In addition, ILO legislation has been struck down in cases where it is incompatible with EU legislation. Regional governance, in a legal sense, has proved much more robust than global governance. Still, where EU and ILO legislation co-exist

²⁵ There is also no EU coordination in the Geneva Group. The Geneva Group in Brussels brings together the fourteen largest donor states to the UN in order to discuss budget priorities for the UN institutions, including the ILO.

there is a complicated legal tangle that "includes questions of international, community, as well as national constitutional law" (Betten 1993b, p. 53). These questions have not been resolved in the ten years since this assessment was made. A recent review of fundamental rights in the EU noted that role and impact of ILO Conventions "remain uncertain" (Commission 1999b). Given the trend of decreasing ratification of ILO Conventions by EU Member States, it seems that the emphasis has shifted from global to regional standard setting in social policy.

Part of the tension between EU and ILO legislation results from the position of the Commission at the ILO as a non-voting observer. Forced, ultimately, to stand back and watch Member States decide whether to ratify Conventions, or not, and in light of weak ILO enforcement mechanisms, the Commission has continued to press ahead with its own agenda of social policy legislation. The issue of competency and day-to-day leadership has been much more effectively resolved in the case of the WTO, where political decisions have resolved uncertainty over competency on new issues. In contrast, issues continue to be managed on a case-by-case basis at the ILO. The informal state of relations is complicated by the expanding agenda of the EU in the social field in each successive Treaty revision, and new forms of regulation, such as the Open Method of Coordination (OMC), that sit at an uncertain divide between Member State and regional authority.

Social partner objections to Commission leadership, and national sensitivity about Commission leadership, indicate that a resolution of competency should not be expected. The uncertain and awkward divide between EU and ILO legislation will continue. The Governing Body of the ILO and its Legal Committee, as well as International Labour Office officials, have shown great resolve in consistently stating that the relationship of EU Member States at the ILO is up to them to solve.

On the normative side, regional and global governance have proved more compatible. The concrete policy activity of the early days of the ECSC and the EEC were directly inspired by the ILO, and the goals of EU policy making hold much in common with the Preamble of the ILO constitution. Activity in the areas of labour mobility, worker re-training, social security, and health and safety were all connected to the ILO agenda in their earliest stages. The development of worker rights, equality

between men and women, and non-discrimination in the workplace in EU Treaties also has resonance with the earliest goals of the ILO and the 1998 Declaration. In the ILO's view, the EU has promoted many of its core values: respect for core worker rights, an ever-increasing level of standards in social policy, equality among men and women, non-discrimination in all its forms, and social dialogue (ILO 1988b, p. 8). In the area of core standards, the ILO has "reinvented itself as the primary and unique universal institution" (Murray 2001, p. 219). The EU supports the ILO in this effort, no doubt hoping to prove that it is not unilaterally applying core labour standards as a protectionist measure.

Still, tensions between regional and global levels of governance persist when the EU pushes for an agreement that is at a much higher level than other member of the ILO can accept. The most critical observers note that "the EU destroys this place [the ILO] by creating a bloc position that is very difficult to move. Developing countries don't really like it, and in the end, ratifying ILO conventions does not seem to be a priority of EU Member States" (Interview). In the words of another ILO representative: "The danger must be avoided of falling into the temptation—which experience has shown to be not imaginary—of shifting from a concern for compatibility to an insistence on conformity, by projecting Community solutions onto the international level, with all the undesirable consequences which this may entail" (ILO 1994, para.5). As the Representative of the Government of Denmark expressed: "too many recent Conventions have been modelled on Community standards so that no one could ratify them, not even the EC States" (ILO 1993b, p. 3). This is a great problem for the ILO's mandate to create universally applicable standards in social policy.

Certainly it would make governance in the EU more coherent to have regional positions on issues replicated at the global level, but this would clearly make it more difficult for states to come to agreement in international fora. There is some evidence that indicates that at the global level, where the goal is to assert general principles and develop minimum or framework legislation, the presence of a bloc of well-developed nations having worked out a highly detailed negotiating position makes it more difficult to come to agreement with other states and may threaten effective compromise. The desire for coherence in EU decision-making thus meets the issue of finding effective

compromise at the multilateral level head-on, and it is not clear that these are compatible goals.

Presently, the loose association of the EU Member States at the ILO, while certainly in contrast to their working at the WTO, provides a messy but pragmatic solution to the difficult challenge presented to EU Member States operating in a global forum. More formal EU coordination at the ILO might help to solve the problem of coherence, but the challenge of compatibility between regional and global forms of governance in social policy would remain.

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