

Assessing EU Performance in the ILO: Preliminary sketches of a feasible methodology

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Abstract:

The paper is a preliminary sketch of a larger research project assessing the performance of the European Union (EU) in the International Labour Organization (ILO), submitted to the European Social Foundation in March 2009. The focus is primarily on identifying the relevant actors, policy domains, the interaction effects between them, and a variety of research questions, rather than on presenting a comprehensive theoretical argument. Nevertheless, through the elaboration of the research design two hypotheses emerge, one concerning the nature of the EU as an actor, the other concerning the impact of the EU in the ILO. The first hypothesis is that the performance of the EU cannot be understood without understanding the roles played by diplomats and practitioners upstream (Brussels) and downstream (Geneva) in the coordination process. Predictive (positivist) theories based on rational choice modelling or power and influence do not provide adequate explanatory frameworks, and instead historical and sociological institutional theories that focus on individual actors within institutional settings yield insightful results. The second hypothesis is that EU performance – broadly understood to be its ability to translate a set of EU policy objectives into policy outputs by the ILO – is potentially detrimental to the overall objectives of the ILO in many policy domains. Rather than confirming widely shared assertions that the EU and ILO are highly compatible social partners, the opposite is proposed. In the event that this hypothesis is shown to be valid, the assessment of EU performance becomes considerably harder because of the need to assess the net performance of the EU against its detrimental effects on the ILO.

Keywords:

European Union
International Labour Organization
foreign policy
development policy
social policy

This paper is intended to provide a preliminary sketch of how to assess the performance of the European Union in the International Labour Organization (ILO). Presented on a panel where other work is more developed, it would therefore seem out of place. However, this paper is the first step in an ambitious (and possibly foolhardy) project to synthesis much of the existing research on the ILO (including my own doctoral and post-doctoral work) into a single monograph. The fields surveyed are diverse, spanning law, social policy, development and trade literature, global governance and International Relations. However, it is only through incorporating such a diverse body of work that the EU can be assessed across the entirety of its working relationship with the ILO. Oftentimes the same issue is approached from alternative academic perspectives, such as the General System Preferences – GSP – which Orbie *et al* (2005, 2008a, 2008b) have studied from a political science perspective, and Novitz (2005) from a legal one).

The motivation for the wider project is as part of a wider EU-PERFORM collaborative research network looking at the performance of the EU in five international organisations and regimes. A crossing-cutting synthesis of results is planned in the latter half of the project, while in the early stages each partner is tasked with the job of assessing how well the EU is able to influence the policy environment of the international organisation / regime in question, and how closely matched final outputs are with EU preferences. In the first substantive section of this paper a little more will be said on how the assessment of performance will be operationalised. However, the majority of the paper is dedicated to the larger task of setting out the methodological approach, the fields of analysis and variables considered, as well as the key questions and policy issues that will be used to illustrate each part of the survey. To conclude, a sketch of expected findings is drafted. This paper may be criticised for being thin on theory, but given its current length adding further to it would make it even more unwieldy. Very briefly, the macro-theoretical approach to the study is a comparison of rational-interest based explanations for EU performance based on interests such as Liberal Intergovernmentalism (Moravcsik 1998) with historical and sociological institutional explanations focusing on practices and path-dependencies, social learning and norm entrepreneurship, as well as constructivist explanations focusing on identity and discourse. (Finnemore & Sikkink 1998; Haas 1992; Hall & Taylor 1996; March & Olsen 1998; Nuttall 1992; Tonra 2001). Expected findings are likely to demonstrate that all approaches have merits and shortcomings, and the aim of the project is not to refute or verify one approach but instead to illustrate the value of theoretical pluralism. The methodology used will reflect this pluralism, incorporating quantitative and qualitative empirical evidence. I intend to expand and develop my dataset on voting cohesion, common statements and convention ratification for 34 years between 1973 and 2007, covering over 100 technical instruments and 38 International Labour Conferences (ILCs). Qualitative primary sources will include policy documents from the EU, ILO and national governments, as well as expert interviews in Brussels, Geneva and national capitals, and the International Labour Conference.

I. Assessing the Performance of the EU in the ILO

Oberthuer's discussion of Laatikainen and Smith's (2006) methodology for assessing the performance of the EU in the UN system concurs with their own view that it is much easier to look exclusively at the EU. Assessing 'the "external effectiveness" of the EU in international institutions constitutes a formidable methodological and practical challenge' (Oberthuer 2009: 4). Laatikainen and Smith choose to focus on 'EU effectiveness as an international actor', 'EU effectiveness at the UN', and the 'EU contribution to the UN's effectiveness' (2006: 9-10). By this they mean the ability of the EU member states to act collectively and produce an EU 'output' and label it 'internal effectiveness'. They also look at the ability of the EU to lead, agenda-set and serve as a frontrunner, all of which constitute influence and is labelled 'external effectiveness'. The final characteristic is the ability of the EU to 'strengthen the UN's capacity to act and have influence' (2006: 10) and as such demonstrate 'effective multilateralism'. Oberthuer has developed a more elaborate method of assessing internal effectiveness that can more easily take into account dynamic changes to the representation and coordination mechanisms developed by the EU over time and in response to the demands of the international institutions it is operating in, including evolution in upstream coordination processes in Brussels. The central idea in his refined methodology is to unpack the concept of internal effectiveness and apply it to the specific institutional setting of an international organisation or regime. He argues that we need to compare negotiating capacity and negotiating behaviour, and discrepancies between the two illuminate the performance of the EU. To do this he suggests four dimensions that translate capacity into performance. The first are 'the qualities and capabilities of the negotiators'; the second the 'ability of the EU to speak with one voice and present itself as a unitary actor'; for the third 'contacts with key negotiating partners are a crucial determinant'; while the fourth concerns the 'continuity in representation and preservation of experience' (Oberthuer 2009: 6-7). The advantage of this approach is that it allows a more subtle grading of the EU's strengths, while remaining EU-centric.

Oberthuer's work is predicated on the assumption that at the heart of all international institutions is a negotiation process, and when assessing EU performance we must focus on the 'negotiating capacity and performance of an actor... [to] participate effectively in a particular communication process: (multilateral) negotiations' (Oberthuer 2009: 5). While this suits his own field of policy analysis (environmental regimes), it is not clear that it can be used broadly across the entire spectrum of international institutions. The type of negotiations he has in mind are large intergovernmental conferences in which international treaties establishing organisations or drafting international law are agreed (he gives the examples of UNCLOS III, the Uruguay Round of trade talks and the Marrakesh Accords). In the ideal typology of Inis Claude, these are consensus-based processes in which all states (at least in theory) have the ability to veto the final agreement, and outcomes are a grand bargain between all parties. However, Claude sees this as just one of three types of decision-making processes in international institutions, the others being majoritarianism and privileged-based (Claude 1984, Kissack 2008d, 2009b). In majoritarian-based decision-making the argument does not have to convince every participant, only a sufficient number to pass the vote, and in institutions that employ this method the more frequently used quantitative focus on EU member state voting cohesion is useful (although not sufficient) in explaining outcomes. In privilege-based organisations such as the UN Security Council and the Executive Boards of the IMF

and IBRD, power inequalities are translated into privileges granted to a select handful of states in the form of veto powers or weighted votes. In the UNSC for example, negotiations are on two levels, insofar as a basic agreement between veto-wielding states is a prerequisite before taking a majority decision among the non-veto holding members. In the IFIs the USA controls a sufficiently high proportion of votes to block decisions (holding slightly over 15% of the total in both). Across the three ideal types of decision-making the authority of the decision and the degree of binding weight that it commands decreases, with only UNSC Chapter VII resolutions having the authority to command action from a state against its will. Consensus-based decision-making is used to draft international law in order to maximise eventual acceptance, which is ultimately on a voluntary basis. Finally, resolutions such as those passed by the UNGA are non-binding on member states and are primarily normative instruments serving as bellwethers for the will of the international community. Oberthuer's focus on negotiations is an extremely important one because the majority of 'important' decisions taken in international institutions are made this way through 'grand bargains'. However, his framework must be supplemented by further insights if it is to be used in forums that do not rely exclusively on consensus.

Which decision-making mechanisms are used in the ILO? Answering this question will allow us to choose the best methods for assessing the performance of the EU. As I have written about elsewhere (Kissack 2009c), the ILO has a composite decision-making structure that varies across policy areas. In the important realm of labour standard setting, the upstream process of drafting is achieved predominantly by consensus, with an occasional resort to voting by simple majority when deadlock is reached.¹ The more conspicuous plenary vote is decided along majoritarian principles, but given the highly predictable outcomes generated (one recorded vote on a technical instrument failed to be passed out of 107 in the last 35 years, and then by a single vote) there is an incentive for voting delegates to free-ride on the expected outcome in order to satisfy domestic constituents opposed to the ILO and its work. Assessing the performance of the EU in the ILO requires a careful analysis of the way the ILO works and what strategies the EU should use to achieve its goals. The work of Oberthuer and Laatikainen and Smith draw attention to important considerations. The former set out the macro-parameters of what we need to look out for, while from the latter shows how an appreciation of the decision-making procedures informs the specific project design. However, given the heterogeneous nature of the UN system, and the unique tripartite structure of the ILO, it is expected that while the assessment of EU performance in the ILO will overlap with some existing methods, it will also require some new ones of its own.

II. The levels of analysis

¹ The retreat to such votes is usually an indicator that the contents of the instrument is highly contentious and the entire drafting process requires reconsideration. As most instruments are drafted over two years, if such votes occur in the first year then a fresh approach is taken the following year, while if such votes occur in the second year the committee adjourns into private working parties to iron out disputes.

In this study four levels of analysis are used: individual diplomats, the EU member states, the European Union/European Community (on which much more presently), and the ‘international’, which is divided into the ILO (regarded as an autonomous actor under the agency of its secretariat) and third parties in the ILO (tripartite workers’ representations, employers’ representatives, and other states). The common approach in the literature toward the study of the levels-of-analysis problem is through Putnam’s two-level game (1993) or some variation thereof (Patterson 1997). While this method is useful when looking at how international bargaining takes place, it is less relevant in the ILO for the following reasons. Firstly, the salience of negotiations is, for the most part, quite low and heads of state that traditionally juggle domestic and international demands via appeals to their respective constituencies are not found in the ILO. The most senior diplomats likely to be involved in negotiations are Heads of Mission (equivalent to Ambassadors) and in the highly concentrated UN environment of Geneva bargains are struck more often by logrolling between UN agencies.² Secondly, since the outcomes are non-binding on states, domestic constituency vetoes are not a credible threat when leveraging a national position. Finally, with regard to the EU, the exclusive competence that sets the WTO and FAO cases apart (and inserts the third-level) is not relevant in the ILO. However, in order to present the analysis in a clearer fashion, the following exposition begins at the EU member state level and works ‘up’, turning lastly to the individual diplomats in section (v) whose work takes place in the ‘spaces’ between the levels of analysis, for example through outreach from with the EU coordination group to like-minded non-EU states.

(i) EU member states

Since only the EU member states are members of the ILO (recognised by ECJ Opinion 2/91) it is up to them to ultimately represent the EU in the ILO. It is the member states that ratify conventions and are held to account by the ILO’s scrutiny procedures when they fall short (Novitz 2005). While both the EU Presidency and the European Commission (speaking on behalf of the European Community) have the right to address the conference or intervene in drafting committees, the EU always votes as 27 separate delegations. Moreover and more importantly, each delegation is a composite of national government, workers’ unions and employers’ federations and while not obliged to voting cohesively together, the tripartite delegation remains the core unit of ILO membership. One of the strongest arguments against EC (or post Lisbon Treaty EU) membership of the ILO is its inability to replicate the non-governmental lines of representation from national to international level. Not only are European-level federations considerably weaker than national ones, loud voices in the European Economic and Social Committee (EESC) have demanded the preservation of national tripartite representation (EESC 1995). The EU member states also have legitimate claims for retaining a degree of autonomy from the EU with regard to budget issues, as discussed in more detail in section (iii) below. Johnson (2005) notes that EU coordination has traditionally been weakest in this matter, partly due to the preferences of major EU donor countries (France, Germany, Italy and the UK) to coordinate with like-minded states that also share permanent membership of the

² Personal Interview with Lord Brett, (July 2004), recalling his chairmanship of the 1998 Declaration on the Fundamental Principles and Rights at Work.

ILO's Governing Body (Brazil, Canada, China, India, Japan and the USA) The Governing Body meets thrice yearly, with many executive decisions taken during the meetings in March and November (as opposed to right after the June Conference) when the majority of ILO members – and by extension when the majority of EU states – are absent. Interview evidence illustrates how EU GB government representatives develop close working relations practices with non-EU states that they are unwilling to alter in order to incorporate all 27 EU states. In summary, no analysis of the performance of the EU in the ILO can take place without devoting a considerable amount of time EU member states *qua* member states, be it in the field of convention ratification, tripartite representation, or scrutiny of labour standard implementation.

(ii) The European Union

Without wanting to appear to play 'fast and loose' with definitions, the EU level is taken to mean different things at different times. In committee and plenary meetings it refers to the EU Presidency speaking on behalf of the member states, while on other occasions in the European Commission has spoken on behalf of the European Community (EC). The EC has a long history of collaborative work with the ILO, covering letters of exchange (most recent in 2001), technical and financial assistance, contributing to the World Commission on the Social Dimension of Globalisation (WCSDG), as well as tying preferential access the European market to the ratification and upholding of ILO core labour standards. An important, and overlooked, additional channel of communication is through the EESC, which is a conduit for trade unions and employers' federations (the social partners) into the European political system. The mode of entry is most forceful through issuing own-initiative opinions on Council and Commission proposals that form the basis of European Parliament statements. The chairperson of the EESC is invited to address the annual conference (a practice established by Roger Briesch and Lord Brett), but more importantly a number of individuals double-hat between the EESC and ILO GB (for example, Ursula Engelen-Kefer, Renate Hornung-Draus, and Thomas ETTY). In recent years they have served as rapporteurs in influential EESC reports, thus giving workers and employers representatives with intimate knowledge of the ILO the gate keeping role deciding the content of EESC reports (see Appendix 1 for a list of examples).

In order to add a little more clarity to the question 'who represents the EU at the table?' we can turn to the useful conceptualisation of three models of EU representation proposed by Knud Erik Jorgensen (Jorgensen 2009). The first is 'unconditional delegation' which as he notes, is rarely found in multilateral diplomacy in general, and not in the ILO in particular. The second is 'supervised delegation' in which the European Commission represents the European Community on behalf of the member states who delegate authority to act within the parameters of a specified mandate. While commonly found in the WTO and FAO, it is rarely found in the ILO because of the issues of membership to the organisation set out above. More common is the use of the Presidency to speak on behalf of the member states, (not least because the EC, as an observer, may only speak after all other states and is not entitled to vote on decisions, thus making a reversion back to the member states

necessary for some functional tasks). Delegation by a group of states to one government representative to speak on their behalf is frequently found in the ILO, with most regional groups using it as well as the cross-regional Industrialised Market Economy Countries (IMEC) which has a membership closely resembling the OECD. Indeed, as has been widely discussed (Johnson 2005, Kissack 2006, Nedergaard, 2008) some EU member states prefer coordination through IMEC over the EU, especially when presidencies are perceived as ineffective. Another reason for preferring IMEC is its *modus operandi* as a looser group geared to exchange of ideas and information, rather than the formality of the EU machine geared to common statements. Finally, Jorgensen identifies the 'coordination model' as the weakest form of association between member states, which retain their individual representations and do not employ the single voice of the Presidency. However, one needs to distinguish between outcomes from the coordination model (i.e. lack of willingness to use supervised delegation) and outcomes from the 'one-message, many-voices' approach first utilised by the British Presidency in 2005 to increased effectiveness in UN human rights bodies (Smith 2008), as well as apparent disunity that actually masks complex multilevel bargains across decision-making forums within an international organisation (Kissack 2009).

The boundary between the member state and EU level of analysis is blurred due to the high degree of interaction between the two levels, sufficiently high to make the interface an important area of investigation in its own right. Broadly termed as 'Europeanization', this can take the form of upward, downward or horizontal (Wong in Hill and Smith 2005). Through the creation and fostering of a European identity (such as in the domain of human rights promotion Rittervold 2008), EU member states develop a common expectation on how to cooperate together, akin to the coordination reflect noted by Tonra (2001). Other methods of transmission include norm entrepreneurship in Geneva-based diplomats working in small groups to build a consensus among a sub-group of EU member states, and over time turn these initiatives into EU-common positions (Kissack 2007a). Most EU common positions in the Committee on the Application of Standards, the primary site of scrutiny of state adherence to labour standards in the ILO, began as Nordic group statements, which gained momentum through like-minded EU members (normally Germany, the NL or UK) becoming associated and in later years adopted as an EU position. As a Nordic EU state diplomat made clear in a personal interview, a minimal EU statement is always preferred over a maximal Nordic group one, because of the additional significance the EU signature carries (Kissack 2006, 2007a).

Interests can also play a large part in determining the exact distinction between member state pluralism and EU solidarism, and shall be demonstrated by two examples. Simon Nuttall (1992) provides a fascinating insight into the working of EPC in the 1980s when the EU member states were under pressure from the ILO to adopt strict sanctions on the apartheid regime in South Africa. In 1976 the EU adopted a Code of Conduct setting out the conditions under which EU firms could invest in South Africa, with the resulting guidelines lower than Danish or Dutch preferences, but higher than those of either West Germany or the UK. In 1981 the ILO passed a resolution (*Apartheid in South Africa, including the updating of the*

1964 Declaration concerning the Policy of Apartheid of the Republic of South Africa) demanding all member governments declare what steps they were taking to prevent investment in apartheid-supporting firms (ILO 1981b) The EU chose to submit a joint report compiled under the existing Code of Conduct framework in the Council (ILO 1981a), and stubbornly continued to hold this position in the following years despite workers' representatives becoming increasingly incensed that the common report was a smokescreen for continued investment by the UK, Germany, and to a lesser extent France, Belgium and Italy. While all EU member states continued to submit the single report, the Netherlands, Denmark and Ireland began submitting additional national reports in parallel to the EU one, evidence of a growing lack of solidarity inside the EU. Despite the successful passing of a resolution in the ILC plenary calling on the EU to change its reporting method (ILO 1985a,b) and even forcing a record vote that resulted in a three-way split in EU member state voting cohesion (ILO 1987a,b), the EU refused to change its approach to the satisfaction of the large member states. The 1993 Danish Presidency avoided a potentially embarrassing situation in which one of the biggest internal critics of the EU position would have been forced to defend the Code of Conduct report thanks to the end of apartheid, a transition to democratic and the re-admittance of the South Africa into the ILO (Kissack 2006, 234-242). From this example we can see how large EU member states used the Code of Conduct to serve their national interests and obscure their domestic policies from scrutiny in the ILO, even against the interests of a number of smaller member states. While an eventual compromise was found in which solidarity *and* plurality (or supervised delegation through the single Code of Conduct report *and* independent state action) was possible, Moravcsik's liberal intergovernmental approach does appear to have correctly theorised the role of the national interests of large member states (1998). Nuttall only contestation of this is that the deal agreed was not purely at the level of the lowest common denominator, but a median position between all state interests.³

Domestic preferences linked to national governments have also played an important role in shaping the actor capability of the EU in the promotion of human rights. The May 1 1997 election of 'New Labour' in Britain that ended 18 years of Conservative rule led to a series of policy U-turns in the Committee on the Application of Standards (CAS) that enabled a number of significant HR-promoting steps to be taken in the following years leading up to the 2000 Presidency statement on forced labour in Myanmar, the first such intervention in the CAS by the EU. The background to this event lies in the early 1990s, when over successive conferences the Trade Union Congress (TUC – the UK workers' union collective organisation) petitioned against a series of government actions that were found to be in violation of fundamental labour standards guaranteeing freedom of association.⁴ Given the unwillingness of the Tory government to alter its policy, the issue came to a head in 1995 when a 'special paragraph' was threatened against the UK, amounting to the same degree of 'naming and shaming' used against the 'worst' violators (such as

³ Although Nuttall does not make the point, one could also regard the multiple reports as another example of a median compromise. This also resonates with my own work on the complex bargaining between EU member states in which cooperation in one area of decision-making is agreed on the grounds of acquiescence to non-coherent positions in other parts of the decision-making chain (Kissack 2009c).

⁴ Association and Protection of the Right to Organise Convention (1948) C87 and Right to Organise and Collective Bargaining Convention (1949) C98.

Myanmar, Belarus, Colombia or Zimbabwe in the present era). The then Employment Minister Michael Portillo threatened to withdraw the UK from the ILO if such steps were taken and the 'special paragraph' was never included in the final report of the committee.⁵ Nevertheless, the UK remained indignant and continued to be as obstreperous as possible, voting against the adoption on instruments in plenary sessions and refusing to allow EU coordination to take place in its name (Kissack 2006, 2007a). The 1997 International Labour Conference began less than a month after Tony Blair's party was elected to office, but the change had already begun.

A Government representative stated that the United Kingdom Minister of State for Employment had already announced formally the restoration of trade union rights at the Government Communications Headquarters in Cheltenham (GCHQ) in his speech to the plenary session of the conference. He had emphasised the Government's full support for the ILO, the importance that it attached to restoring the United Kingdom's reputation for fulfilling its obligations in the ILO, and its full respect of the application of the ILO's core labour standards. (...) This was one of the very first acts of the new Government, after it was elected on 1 May 1997. (ILO 1997: 100)

The government also began issuing statements against violating states in the CAS, both individually and in association with like-minded EU states. By 1999 the UK was speaking on behalf of 10 EU states and in 2000 the Portuguese Presidency assumed responsibility for presenting what had become a common EU position. Other factors were undoubtedly important too, such as the accession of Finland and Sweden to the EU in 1995 and the 1998 election of the SPD in Germany. In combination, a critical mass of northern, HR focused states with pro-ILO tendencies engineered the momentum toward the issuing of common statements. Such arguments can be undermined when asked to explain how a government can change its 'national interest' at a moments notice. The answer that will be elaborated on below is that diplomats play a crucial role in explaining the transmission mechanisms at work, and the significant change at national level occurs when previously closed policy positions become open to entrepreneurial diplomats on the ground, who can respond quickly to the changing political reality in order to implement rapid policy change.

(iii) The International Labour Organization

The modelling of the ILO level of analysis is relatively straightforward once a number of preliminary assumptions have been clearly stated and acknowledged, all primarily concerned with the theoretical implications of the degree of autonomy one is willing to grant to international organisations as actors in the international system. The ILO serves the interests of states by providing a forum to discuss employment related issues, draft instruments designed to mitigate against competitive tendencies that lower labour standards over time, and scrutinise members' adherence to standards in a transparent manner. The ILO is therefore the institutional solving the collective actions problems associated with capitalist competition between market economies facing continual pressure to reduce costs. The ILO provides the floor below which no country's standards should drop, and pays back to states the dividend of peaceful industrial relations domestically and harmonious international relations. The

⁵ Personal interview with member of UK delegation to the ILC in 1994 and 1995.

International Labour *Office* is the secretariat of the organisation with its own staff of international civil servants, technical experts and policy directors. The literature is replete with discussions over the degree to which international organizations and their secretariats can be regarded as actors in their own right, summed up by the perennial question of whether an IO is ever more than the sum of its parts. This section assumes that the answer is 'yes', and presents two ways in which the ILO behaves as a distinct actor, justifying its own level of analysis in the system.

The International Labour Office as the secretariat of the ILO is the first institutional actor to consider, with three specific interests to promote, namely (i) the continued relevance of the ILO in the UN system (mission), (ii) the continued funding of the ILO as an organisation (budget), and (iii) the continued prominence of the ILO as a deliverer of the outputs that its member demand (performance). Within the literature on the behaviour of institutions, these correspond broadly to the tendency to seek more money or to seek to further the reach and scope for the organisation beyond its current roles. Within the competitive environment of international institutions, this also includes ensuring that the ILO is not rendered obsolete by other institutions challenging its role. In terms of **mission**, Novitz (2005: 235-238) has described the crisis within the ILO during the early 1990s after the end of the Cold War when the question of the continued relevance of tripartite relations came to the fore. The apparent victory of liberalism and the market mechanism put workers credibility into doubt. The continued relevance of the ILO was further undermined in the discussions over the blueprint for the World Trade Organization (WTO) and the possible inclusion of a social clause. Developing countries won the argument to keep social policy in the ILO, and the 1995 World Summit on Social Development (WSSD) mandated the ILO to work towards producing a code of core labour standards. The 1998 *Declaration on the Fundamental Rights and Principles at Work* codifies four basic rights in eight ILO labour standards, also committing ILO members to respect these rights regardless of whether they had ratified the associated conventions or not. The ILO has put declaration into practice through its *Decent Work* programme, as well as promoting a large push towards universal ratification of the eight core labour standards. The ILO has consolidated its mission as the promotion core labour standards, but as Alston has commented, the ILO has shied away from referring to these as 'rights', and also notes how the substance of the four principles are actually codified in the Universal Declaration of Human Rights (UDHR) in 1949. Viewed in this light, the value added by the 1998 ILO Declaration to global human rights standards is questionable, and from a critical perspective one must ask whether this is no more than a poor example of 're-branding' existing rights (Alston 2005: 3)

The secretariat is also responsible for maintaining the **budget** of the organisation. The three options available during any funding review are to increase, remain constant, or reduce the regular budget for the following period. However, when inflation is taken into account the decision to maintain the budget at a constant level must entail an increase by the rate of inflation. Conversely, a decision to keep contributions unchanged from the previous period equates to a budget decrease by the rate of inflation. This seemingly small difference is the nexus of EU member state divergence, between advocates of zero-nominal growth, zero-real growth, and budget

increases. The majority of states favour zero-real growth that allows the ILO to maintain its spending levels over time, while stricter members seek to reduce the ILO budget by forcing it to expenditure over time.⁶ From the perspective of the ILO as an autonomous actor seeking to maximise its resources, a divided EU on this issue is better than an EU with a common position for zero nominal budget increase, worse than an EU with a common position for zero real budget increase, and considerably worse than an EU with a common position for positive actual budget increase. Within the ILO (as in many other IOs) there is a complicated trade-off between the small number of members contributing the majority of funds, and the majority of members contributing very little – between the ‘payers’ and the ‘sayers’. While ‘payers’ are very often reluctant to hold an organisation ransom, ‘sayers’ appreciate that making too many demands risks alienating large donors to the extent that they withdraw funding, to the detriment of the organisation and the countries that receive aid and technical assistance. While rich states find it difficult to unilaterally alter their contributions to the regular budget of an organisation (that is the budget drawn up by the secretariat and voted on collectively by all members), their contributions to special / additional budget programmes is at their discretion. Within the ILO the *International Programme for the Eradication of Child Labour* (IPEC) is one of the best funded, with Germany, the UK and the US among the leading donors. For donor states it allows them to give to projects that correspond to their foreign policy and development policy objectives, as well as having considerable control over the destination of monies and the duration of projects. There is a gradual long-term shift in the ILO towards reducing regular budget and increasing special budget programmes, one that gives donors more control over the ILO and reduces the influence of the secretariat and the wider ILO membership. It also threatens to turn the ILO into a donor driven organisation that only delivers what rich governments want, rather than addressing a spectrum of concerns identified by its experts, as well as risking the overall coherence of the organisation through a gross distortion in distribution of resources on an *ad-hoc* and short-termist manner. The funding preferences of the ILO are a complex trade-off between the different types of budget contributions, where reductions in the regular budget might be offset by larger increases in special programmes, thus providing a net financial gain to the organisation but a decrease in its budget autonomy. EU member states and the Community budget are sources of funding open to the ILO, and assessing the performance of the EU requires more than simply observing their lack of a common position during biennial budget negotiations.

Finally, the ILO secretariat is interested in maximising its **performance**, although this is a difficult issue to judge since it requires finding a balance between two conflicting concerns – maximal standards and maximum ratifications. Simply put, in an organisation with universal membership the gulf between what is relevant and appropriate for a least developed country and a member of the OECD is highly problematic. While income differentials between countries have always been present, the absolute range between workers globally has increased over the lifetime of the ILO. Should the ILO focus on incrementally raising the floor of minimal standards

⁶ In the recent budget talks Canada (§45) and Japan (§51) advocated this line, while the US broke from its usual position of zero-nominal growth in UN organisations to accept a ‘3% above zero-nominal growth figure’ (§36) (ILO 2007).

around the world, or develop standards that push middle income and rich states towards higher levels of social protection in line with their material capabilities? Since states only ratify instruments that they regard as appropriate and feasible, conventions codifying maximal standards receive a handful of ratifications by states that very often already have existing welfare legislation in place that requires only minimal adaptation in order to comply. Conversely, the most widely ratified conventions are old (some such as the Forced Labour Convention C29 date from 1930) and as Alston (2005: 3) has pointed out, were codified elsewhere in international human rights law in the 1949 UDHR. What progress has the ILO made if its ‘successes’ are goals that were recognised 80 years ago?⁷ As will be discussed in further detail below, the EU has on occasion sought to increase the level of protection provided by conventions to bring them closer into line with EU law (Kissack 2009a), successfully winning the debate to improve labour standards globally but leaving the ILO with a legal statute book increasingly irrelevant to the majority of its members. What role should the EU be playing in helping the ILO to address these problems concerning its own performance?

The second way in which the ILO act autonomously to influence the policy outputs of the organisation is through its technical experts, both in the legal and policy sector fields. During the drafting of instruments ILO staff from the legal department are occasionally called upon to advise on the correct procedure according to the ILO constitution, as well as provide the institutional memory for previous decisions of relevance to the issue under discussion. Given that many national government representatives have limited experience negotiating in the ILO, it is to be expected that the ILO has the resources to provide expert advice on its own procedures and norms. In reality, however, action by these experts does not greatly impact on policy outputs. Far more significant are the technical experts who demonstrate the characteristics of members of an epistemic community (Haas, 1992). They provide reliable, state of the art information and policy guidance to governments that is not skewed towards the preferences of any national position. Prior to the drafting of new instruments, ILO technical experts convene meetings with other members of the broader epistemic community to outline the objectives of the new instrument. They then prepare a preliminary text to be circulated to all ILO members for comments, which are incorporated into the initial draft text for discussion. In this capacity they serve as agenda-setters and gatekeepers able to orientate the content on an instrument in the ILO’s preferred direction. After the tripartite committee members have discussed the document during the annual conference, the same experts begin preparing the revised text to be re-circulated and commented on in preparation for the subsequent year’s committee meetings, where the text will be finalised and put before the conference plenary for adoption. Thus while the ILO members of the drafting committee are responsible for hammering out an agreement over the text that is acceptable to all parties (or as many as possible), the ILO is able to define the parameters of the instrument finally agreed. Elsewhere in the organisation, legal experts from a diverse range of countries meet annually to scrutinise the level of adherence to ratified conventions by ILO member governments. The report of the

⁷ The Worst Forms of Child Labour Convention (1999) C182 is an exception; a widely ratified recent convention, but is one of the eight core labour standards that have been subject to broad efforts to promote since its adoption.

work on the *Committee of Experts on the Application of Conventions and Recommendation* (CEACR) is then presented to delegates at the annual conference meeting of the *Committee on the Application of Standards* (CAS) during which ILO members found in breach are invited to defend their actions, and decisions are made on how to proceed with persistent violators.⁸ In both examples, experts are neutral with regard to the national interests of members, but committed to promoting the ILO's interests of policy effectiveness and strict adherence to labour standards. When considering the performance of the EU, one must consider too whether EU and ILO preferences coincide, how often, and on what policy issues. While there is a widespread assumption that the EU and the ILO should share a high degree of synergy (for a discussion of how see Delarue 2006), as Novitz (2008) has pointed out, the ILO oftentimes appears to be the weaker, junior partner in the relationship and as a result is forced into accepting EU preferences over its own.

(iv) Third parties

Because of the tripartite nature of the ILO the term 'third parties' is preferred over 'other member states', although in effect this group comprises of other government members (i.e. not-EU) and all tripartite members (from EU and non-EU states). The interests of these various groups align and diverge depending on issue area, so exploring them allows one to consider the various constellation of interests that help or hinder the EU to perform.

Workers and employers' representatives are often ideologically opposed on issues relating to the regulation of work, and as Novitz has pointed out a more fundamental schism emerged between the two in the years after the end of the Cold War in which it appeared liberalism had prevailed. While the leitmotif of Fukuyama's 'end of history' zeitgeist is too strong, the fall of socialism did raise serious questions about the future of industrial relations as a tripartite relationship. There were other reasons too why the ILO to suffer an ontological crisis in the early 1990s, becoming an international organisation with an uncertain future. At a fundamental level, the crisis originated in the ILO's original purpose when founded in 1919. Capitalist states feared revolutionary upheaval spearheaded by communist internationalism if working conditions were left unprotected from the buffeting of untrammelled market pressures.⁹ The success of the ILO was in part due to its ability to solve the collective-action problems of coordinating labour standards without resorting to protectionism or tariffs. During the Cold War its purpose for western states was to pour scorn on the communist model of industrial relations, who used the ILO to demonstrate the lack of freedoms granted to workers in the second world. By 1994 the debate had moved on toward incorporating labour standard into the soon-to-be established WTO, potentially removing from the ILO its primary specialism. Orbie and Babarinde

⁸ The most common method is to include a 'special paragraph' in the final report of the CAS, after which specific resolutions are drafted calling on the Governing Body to appoint a rapporteur and commission of inquiry. Both steps are designed to put increased pressure on a government to act, but also provide channels of technical support where appropriate.

⁹ Widespread concern about the ability of the free market to regulate affairs between states without concern for the social consequences also led to the ending of the gold standard in the early 1920, a topic discussed by Polanyi (2001) in *The Great Transformation*.

(2008) show in detail the steps by which this was first considered and later sidelined, showing too that the 1995 Copenhagen World Summit on Social Development threw a lifeline to the ILO by setting it on the road to its current mission of decent work and core labour standards. (Alston 2005) Despite this seemingly wide gulf between the tripartite non-governmental partners, their shared *non-governmental* status is an important unifying identity when faced with two distinct threats. The first is from governments, and any efforts to increase the role of government action brings about a strong concerted response from the two sides. Illustrative of this is the way in which both sides have lobbied the European Parliament through the EESC to reject steps to lessen tripartite representation in the EU. Looking much further back into the history of the ILO we find a similar response in 1978-79 during the drafting of the *Hours of Work in Road Transport Convention C153* (Kissack 2006, 2009a). This was one of the first attempts by the EU member states to upload the *acquis communautaire* into an ILO labour standard, and it brought a series of formal complaints from workers and employers representatives concerning the role of the European Community in the ILO. The second threat comes from reform efforts to widen the non-governmental component of the ILO to incorporate other civil-society actors (Novitz 2005). Any attempt to diminish their privileged position is likely to provoke a unified response from the two parties.

Among non-EU government members of the ILO there exist a number of crosscutting cleavages that are fluid rather than fixed. IMEC is an important coordinating group that includes EU and non-EU OECD members, and to disgruntled EU members the alternative option of IMEC does provide the opportunity to ‘forum shop’. In the defence of those that do this, it is argued that EU coordination meetings are designed to consolidate common positions from the various national positions, while IMEC is a looser coordination bloc that increases shared knowledge by sharing ideas and positions (and does coordination work too). EU member state diplomats speak of the frustration felt when a carefully worded EU position is presented in an IMEC meeting, only to watch some EU member states take differing lines in the general discussion that follows. The states that do this (of which the UK has been often given as an example) argue that IMEC cannot function without a discussion of positions, and the EU and IMEC are immiscible, insofar as reading out a common statement that is not open for further negotiation is at odds with the *modus operandi* of IMEC. One area for further study is the extent to which the EU has learnt that flexibility is needed too, and that perhaps IMEC holds lessons for EU coordination in the future. On substantive issues Norway often aligns its position with the EU, Canada and Switzerland less often, Australia and New Zealand slightly less again, and the US and Japan least of all. This spectrum is subject to change however, with the recent conservative government in Ottawa pushing Canada closer to the US and Japan, while the newly elected Labour government in Australia is likely to signal a shift closer to the EU.

The remaining states in the ILO constitute the ‘global South’, although regional coordination is more common than G77 action. In the UN system in general GRULAC (Group of Latin American Countries) is most often aligned with the EU on issues of human rights, but revert back to a solidarist position with the G77 on issues

of macro economic and social policy (such as the right to develop). In the ILO most issues fall into the former category and thus the differences between GRULAC and the EU are relatively small. However, one issue that divides GRULAC from the EU, and creates division inside the group is the issue of maximal and minimal standards, with poorer states anxious to prevent labour standards becoming a veiled form of protectionism.

African, Gulf and Asian states also widely coordinate together. African states are homogeneous in their common interest in lower standards that are more relevant to their economic reality. Gulf states focus coordination on articulating religious and cultural reasons why certain labour standards are unsuitable for their countries, and in general try to reduce the level of protection offered in standards. The Asian group is the most variable in its geometry, because it can focus around a core of strong cultural demands (such as the organised rejection of the 2005 Fishing Convention on the grounds that its standards were incompatible with their tuna fishing fleets), as well as the widely cited concern for making labour standards compatible to lower levels of economic development. In the former case South Korea and Japan were forceful advocates, while in the latter they more closely align with EU/IMEC positions based on their wealth.

The performance of the EU can be seen, albeit somewhat crudely, as a function of how well it is able to promote its preferred policy positions in the face of competing positions from both third parties and, to the extent that they can, the ILO secretariat through its prior drafting and expert knowledge. The EU is rarely likely to find itself in opposition to all other members (except on the issue of EC membership), and must often work to build alliances with other parties. Moreover, during the drafting of conventions and in the issuing of reports on labour violations as many decisions as possible are taken by consensus. The EU is therefore rarely called upon to muster votes in a straightforward 'up/down' vote.¹⁰ Across policy areas and over time the constellations of support for the EU will vary, and therefore the results we are likely to gather will be contingent on a number of theoretical assumptions being held correct.

(v) The interaction effect: diplomats and networks

The role of diplomats is enormously important in this study because in many cases the degree of cooperation, coordination, animosity, the strength of coalitions, and the discrepancy between theoretically informed expectations on the power and influence of a state and the material reality, can *all* be explained by the role of diplomats. Personal interviews with practitioners in New York, Geneva and Rome (where the FAO is based) all confirm the view that the influence of a state in an international organisation is determined by the experience, dedication and ability of a mission, rather than their size on the global stage. For example, China is widely accepted to

¹⁰ As I have argued elsewhere, these votes are subject to a much wider series of consideration than appears the case at first glance (Kissack 2009a).

have the most competent diplomats in the UNO, reflecting their increasing influence during the last decade.¹¹ Similarly, the G77 is steered in various organisations by a dozen or so states that take the initiative to lead, and not only the largest members. For example, Zimbabwe is an important member in the FAO because of the significance of the mission in shaping G77 opinion. Singapore is one of the lead states opposing the abolition of the death penalty, and is far more visible in negotiations than China, the USA, India or Japan, which are also retentionist states (Kissack 2008c). Therefore, while the four levels of analysis identified constitute the different stages upon which diplomats act and demarcate the spheres of influence they occupy, networks between diplomats transcend the levels and reach out beyond the spheres.

Looking specifically at the European level, a number of examples from the ILO and the wider literature are useful to illustrate this point. Beginning inside the ILO, one of the puzzling issues to explain is why over the 35 years of coordination between EU member states the outputs in technical issues have consistently underperformed, while political coordination has yielded robust and coherent common action. Our theoretically informed expectations suggest that low politics should perform better than high politics. I have explored the issue in detail (Kissack 2006) and wish to raise only one important aspect here, which is the familiarity of diplomats with EU processes and coordination methods. Despite upstream coordination in Brussels on ILO agenda items, national capitals send expert representatives to the ILO from either an issue-specialism or their international department, rather than their European department. Conference coordination between EU member states is often carried out by member state representatives with neither much experience of EU coordination, nor many socialised contacts with EU colleagues. Coordination is slow because norms of behaviour are neither known nor followed, and the outputs produced become sub-optimal. By contrast, there is a considerable amount of evidence to suggest that political coordination is more effective because it is the responsibility of Geneva-based staff that develop a rapport with their European colleagues during their rotation (Kissack 2007a). More importantly, the flexibility of coordination allows a degree of entrepreneurship not found in technical coordination, and Geneva staff are able to socialise new diplomats (either from accession states or newly arrived) into their existing practices, thus consolidating behavioural norms. In the wider literature there is an emerging discussion of the ability of the EU to outreach beyond its own membership and convince other states to align their policies with the EU. Karen Smith has detailed the navel-gazing tendency in the Commission on Human Rights (Smith 2006), while evidence of lessons being learnt in terms can be found in the 2007 UNGA moratorium on the death penalty resolution (Kissack 2008c). In this case, outreach and a concerted effort to give non-EU states co-authorship of the resolution was a successful part of the process, however the EU still needs to go further towards adopting a more flexible approach to coordinating with non-EU states to prevent those states from feeling that they are being forced to accept a *fait accompli* statement.

¹¹ On this see Laatikainen and Degrand-Guillard (2009), also ECFR *Audit of EU Power in the UN*, where China is included in their 'Axis of Sovereignty'.

In summary, now that we have established the four levels of analysis for the study of the performance of the EU in the ILO, and that the levels cannot be neatly compartmentalised, but instead ‘messily’ interfere with each other. We will now move on to consider the five policy fields in which EU performance in the ILO can be sub-divided, as well as consider how the four levels of analysis generate a series of research questions for further investigation.

III. Policy domains

Five, broad policy domains have been identified for consideration. The first is **technical**, which is divided into standard setting (such as conventions, recommendations, protocols, as well as expert panel meetings) and cooperation (projects in the field). The second is **political**, referring to the scrutiny of adherence to labour standards, petitioning against the violation of core labour standards and punitive actions against recalcitrant states, such as Myanmar under Article 33 of the ILO Convention (Maupain 2005). The third is **legal**, which is divided into constitutional (the limitations to action facing the European Community due to its observer status), competency (how to legislate in order to comply with ILO standards in areas of mixed and Community competency, as raised in ECJ Opinion 2/91) and also legitimacy (concerning the EU’s use of conditionality based on ILO standard violations to withhold GSP tariff preferences to developing states, as seen in India’s appeal to the WTO Novitz 2005). The fourth is **financial and managerial** issues, which concern the budget of the organisation, coordination on the executive body (Governing Body), and of the acceptance of national candidates for appointment to senior positions. Lastly, **tripartite** relations are an important focal point. The ILO is the only body in the UN system in which non-governmental organisations are given legislative and executive powers on par with governments, making it a unique and highly important characteristic of the organisation. Furthermore, the lack of pan-European tripartite representation has been one of the fundamental structural hindrances to EC membership. Tripartite actors have worked to shape opinion inside the EU, while the EU itself has adopted a form of tripartitism in the form of the Social Dialogue programme and the Lisbon process (Novitz 2005).

The five policy domains are not equally weighted in size; the first and second deserve the most attention since it is in these areas where the ILO does most of its work, and therefore it is here that the performance of the EU must be assessed. However, it is likely that inabilities to perform in the legal, financial or tripartite domains will spill over into technical and political issues to the extent that we can identify causal linkages between them. In order to assess EU performance in each of the five domains we need to consider the influence of the four levels of analysis on the EU, either as enabling or constraining forces, and the extent to which EU performance is affected by the ability (or inability) of other actors to pursue their interests. As mentioned above, it is likely (based on findings from earlier research) that diplomats and practitioners will play an important role in the analysis, explaining the transmission belts between the EU and other actors.

(i) *Technical*

At the level of EU member states, what factors determine whether they will consent to EU-level coordination and common interventions, or speak individually or as part of another bloc? National interests would presumably be the place to begin answering this question, and taking an intergovernmental perspective we would expect national governments to assume primary responsibility for the drafting of conventions that matter greatly to them. As a corollary of this point, policies already integrated at the European level might be expected to be represented externally, as neo-functionalism predicts. Historically, policy areas that fall under Title XI of the Treaty of the European Community (Social Policy, Education, Vocation Training and Youth) and are already subject to the community method of decision-making (for example Occupational Health and Safety as listed in Article 137) have a longer and more substantial record of strong EU coordination. Here the argument would appear to hold that issues of low-salience are willingly conceded to the European level, although a more assertive argument can be made that EU states seek to protect their highly regulated industries from low-cost (and low-protection) producers in developing countries, and thus seek high ILO standards as a form of protectionism. Riddervold (2008) considers this option and rejects it in her analysis of the drafting of the 2007 Maritime Labour Convention (MLC), but my own work spanning 1973-2007 shows that the more active the EU is during the drafting of an instrument, the less likely that instrument is to be ratified by ILO members (Kissack 2008a). I have described elsewhere in detail three such cases demonstrating how the negotiating strategy used by the EU sought to make ILO standards compatible with existing EU law (Kissack 2009a), and it seems highly likely that EU member states find it easier to coordinate common interventions based on pre-existing agreed text (such is seen in the gradual evolution of the wording of Council common statements over time). The already agreed *acquis communautaire* is a natural departure point in the process of drafting EU interventions, so whether malign or benign, conscious or unintended, the evidence points to a ratcheting up of labour standard content as the EU becomes more involved in the drafting process.

The issue of what constitutes an ‘appropriate’ level for a labour standard is highly salient in the wider debate concerning the measurement of EU performance, and how difficult it can be. We have, first off, a basic dilemma in the form of what is the EU’s actual policy objective? Riddervold argues that EU behaviour in the drafting of the MLC does not support the claim that the EU is seeking to maximise labour standards in order to protect the single market. However, large-scale survey data does lend weight to argument that this is the actual consequence, even if it is not explicitly stated. What, amongst all this, is the ILO’s preferred policy outcome, between maximal standards with a handful of ratifications, and minimal standards that are widely adopted? A pragmatic response from the ILO would be to seek standards that make a real difference yet do not contain such aspirational goals that states will be unwilling to accept them. Considering the wider ILO membership, workers’ representatives generally favour higher standards in conventions but curb their enthusiasm when such levels are approached as to make them unratifiable. Conversely, employers’ representatives prefer lower standards, but they too realise that extremely low standards undermine the purpose of the organisation and accept that a global ‘race for the bottom’ is in no-one’s interest. Likewise, developing states

prefer lower standards, and some rich countries with strong liberal ideologies also seek lower regulation, unless there are benefits in the form of domestic job protection to be gained. On balance, therefore, workers, EU member states, and some likeminded non-EU states (either in the European neighbourhood, from IMEC or from GRULAC) favour higher standards, along with the ILO secretariat. We can say that the EU is performing well when it is able to promote higher aggregate labour standards with the help third parties from within this constellation. However, if it pushes too hard various parties in the constellation become disillusioned and peel off, leaving a thinner coalition that may still see their preferences incorporated into the standard, but ultimately leaving the convention unratified. How are we to measure performance then, when EU objectives have been met in the form of maximal standards, but have simultaneously let the ILO down? As Novitz has discussed in relation to the cooperative partnership between the EC and the ILO, while it is proclaimed to be a partnership of equals, the ILO appears to be in reality the weaker partner, left with sub-optimal outcomes that do not help it in its work. Measuring the performance of the EU in the policy domain of technical standards cannot be done by looking at the match between EU preferences and ILO outputs alone, because going so risks missing the more important question: is a strong EU a help or a hindrance to the ILO (Kissack 2008a)? If it is a hindrance, how can we conclude that it is performing well when it is diminishing the ability of the international organisation to perform its own work?

(ii) Political

The 'label' political for one policy domain in the ILO is somewhat controversial. On the one hand it is an accurate depiction of the way governments view the working of the ILO. The scrutiny of the domestic practices of sovereign states is the concern of foreign ministry officials because it is part of the larger framework of relations between states. On the other hand, the ILO scrutiny process is supposed to be neutral and transparent, carried out by legal experts focusing solely on facts and divorced from political concerns. Part of this can be explained in the difference between the ILO as an international organisation, and the action taken by states (and the tripartite partners) against other states on the basis of information provided by the ILO. The ILO itself has no capacity to sanction members, and relies on members to enforce adherence to labour standards by agreeing punitive actions against violators collectively and applying them consistently (Maupain 2005). In an interview with an EU diplomat based in Geneva and working on a resolution against Zimbabwe, the major concern was that pushing too hard for punitive action against the country would allow Zimbabwe to claim that the ILO was becoming 'politicised', from which it would be a short step to claim that the organisation was a puppet for the imperial forces of Britain and the US. Thus giving Zimbabwe grounds to make this rhetorical claim would damage both the credibility of the ILO scrutiny process and the hopes of improving human rights in the country. Looking further into the past, the ILO has been used as a proxy battleground during the Cold War, has been used to highlight the issue of Palestine and occupied territories, and seek the end of the apartheid regime in South Africa (Kissack 2006). The performance of the EU in the political domain of the ILO cannot be assessed on the grounds of how many statements it makes or how many 'special paragraphs' are included in the CAS report to the annual International Labour Conference (ILC). It is also measured by how delicately it pursues its goals

and how sensitive it is to the interests of third parties, since like with technical issues, too assertive an EU role could lead to a less effective ILO if CLS violating states can claim they are being unfairly singled out because of ulterior Western motives.

(iii) Legal

As stated above, the legal policy domain can be divided into three issues; constitutional, competency, and legitimacy. A European Parliament (1977) report predicted that the European Community would accede to membership of the ILO in the place of the member states in the medium term, putting the ILO on a par with the GATT as the primary international forums of EC action. Needless to say, over 30 years later no such change has been made and any optimism today that such a change will occur soon is misplaced. A change to the ILO constitution would be required in order to allow a regional organisation to become a member, and previous attempts to change the constitution have been long drawn out processes. The unique tripartite structure would be difficult to recreate on a pan-European level, thus leaving both workers' and employers' representatives resolutely against any change. Their combined 50% of the Conference plenary votes mean they need only a small number of governments to agree with them in order to achieve the 66% (2/3 majority required).¹² It seems, however, that many non-EU governments would not accept any steps towards allowing the EU or EC membership. Within the FAO (where the EC does have membership) there is widespread dissatisfaction with the EC as a member, and a senior EC diplomat, when asked if the 1989 change of FAO constitution would be adopted today with the benefit of 20 years hindsight, straightforwardly answered 'no'. The explanation given was the in 1989 non-EU states did not know what they were signing up to, and the same mistake would not be made elsewhere in the UN system today. The performance of the EU must be analysed from the perspective of its coping mechanisms with the current legal arrangement, rather than as a failure to achieve the goal of membership.

Regarding the division of legal competency between the EC and the member states, the petitions to the ECJ in 1991 by member states demonstrated their diverging opinions over what role the European Community should play in the representation of the EC during the drafting of conventions and their ratification thereafter. The Court settled on the need for cooperation between the member states in representing the EC but accepted that because *only* the member states are ILO members, they must remain the primary actors. As Cavicchiolo (2002) describes, by pooling their sovereignty in certain areas of social policy, they have voluntarily ceded the right to legally represent themselves in the ILO; while the ILO does not recognise the legal actor (the EC) that the member states have empowered to act on their behalf. The intractable nature of this conundrum is what attracts EU legal scholars to it, and the measurement of EU performance requires an appreciation of the legal parameters of action. The final issue to consider in terms of EU performance in the legal domain is the legitimacy of trade preference conditionality based on labour standards. This can either take the form of

¹² Once the revised constitution has been accepted in the plenary, it requires ratification by 2/3 of ILO members in their national parliaments, thus giving the non-governmental partners another opportunity to lobby against ratification.

hypocritical double standards, where not all EU member states (until recently) had ratified the eight core labour standards expected by the Commission. Alternatively, states such as India are ‘testing the water’ for appealing in the WTO against the conditions for preferential market access granted by the EU, including observance of ILO core labour standards. Here the question of EU performance needs to be contextualised within the broader demands of performance across international organisations. Just as we have seen examples of how certain EU policy objectives might be detrimental to the performance of the ILO, we can also find examples of there been wider damage inflicted on the international trade system. (Novitz 2005: 233)

(iv) Financial and managerial

The financial, managerial and reform domain is considerably smaller than the previous three, concerning the biennial budget of the organisation, the appointment of senior staff and the national quotas drawn from ILO members, and the future of the organisation. As Johnson (2005) notes, the EU has been extremely weak in its coordination on budget matters, and have been fundamentally divided over the whether the organisation’s budget should grow absolutely, be increased only by the rate of inflation, or contracted. These divisions are endemic across the UN system as most member states have a homogeneous approach to UN funding consistent across all bodies. Scandinavian states tend to support budget growth, while most EU members prefer to limit increasing budgets by the level of inflation. However a small group including the UK have in recent advocated a reduction in dues, made possible by streamlining and efficiency improvements. This is not to say that overall funding from EU member states is decreasing. Oftentimes reducing the regular budget goes hand-in-hand with increasing donations to specific projects, meaning the states can target their aid to the parts of the ILO carrying out the development work they prioritise. This leads to potential problems of consistency between EU members’ individual contributions, which lack overall coherent when conducted more so separate policies. Additionally, the reduction in regular budget contributions (which the secretariat determines how to spend) and increase of ‘ring fenced’ special budget payments risks damaging the overall coherence of the ILO. However, one potential benefit of a fragmented EU is a more accurate reflection of the bargaining positions of the ‘sayers’ (majority of G77 members) and the ‘payers’ (IMEC states). Unpublished research on EU coordination in the FAO found that the EU is a weak bargainer and in recent reform and budget negotiations, likeminded, non-EU states were frustrated that the failure of the EU to negotiate more assertively on the issue of tying budgetary concessions to reform concessions. If a coordinated EU on budget issues results in ‘sayers’ (states paying low contributions, receiving the majority of funds and constituting the majority of the membership) having too much influence, the effectiveness of the organisation goes into decline as donors take their funding elsewhere. This is another example of how *prima facie* examples of the EU performing well may have detrimental effects to the organisation itself.

As has been mentioned above, the executive organ of the ILO, the Governing Body, is comprised of 56 members (28 government, 14 worker and 14 employer). Of

the 28 government seats, 10 are permanently occupied by the ten most important industrial nations (France, Germany, Italy and the UK along with Brazil, Canada, China, India, Japan and the USA), and the other 18 are allocated on a regional quota system. Within the EU there is therefore a divide between the major industrial states with a long-term involvement in the running of the ILO and those that participate periodically on a three-year rotation.¹³ Coordination between the permanent ten takes place during the whole year both in Geneva and in national capitals, and as a result some members find networks of coordination established for the GB more resilient than the sporadic coordination by EU member states. More broadly, the privilege granted to these states manifests itself in two related issues. The first is their overall policy position on funding in the UN system, which given their large contributions makes them less winningly to continuously increase the budget in a way that in particular Scandinavian states push for. The second is the appointment of nationals from their countries in positions of influence in the organisation. While all international civil servants are in theory neutral with respect to the interests of their nationality, all states are keen to ensure that each national quota is full so as to maintain a presence in the organisation, if only to have inside information on the politics of the organisation. While there remain important privileges from membership that accrue to national governments, the performance of the EU as an actor will be limited.

(v) Tripartite relations

The final domain to consider is tripartite relations, in which the EU's performance is severely limited, at least within the ILO. Despite the division of legal competencies within the European Community requiring some form of formal representation at the ILO, as well as the capability at the Council level to coordinate ratifications, not least because the decision-making necessary to make EU directives compatible with ILO standards in areas of community competence is at the Council level. EU performance is thus compromised because of legal-structural constraints imposed by the gridlock between what the EU has become, and what the ILO refuses to admit, i.e. a member-organisation. The assessment of performance must therefore be based on how well it copes with the fixed nature of relations between the EU and the ILO. Tripartite assessment can also take into consideration the extent to which the social partners within the ILO are able to work with the EU (and the extent to which they want to). There is evidence to show that they have on occasion sought to upload the *acquis communautaire* as an example of best practice even when the EU itself has been unwilling to act, demonstrating that both sides regard the European social model as valuable (Kissack 2009a). Within the European Union tripartitism is being promoted through Social Dialogue and the related institutions of the Lisbon Process (Novitz 2005). What remains to be seen is how well the intra-EU and ILO level tripartitism can be integrated, and the extent to which intra-EU efforts to increase tripartite representation are a substitute for greater European cooperation in the ILO, or a step towards resolving the structural barriers to European Community involvement in the ILO.

¹³ Since there are also deputy members of the GB who stand in during the absence of a government, more states are involved in the GB at this lower-level association.

IV. Conclusion

The purpose of this paper has been to ask questions, suggest hypotheses and demonstrate an outline plan of how to assess the performance of the EU in the ILO. As such, and by definition, it has come up short on answers. However, one recurrent theme that has been touched on repeatedly and that serves as a leitmotif throughout is the possibility that EU interests, preferences and goals need not be compatible with those of other actors (of no surprise), nor to the ILO itself. Whether it be the maximisation of labour standards, the relentless pursuit of action against states violating core labour standards, or seeking greater EC participation (despite the fact that a number of EU member states do not favour this), in the technical, political and legal domains high EU performance could very possibly be detrimental to ILO 'performance'. Scenarios of such conflicting interests in the domains of finance/management and tripartite relations are less obvious, but in principle a choice must be made between the absolute assessment of EU performance on the one hand, and the relative performance of the EU in the ILO on the other hand. EU performance cannot be studied in a vacuum, in isolation from the overall performance of the organisation it is participating in, as Laatikainen and Smith warn against. As a result we are likely to end up hedging our performance assessment with caveats. This is no less that we should expect, since it is entirely to be expected that a group of states as powerful as the EU would impact upon the multilateral institution in which it is operating, and by doing so distorting the equilibrium of the international organisation itself.

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Appendix 1: ILO GB members serving as EESC rapporteurs

Ursula Engelen-Kefer: (Selected) – Germany, Employers

No. 1172: OPINION of the European Economic and Social Committee on *Quality of working life, productivity and employment in the context of globalisation and demographic challenges* (13 September 2006)

No. 589: OPINION of the European Economic and Social Committee on the *Proposal for a Directive of the European Parliament and of the Council on improving the portability of supplementary pension rights* COM (2005) 507 final (20 April 2006)

No. 846: OPINION of the European Economic and Social Committee on the *Communication from the Commission on the Social Agenda* COM (2005) 33 final (13 July 2005)

No. 527: OPINION of the European Economic and Social Committee on the *Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/88/EC concerning certain aspects of the organisation of working time* COM (2004) 607 final (11 May 2005)

No. 250: OPINION of the European Economic and Social Committee on the *Proposal for a European Parliament and Council Regulation on the European Social Fund* COM (2004) 493 final (9 March 2005)

(With Hornung-Draus) No.355: OPINION of the European Economic and Social Committee on the *Communication from the Commission on Promoting a European framework for Corporate Social Responsibility* COM (2000) 366 final (4 April 2002)

No. 704: OPINION of the European Economic and Social Committee on the *Communication from the Commission on the Framework for informing and consulting employees in the European Community* COM (1998) 612 final (9 July 1999)

Renate Hornung-Draus: (Selected) – Germany, Workers

(With ETTY) No. 252: OPINION of the European Economic and Social Committee on *The Social Dimension of Globalisation – the EU's policy contribution on extending the benefits to all* COM (2004) 383 final (9 March 2005)

No. 325: OPINION of the European Economic and Social Committee on *Employment support measures* (2 March 2004)

Thomas ETTY: (Selected) – Netherlands, Workers

No. 213: OPINION of the European Economic and Social Committee on the *Communication from the Commission under Article 138(2) of the EC Treaty on the strengthening of maritime labour standards* COM (2006) 287 final (15 February 2007)

No. 92: OPINION of the European Economic and Social Committee on the *Communication from the Commission on Promoting decent work for all* (17 January 2007)

No. 238: OPINION of the European Economic and Social Committee on the *Representation of women in the decision-making bodies of economic and social interest groups in the European Union* (14 February 2006)

No. 1071: OPINION of the European Economic and Social Committee on *Social policy within a pan-European system for regulating inland-waterway transport* (own-initiative opinion) (29 September 2005)

No. 885: OPINION of the European Economic and Social Committee on the *Communication from the Commission on Adapting to change in work and society: a new Community strategy on health and safety at work 2002-2006* COM (2002) 118 final (23 July 2002)

No. 194: OPINION of the European Economic and Social Committee on the *Communication from the Commission for amending Council Directive 83/477/EEC on the protection of workers from the risks related to exposure to asbestos at work* COM (2001) 417 final (22 February 2002)

No. 937: OPINION of the European Economic and Social Committee on the request by the *Commission for the Committee to draw up an exploratory opinion in anticipation of the Commission Communication on health and safety at work* (17 July 2001)