A Humanitarian Common Policy Through Deliberation?

On the Characteristics of EU Foreign Policy

Marianne Riddervold

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ISBN (print) 978-82-93137-36-8
ISBN (online) 978-82-93137-86-3
ARENA Report Series (print) | ISSN 0807-3139
ARENA Report Series (online) | ISSN 1504-8152

Printed at ARENA
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Oslo, November 2011

Preface

The aim of this dissertation is to contribute to a better understanding of what characterises EU foreign policy. In particular, I am concerned with what, if any, role norms play in the member states' collective foreign policies.

The dissertation is composed of three main parts. The first part contains an introductory chapter where the framework of the articles, the research questions, the main hypotheses and analytical framework are presented more closely. The second part holds the three articles. In the third and final part, the main findings and theoretical implications are summed up and discussed.

The first article '"A matter of principle"? EU foreign policy in the International Labour Organisation' is published in 2010 in *Journal of European Public Polic*y, Vol. 17 No. 4, pp. 581-598.

The second article, 'Finally flexing its muscles? Atalanta - the EU's naval military operation against piracy' is published in 2011 in *European Security,* Vol. 20 No. 3, pp. 385-404.

The third article 'From reason-giving to collective action: Argument-based learning and European integration' is forthcoming in 2011 in *Cooperation and Conflict.*

Many people deserve my gratitude for helping me write this dissertation.
First of all, I want to thank my supervisor Helene Sjursen. Helene encouraged me to apply for a doctoral position at Arena, and has encouraged and guided me through all the different phases in writing this dissertation. Easily detectable, her academic work has strongly inspired my research. Her unique analytical skills, her ability to point to what is important and to ask the right questions have been invaluable in helping me sort my thoughts and make them into the different articles and chapters that compose this thesis. Thank you also for your friendship, our daily talks and for all your empathy, understanding and support when I needed it.

I have benefited enormously from the inspiring and stimulating research environment at Arena. I am grateful to all my colleagues and

friends at Arena for discussions and comments and for making Arena such a great place to work. Arena has provided me with excellent working conditions.

A special thanks goes to Guri Rosén for not only reading more than a few drafts, for sharing my academic interests, for all our discussions, and for her always critically constructive comments and questions. Most of all, thanks for being the funny and caring friend that I so much look forward to seeing every day.

Erik Oddvar Eriksen deserves a special thanks for his many writings on the different issues that interest me, and that so clearly have inspired the work done in this dissertation. It is quite obvious that it is based foremost on the works of Jürgen Habermas, Helene Sjursen and Erik Oddvar Eriksen. I also want to thank Erik Oddvar Eriksen for always taking the time to discuss whatever I am wondering about and for answering my not always very reflected questions.

Also others deserve my appreciation for taking the time to read and comment on different parts of this dissertation. In particular, I want to thank Anne Elizabeth Stie for friendship and support and for helpful comments and questions. Her help during the last weeks of finalising the thesis was invaluable. A special thanks also to Daniel Gaus for suggesting the reading by which the deliberation/bargaining framework is based, for reading different drafts and for taking time to explain and discuss parts of Habermas' writings that were unclear or puzzling to me. Thank you also to Meng-Hsuan Chou, Christer Guldbrandsen, Maria Martens, Johan P. Olsen, Nina Vestlund and Pieter de Wilde, and to participants at different workshops and conferences, in particular, Robert Kissack, Amelie Kutter, Jan Orbie and Dirk Pieters, for excellent questions and comments on the different articles. Thanks to Haakon and Hanna for proofreading. And to Sindre Hervig for proof-reading, comments and technical assistance, and most of all for being my friend, for always smiling and for keeping me fit.

I want to thank the Norwegian Ministry of Defence for financing this research. Thank you also to the Ministry of Foreign Affairs for financially supporting my stay at Harvard during the summer of 2005, and to the Norwegian Maritime Directorate for allowing me to participate as part of the Norwegian delegation to the ILO in Geneva

so that I could observe the EU coordination meetings and get all my contacts and interviewees. Many thanks also to all my friends from my previous work place in the Norwegian Maritime Directorate for making these trips to Geneva so enjoyable.

I want to thank my sources and key-informants providing me with the necessary data to conduct the research composing this dissertation. In particular I want to thank Haakon Storhaug for sharing his enormous knowledge about international maritime law, the MLC, EU maritime policies and EU coordination, for answering all my questions and for taking the time to be interviewed so many times. A special thanks to Dr. Trond Stokke for his care and support and for keeping my head up while writing this dissertation.

Last but not least, thanks to my family and all my friends for their interest and support during the years of writing this dissertation, and in particular to Daniel, Gustav and Fredrik for all the joy and happiness you spread. Most of all, thank you to the two most important persons in my life: Espen and Philip. Your love and support is always my greatest inspiration. This dissertation is dedicated to you.

Marianne Riddervold

Oslo, July 2011

List of abbreviations

Atalanta: EU Naval Forces (NAVFOR) Somalia – operation Atalanta
CGPCS: The International Contact Group on Piracy off the Coast of Somalia
Commission: The European Commission
CLS: Core labour standards
CSDP: Common Security and Defence Policy
CTF-151: The Combined Task Force 151
EP: The European Parliament
ESDP: European Security and Defence Policy
EU: European Union
EUFP: European foreign policy
ILO: International Labour Organization
IR: International Relations
MEP: Members of the European parliament
MLC: The Maritime Labour Convention for the International Labour Organization Maritime Sector
NATO: North Atlantic Treaty Organization
PTMC: Preparatory Technical Maritime Conference
SHADE: Shared Awareness and Deconfliction conference
UK: United Kingdom
UN: United Nations
UNSC: United Nations Security Council
WFP: World Food Program

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Chapter 1

Introduction

Part I. Introduction. What characterises EU foreign policy?[1]

1.1. Topic and puzzle

The European Union (EU) is in many ways a unique construct. This is not least evident in the fact that although not a state, lacking a common identity and the monopoly on the use of force, the EU has developed a common foreign policy.

That the EU, as the only international organisation in the world, has developed a foreign policy has puzzled students of International Relations (IR). States have been at the centre of attention in studies of IR. Conventional IR is rooted in the concepts and thinking related to the Westphalian nation-state order of 1648 and 'most contemporary writing portrays the world as partitioned into mutually exclusive and exhaustive territorial units called states' (March and Olsen 1998: 944).

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[1] In this dissertation I apply a wide definition of EU foreign policy, being 'the ensemble of the international activities of the European Union, including output from all three of the EU's pillars' (Hill 2004: 145). Also see page 63.

Foreign policy has moreover been seen as the key domain of these nation-states, linked even to their very existence. It is thus the policy area where one would least expect nation states to integrate. Still, contrary to Stanley Hoffman's (1996) prediction that the EU member states would not compromise their sovereignty and integrate in this policy area, they have formed an extensive common foreign policy. The EU has developed a wide range of foreign policy tools, including military capabilities. It has its own security strategy, an institutional structure has been established in Brussels, and the EU increasingly speaks with one voice at the international arena. With the Lisbon treaty, the EU has gained legal personality and has even established a distinct European diplomatic service, the European External Action Service, headed by an 'EU foreign minister'.

What is more – not only has the EU moved much further in terms of developing a common foreign policy than many expected, challenging our conventional conceptions of foreign policy as a field belonging to the exclusive domain of the state. The EU has also set itself ambitious goals for this foreign policy. According to the EU,

> [the] Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.[2]

This seems to contradict the established expectations to foreign policy behaviour, where the dominant view has been that policy outcomes are linked to the actors' particular interests. The EU's proclaimed focus on human rights and international cooperation has therefore led to a wide scholarly debate about whether or not EU foreign policy differs from conventional conceptions of foreign policy. Is there, as argued by an increasing number of scholars, something distinct about EU foreign policy? Or does the EU use norms instrumentally in its pursuit of material interests, in line with what one would expect following conventional, rational choice-based perspectives? Whether or not EU foreign policy adheres to different principles than the ones coherent with the dominant perceptions of nation-states' foreign policy behaviour is still an open question. 'The precise nature of the Union's foreign policy remains contested. Hence, there are eminently good reasons to focus on the EU's international […] policies' (Jørgensen 2006: 31-31).

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[2] EU treaty (2008) Title V, Chapter 1, Article 21.

1.2. Research question: What characterises EU foreign policy

This article-based dissertation contributes to this debate. The aim is to contribute to a better understanding of what characterises EU foreign policy. In particular, I am concerned with what, if any, role norms play in the member states' collective foreign policies.

In doing so, I raise and seek to answer two questions. First, I ask if EU foreign policy differs from foreign policy as it, following rationalist perspectives, traditionally is understood. Is there a normative distinctiveness to EU foreign policy or does its behaviour fit the conventional understanding of interest-based international behaviour, based on nation-states as the main theoretical and empirical units? If so, in what ways is it different? Second, I also have a theoretical ambition, aiming to contribute in further developing analytical tools that might help us explain such a putatively different policy. If the collective policy adheres to different principles than the ones coherent with the dominant perceptions of nation-states' foreign policy behaviour, how may we theoretically account for such a policy?

1.3. The role of norms in foreign policy

By its focus on if, how and why norms influence EU foreign policy, this dissertation not only contributes to the debate about the role norms in EU foreign policy. It also links up to one of the biggest contemporary debates in IR studies in general, about the influence of norms and ideas on the international behaviour of individuals and states. On the one hand, rational choice based perspectives build on the assumption that states' behaviour is interest-driven. In a rationalist analytical scheme, norms do not have independent behavioural effect, other than through the mechanism of self-interested behaviour (Goldstein and Keohane 1993; Keohane 1984; Moravscik and Schimmelfennig 2009; Waltz 1979). On the other hand, constructivist scholars point to the constitutive role of ideational or normative factors, to how norms and ideas function as explanatory variables. Following a constructivist approach, norms, i.e. expectations of how one ought to behave, may influence actors' preferences and even identities and thus regulate behaviour (Kratochwil 1989; Ruggie 1998; Olsen 2007).[3]

This discussion is also evident in the literature on EU integration in general and on EU foreign policy in particular. Currently, there are different notions as well as theoretical perspectives on how to explain EU foreign policy. On the one hand, scholars applying rational choice based perspectives maintain that their conventional state-based analytical tools and models can explain EU foreign policies. Though there are major differences between the neo-liberal and neo-realist approaches within the tradition I here call conventional or rationalist approaches, building on such perspectives, one would expect that once the EU acts on the international scene, its behaviour will be in line with what we expect of a traditional foreign policy actor.[4] In the same manner as states, its foreign policy would follow from an internal aggregation of interests and the main aim would be to promote these interests in the most efficient way available. If the EU refers to or promotes human rights norms, this would be a strategic choice. The main aim would be to advance the member states' common preferences and any reference to or promotion of human rights would be instruments in this regard.

1.4. The approach: Communicative action

Other scholars have challenged this view on how to understand EU foreign policy-making and its conduct, arguing instead that the reason why the EU claims to conduct a norm-based foreign policy is that the EU's foreign policy behaviour *is* different. Duchêne characterised the EU as a 'civilian' power already in 1972, but in particular since the 1990s, an increasing number of scholars have on the basis of empirical studies argued that the EU is a 'normative', 'civilian' or 'ethical' foreign policy actor, who has rejected power politics and instead acts as a 'force for the good' (Aggestam 2008; Duchêne 1972; Kissack 2010; Lucarelli and Manners 2006; Manners 2002, 2006; Orbie 2008; Rosencrance 1998; Stavidris 2001; Telò 2006).

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[3] Though this is a very diverse group, by constructivist perspectives I mean all perspectives that hypothesise 'how ideas, norms and institutions shape state identity and interests' (Mingst 2004: 316).

[4] For neo-realists see among other Hyde-Price 2006, 2008; Posen 2006; Walt 1998; Waltz 2000, neo-liberalists see among others Krasner 1999; Moravcsik 1998, 2010; Nye 2004.

Although sharing the assumption that norms might influence foreign policy behaviour, other authors have however questioned both the theoretical robustness and the analytical usefulness of these concepts for describing and explaining EU foreign policy (Diez 2005; Börzel and Risse 2007; Sjursen 2006a, 2006b). There is often a lack of clear analytical definitions, making what might be a normatively distinct EU foreign policy difficult to specify and study empirically. In particular, there is a need to nuance the concept of normative policies, as there are different types of norms that may point towards very different types of foreign policies (Sjursen 2006a). Moreover, though scholars increasingly argue that norms and ideas might have an independent effect on foreign policy, why this is so is less clear from the existing literature.

To study the possibility that there is more to EU foreign policy than one would expect following a rationalist perspective, there is thus a need to further specify and refine existing theoretical tools that can provide plausible theoretical explanations to the putative normative distinctiveness of EU foreign policy. In this thesis, I argue for linking a communicative approach to the analysis of the EU's external actions.[5]

As rationalist perspectives, IR scholars applying a communicative approach for descriptive and explanatory purposes build on the assumption that there is a causal link between the policy-making process and its outcome. However, while rationalist perspectives assume that foreign policy outcomes result from an aggregation of the member states' fixed interests, a communicative approach allows for the possibility that norms may influence policy outcomes other than through the mechanism of self-interests behaviour. More precisely, building on Habermas' concepts of communicative rationality and deliberation, I expect that norms might influence different fields of common EU polices due to the force of the better argument – because EU policies are constructed through deliberative processes where actors' positions and behaviour might change because they learn from each other's arguments (Deitelhoff 2009; Eriksen 2005, 2009; Risse 2000, 2004; Sjursen 2002, 2003, 2004, 2006a).[6] On this basis, norm-based foreign policy behaviour becomes an analytical possibility *on a par* with strategic or instrumental foreign policy behaviour. Acting on the basis of norms becomes equally rational as interest-based behaviour. Furthermore, when studying a putative normative foreign policy empirically, a communicative approach may be helpful because it provides us with tools for distinguishing between types of norm-based foreign policies, between policies based on universal norms or rights, on the one hand, and policies based on context specific values, on the other (Sjursen 2002, 2006b). On this basis, it is possible to spell out and study the relevance of alternative hypotheses of EU foreign policy behaviour.

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[5] The increased use of a communicative approach in explanatory research has been called the 'deliberative turn' in the IR-studies (Neyer as cited in Risse and Kleine, 2010: 709). Also see amongst others Deitelhoff 2009; Deitelhoff and Müller 2005; Diez and Steans 2005; Eriksen 2000, Eriksen 2005; Eriksen and Fossum 2000; Müller 2002; JEPP special issue 2010; Risse 2000, 2004; Risse and Ulbert 2005; Sjursen 2003, 2004, 2006a; Thompson 2008.

1.5. Answering the questions: The articles

In this dissertation, three articles address the overall question of what characterises EU foreign policy by shedding light on different sides of it. First, two articles address the empirical question of whether or not EU foreign policy differs from foreign policy as one, following rationalist perspectives, conventionally understands it, and if so, in what way it is different (articles 1 and 2). In order to contribute to an answer, I ask why the EU conducted a particular policy in two empirical cases of EU foreign policy.

First I study a low politics case, analysing the EU's behaviour in an international organisation, namely the United Nations International

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[6] Some scholars use the term deliberation, others arguing. I prefer the term deliberation, but when referring to other studies, the two terms are used interchangeably in the dissertation. For a discussion of different definitions see part 3.2 of this chapter.

Labour Organization, the ILO. More precisely, in the first case-study I analyse the EU's policies towards the Maritime Labour Convention (MLC), adapted in 2006. The second foreign policy area studied is a high politics case, namely the EU's launch of its first maritime military operation, EU Naval Forces (NAVFOR) Somalia (Atalanta) in 2008. These are both critical cases of EU foreign policy, by being cases where the EU has strong material interests but still claims to be promoting human rights. Thus, if there is something distinct about EU foreign policy in these two cases and this distinctiveness is linked to the promotion of norms, this would be a strong indication that EU foreign policy differs from the conventional, rationalist conceptions of foreign policy. However, both in the ILO and with Atalanta, following a rationalist perspective, one might also expect the opposite, namely that the EU used reference to human rights norms strategically in its pursuit of economical or security-related interests.

To study the relevance of these alternative explanations of EU foreign policy, in these two articles I apply Eriksen (2009a) and Sjursen's (2006a, 2007) model of a humanitarian foreign policy actor. To capture the possibility that EU foreign policy is different, this model builds on different analytical assumptions than the ones underlying the rationalist perspectives. While the foreign policy of a traditional great power builds on the principle of state sovereignty as the constituting principle of international relations, the principle underlying the foreign policies of a humanitarian actor is universal rights. If the EU's behaviour testifies to such a model, its foreign policies would be underpinned by the main aim of 'domesticating' world politics through a focus on strengthening binding human rights law, i.e. global law, in the international system (Sjursen 2007: 13). Individuals, and not states, are the addressees of global law. In conducting its foreign policy it would also bind itself to such law. Building on the assumption that agreement on what collective EU policy to conduct in the two cases were reached through the exchange of arguments, to explain EU policies in the two cases, the methodological approach is to identify the arguments behind the policies conducted – the arguments that were not only presented but also acted upon and thus functioned as what I following Sjursen (2002) call mobilising arguments, controlling for actual behaviour.

The two articles suggest that EU foreign policy is different from what one would expect following rational-choice based perspectives.

Common policies were mobilised by rights-based arguments. Instead of acting only in favour of its interests, EU foreign policy was in line with what one would expect of a humanitarian actor, that is, it promoted human rights through law, even when this involved costs to the EU itself. On this basis, the third and last article in the dissertation is an attempt to contribute to further develop analytical tools that may help us better account for why in both of these cases, arguments referring to rights mobilised the common EU policies conducted. The starting point for the article is the claim that the existing literature applying a communicative approach in studies of international negotiations and their outcomes seldom analytically specifies and empirically trace the micro-mechanisms by which deliberation has an effect on policy outcomes. The 'black-box' of deliberation is seldom opened. In order to contribute to further specifying analytical tools for this purpose, drawing on Habermas (1998 (1996)) chapter 7, and Deitelhoff (2009), Elster (2007), Eriksen (2005, 2009b) Eriksen and Weigård (2003), Risse (2000, 2004) and Sjursen (2003, 2004), I suggest that norms may have an effect on common EU foreign policies through the mechanism of what I call argument-based learning. To study the framework's applicability, in the article, I then apply it in an in-depth study of the EU coordination towards the MLC. As I in the previous study (article 1) I found that the EU's policies towards the MLC were in line with what one would expect of a humanitarian actor, this is thus a relevant case to study in more detail in order to see if my framework can help account for why, in this case, norms influenced EU foreign policy behaviour.

1.6. The organisation of this introductory chapter

The aim of this introductory chapter is to present the main hypotheses of this dissertation and to more comprehensively present and justify the analytical framework applied in the articles. Due to space limitations, many issues could not be extensively elaborated on in the three articles. Here I thus focus on providing a more thorough discussion of issues that are important in order to highlight this dissertation's contribution to the existing literature. In doing this, the remainder of the chapter is divided into four main parts.

In Part II, I provide a review and discussion of the different strands of literature focusing on the role of norms in EU foreign policy. The aim is to elaborate on the basis of the different hypotheses presented in the empirical articles and to discuss and justify the analytical framework applied in the two empirical analyses. In doing this, I first present different rationalist perspectives on foreign policy. The purpose is to go beyond the articles in giving evidence to the claim that despite their different explanations of why the EU claims to promote norms, they share the expectation that EU foreign policy is in line with what one would expect of a traditional great foreign policy actor. Second, to show how this dissertation contributes to the existing constructivist literature on the role of norms in EU foreign policy and to explain and justify my own analytical choices, I discuss alternative conceptions of EU foreign policy. I first discuss the analytically challenges linked to the concepts and criteria applied in studies arguing that the EU is a 'civilian/ethical/normative' foreign policy actor. Having elaborated on why I find these perspectives insufficient in order to answer the question of what characterises EU foreign policy, I discuss why I believe a communicative approach may help provide a plausible theoretical explanation to the putative normative distinctiveness of EU foreign policy. On the basis of this discussion, I present the theoretical assumptions underlying the alternative hypothesis of EU foreign policy, i.e. that its behaviour testifies to that of a humanitarian actor.

In Part III of this chapter, I go on to discuss the background and basis for the analytical framework that is developed and applied in the third article in this dissertation. One may however argue that argument-based learning is not the only possible micro-mechanism through which norms may influence collective policies. I therefore start by presenting and discussing an alternative constructivist explanation as to why norms putatively influence EU foreign policy due what happens during the policy-making process, namely that norms influence collective policies due to norm-internalisation following processes of socialisation. The purpose of this discussion is to justify why I believe that a framework based on Habermas' concepts of deliberation and communicative rationality provides a particularly relevant alternative approach in studies of collective policy-making processes at the international level to that of the rationalist perspectives. I thereafter demonstrate and explain the basic theoretical assumptions that underlie the concepts and framework that are presented in the third article.

In part IV, I elaborate and discuss the methodological approach applied in the three articles and justify the choice of the two case-studies.

Part II. Is there a normative distinctiveness to EU foreign policy?

2.1. The conventional model of foreign policy: Instrumental use of norms

IR studies have been dominated by rational choice based perspectives which base their analyses on the assumption that foreign policy actors are instrumentally rational.[7] The main assumption is that 'actors calculate the utility of alternative courses of action and choose the one that maximizes (or satisfies) their utility under the circumstances' (Moravcsik and Schimmelfenning 2009: 68).

Most studies of foreign policy also assume that these actors are strategically rational, that they make their behavioural decisions based on how they expect other, equally strategically rational actors to behave. Following rationalist perspectives, foreign policy actors will always choose the action that is considered 'the best means of satisfying the agent's desires, given his beliefs about the available options and their consequences' (Elster 2007: 193) in light of other actors' equally strategic behaviour. In the analytical scheme, norms are reduced to means to reach material goals. 'Actions are valued and chosen not for themselves, but as more or less efficient means to a further end' (Elster 1989: 22). Different rational choice based perspectives apply these assumptions also to studies of the EU's foreign policy.

2.1.1. Structural realism: Lack of military means or milieu goals

Following a structural, neo-realist approach, states are the core units in international politics. The assumption is that these states operate in a still mainly anarchical system where they engage in a zero-sum game with the main aim of increasing their relative powers vis à vis other powers, using the most efficient way available (Grieco 1997; Mearsheimer 1994/1995; Mearsheimer and

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[7] For overviews see amongst others Carlsnaes et al. 2002; Hill and Smith 2008; Jackson and Sørensen 2007; Mingst 2004; Smith et al. 2008.

Walt 2006; Morgenthau 1993; Snidal 2002; Walt 1998; Waltz 1987, 2000).

Scholars applying neo-realist perspectives have struggled to explain the fact that states are willing to bind themselves to cooperation in the field of foreign policy, including in the EU. Following the realist assumptions of strategic states operating in an anarchical state order where they always aim at increasing their relative power, it is difficult to see why states would engage in such cooperation in the first place. This is independent of the possible gain that might result from cooperating with other states – it is the risk that someone else might gain more, the problem of 'relative gains' that should reduce the possibility of interstate cooperation (Grieco 1988, 1997; Mearsheimer 1994/1995; Snidal 2002; Walt 1998; Waltz 2000). States may however have an incentive in cooperating and form alliances with other states in order to shape their external environment or to be better able to enforce their interests in areas where they face common problems (Grieco 1997; Posen 2006). Moreover, once institutionalised cooperation is established such as in the EU, though still expecting that the level of integration particularly within the field of security and defence will be limited, different neo-realist scholars focus on the importance of balancing against other great powers when explaining that the EU member states are conducting a common EU foreign policies (Hyde-Price 2006; 2008; Posen 2006; Walt 1998).

Against this background, the EU's outspoken claim that its policies are based on norms is explained as a strategic choice. In any empirical case, the EU's focus on norm promotion would either be explained as an attempt to create a favourable environment or because it has been perceived as the best way to influence its environment and promote its first-order interests given its lack of other, hard power means of influence (Hyde-Price 2006, 2008, Posen 2006; Rynning 2011). According to Hyde-Price (2008: 32), the EU presents itself as 'an ethical power' first and foremost to shape 'the regional milieu' and thus increase the member states' international influence vis-à-vis other powers. Promoting norms in other states or through international organisations is one element of an international actor`s policy instruments. The main aim is to create conditions that are favourable to the member states' common long-term economic and strategic interests, by creating a stable environment and increase the EU's influence over other actors. As such, the EU acts as a traditional foreign policy actor, shaping its external environment by using the mix of the instruments available to it. It follows that a main reason behind the EU's claimed focus on norms in its foreign policies is that the EU lacks the military means necessary to at will pursue its interests. Following neo-realist assumptions, military power is a crucial factor for the EU to increase its relative international power and thereby increase its ability to act in favour of its interests without having to justify its actions (Art 2008; Kagan 2003; Posen 2006; Toje 2010; Walt 1998; Waltz 2000. Also see Howorth and Menon 2009).

Due to domestic factors, foreign policy actors may moreover promote non-security goals as long as it does not conflict with other more important economic or strategic interests (Hyde-Price 2008; Mearsheimer 1995). The EU`s acclaimed focus on norms is thus further explained as a pursuit of the '*second order normative concerns* of EU member states' (Hyde-Price 2008: 32). Following Hyde-Price (2008), a reason why the EU might promote such second-order concerns in its foreign policy could be that strong national interest groups for some reason promote such norms internally and are powerful enough to make their national government promote them also at the EU level. If then the member state in question is powerful enough to promote these norms also in the EU negotiations, one might expect that this could result in the EU conducting what appears to be an 'ethical' foreign policy, i.e. that the EU would promote these norms in this particular foreign policy. However, though norms may influence the internal aggregation process preceding a collective EU policy, once the EU acts on the international scene, the pursuit of norms will always be secondary to its first order interests (Hyde-Price 2006, 2008; Morgenthau 1993; Posen 2006). One would thus not expect that the EU pursues these norms consistently, or if somehow conflicting with more important interests. Though the member states may wish to bind the behaviour of others in order to increase their collective influence or secure their strategic environment, they would not be willing to bind themselves to norms that restrict their ability to manoeuvre in favour of their interests.

2.1.2. Neoliberal intergovernmentalism: Rhetorical action or smart power-tools

Instead of focusing on the importance of relative gains, scholars applying neoliberal perspectives focus on how cooperation might increase everyone's gain in the long term, i.e. on the absolute gain of cooperation (Goldstein et al 2001; Keohane 1984; Keohane and Hoffmann 1990; Keohane et al. 2002; Krasner 1983, 1988, 1999; Moravcsik 1997, 1998; Moravscik and Schimmelfennig 2009).

Neoliberal scholars predict that states may cooperate when this is perceived necessary or advantageous in order to promote their common interests, which is why they have integrated at the European level. Following this approach, a binding agreement is a 'strategic choice by self-interested actors to resolve recurrent cooperation problems relating to the transaction costs of renegotiations and monitoring and enforcement problems' (Deitelhoff 2009: 40). Why the actors should trust each other enough to bind themselves to common rules is however often unclear given the assumption of strategically rational actors (Müller 2002: 376). Notwithstanding, once common institutions and rules are established such as in the EU, neo-liberal perspectives expect that they affect the likelihood of further integration. Such institutions provide channels of information of other actors' preferences and positions, and increase the credibility of the actors' commitment to future cooperation (Abbott and Snidal 2000; Keohane 1984).

When acting on the international scene, the collective EU preferences are given and the aim is to realise these 'distinctive preferences under varying constraints imposed by the preferences of *other states*' due to interdependence (Moravcsik 1997: 520). Norms do play an independent role neither in the internal policy-making process nor in the policies conducted, other than through the mechanism of self-interested behaviour. Following Goldstein and Keohane (1993), norms or ideas can function as normative justifications for action (which is what Goldstein and Keohane call 'principled beliefs') or they may function as road maps ('causal beliefs') that help actors better achieve goals that have been derived externally from their material interests. In both cases, interests are fixed and norms are used instrumentally to achieve these goals.

> Under conditions of uncertainty or incomplete information, for example, instrumentally rational actors can use ideas as road maps or signposts indicating how they could best realise their interests under given circumstances. Moreover, principled and causal beliefs can enter the utility functions of actors, affect cost-benefit calculations, and influence the strategic interactions themselves (Risse 2000: 4 referring to Goldstein and Keohane 1993).

However, norms do per definition not influence the actors' preferences. Norms or ideas are 'seen as instrumental constructs designed to help actors achieve their ends' (Blyth 2002: 303). When explaining EU foreign behaviour, researchers applying neo-liberal perspectives (at least implicitly) operate with three analytical levels. At the national level there is first an internal process of interest-aggregation through national political procedures, where the outcomes, the national preferences, reflect the interests of strong national or transnational interest-groups. Second, at the macro, EU, level where these interests meet, factors like asymmetrical interdependence decide the outcome through sequential series of bargaining. (Krasner 1999; Moravcsik 1998; Moravcsik and Schimmelfenning 2009; Rittberger and Schimmelfennig 2006; Tallberg 2008). Third, once a collective foreign policy goal or preference is agreed on internally in the EU, the main aim would be to promote this fixed preference externally. If the EU promotes or refers to human rights norms when conducting its foreign policies, this would be a strategic choice, referred to in the literature as 'soft' power, which is defined as the ability of 'getting others to want the outcomes that you want' (Nye 2004: 5). Soft power rests not on military strength but on civilian instruments, such as economic strength and 'an important role in international institutions and the attractiveness of social and political values' (Moravscik 2010: 156).

The EU, in other words, uses norms as a soft power means of influence. It seeks to promote its norms directly or through international institutions in order to increase its global influence and create a favourable and stable environment, in line with its own preferences. 'In the post-cold war area, the primary task of international organizations has […] been […] to provide flexible coordination and legitimation' of own actions (Moravscik 2010: 171). Soft power moreover rests on cooption rather than coercion – it depends on the attractiveness of an actor's culture, values and foreign policies. If a state or organisation's foreign policies are seen as morally legitimate, there is a bigger chance that it can make others act in accordance with its own wishes without using coercive means (Nye 2004). This is why the instrumental use of human rights is a particularly successful strategy in order to influence other states and why it is important for actors such as the EU to be conceived of as morally legitimate by referring to or promoting such norms. Soft power is more than an instrument among others, or an instrument used out of necessity, due to lack of military means, as stated in much of the realist literature. Following the neo-liberal literature promoting and referring to norms is a 'smart power' instrument (Cooper 2003; Nye 2004). Creating a favourable environment can be more cost-efficient than other coercive foreign policy instruments – and it is increasingly becoming more effective:

> As more of the world becomes market oriented, democratic and free of expansionist ideological claims, European countries' policies are well positioned to advance their regional and global interests as they find themselves closer to the consensus point of global bargains (Moravcsik 2010: 168).

2.1.2.1. Rhetorical action

Another version of the argument that norm promotion functions as a potential means of influence can be found in Schimmelfennig's concept of rhetorical action, originally applied in studies of EU enlargement (Schimmelfennig 2001, Schimmelfennig 2003). Rhetorical action is defined as 'the strategic use of norm-based arguments in pursuit of one's self-interest' (Schimmelfennig 2001: 55). According to Schimmelfennig, member states who for material reasons considered enlargement beneficial used references to norms to 'rhetorically entrap' other member states into accepting enlargement to the Central and East-European countries. The same logic can be applied in studies of the EU's foreign policy behaviour, where one for instance would assume that the EU uses references to human rights rhetorically during international negotiations. The aim would be to shame other states into accepting particular policies or positions that in reality are based on concerns for material interests or are promoted to create rules that are in accordance with the EU's own interests so as to create a favourable environment.

The concept of rhetorical action also offers a neoliberal explanation of why particular norms may influence EU foreign policies (Rittberger and Schimmelfennig 2006; Schimmelfennig 2001, 2003). The main idea is that during the internal bargaining process, some of the actors, i.e. the EU member states, use norm-based arguments strategically in pursuit of their own material interests. Such rhetorical action is successful if the other actors are rhetorically entrapped by the use of norm-based arguments, meaning that they are shamed into accepting a particular policy or proposal due to its normative justification. The assumptions behind this argument are that actors are weakly socialised and that they

> do not take the standard of legitimacy either for granted or as a moral imperative that directly motivates their goals and behaviors. They confront the standard of legitimacy as an *external institutional resource and constraint"* (Schimmelfennig 2001: 63).

An additional explanation of why norms may be promoted in EU foreign policy is thus that there is at least one member state that first, has a preference that is in line with these community norms of legitimacy, and second, decides to use them strategically in favour of its interests. This being possible despite the fact that no-one necessarily accepts these norms as valid:

> As for power over outcomes, in a community environment legitimacy strengthens the actors' bargaining position. By linking distributional conflict with the collective identity and the constitutive values and norms of the community, rhetorical action changes the structure of bargaining power in favor of those actors that possess and pursue preferences in line with, though not necessarily inspired by, the standard of legitimacy' (Schimmelfennig 2001: 63).

2.1.3. Summing up.

Hypothesis I: The EU acts as traditional great power

To sum up, both according to a neo-realist and neo-liberal perspective, one would not expect EU foreign policy to differ from foreign policy as it is conventionally understood. On the basis of the assumptions of actors' rationality, one would expect that once the EU acts on the international scene, its behaviour would be in line with what we expect of a traditional foreign policy actor. Though not a state, it would act like one in any concrete case. In the same manner as states, its foreign policy would follow from an internal aggregation of interests and the main aim would be to promote these interests in the most efficient way available. If the EU refers to or promotes human rights norms, this would be a strategic choice. The main aim would be to advance the member states' common preferences and any reference to or promotion of human rights would be instruments in this regard. Being means to reach other goals, norms would always be sidestepped if conflicting with more important interests or involving higher costs than gain. If involving higher costs than gain, the EU would not be willing to subordinate itself to any international rules or principles that restrict its ability to act in favour of its interests. In the theoretical scheme, norms do not have an independent effect on policy outcomes. They influence foreign policy behaviour through the mechanism of self-interested calculations.

It is however unclear how the actors can use norms as an efficient soft power tool to entrap, attract or in other ways influence the behaviour of other international actors if one not at the same time assumes that these norms are not accepted as valid. In particular, it is unclear why it is important for actors such as the EU to be conceived of as a morally legitimate or why a strategy of pursuing and referring to norms should be a particularly efficient means of influence, when the assumption at the same time is that actors 'are not prepared to change their own beliefs or to be persuaded themselves by the "better argument"' (Risse 2000: 8 in Schimmelfennig 2001: 63, footnote 55). Why would someone be willing to change their behaviour on the basis of a norm-based argument if they do not recognise the validity of the norm in question? Arguing that norms can bind the actors' behavioural choices without thereby also assuming that norms may have an independent effect on actors' positions seems like a 'contradiction in terms'. As Sjursen argues (2002: 500)

> the problem is that the success of such processes of shaming depends on the actors' conviction that the principles and norms at stake exist and are valid. Some norms are standing and accepted in and by themselves. The presupposition for rhetorical action is that actors know and respect the established norms.

2.2. Alternative perspectives on foreign policy

An increasing number of scholars disagree with the rationalist expectations to EU foreign policy. Instead they contend that the EU in its foreign policies adheres to different principles than the ones coherent with the dominant perceptions of nation-states' foreign policy behaviour and that its actions therefore must be understood and analysed with different analytical tools than the ones provided by the rationalist approaches.

2.2.1. Civilian/ethical/normative power Europe

In particular since the 1990s, it has on the basis of empirical studies been suggested that the EU is a 'civilian', 'ethical' or 'normative' power in the international system (Aggestam 2004, 2006, 2008; Kissack 2008; Lucarelli 2006; Lucarelli and Manners 2006; Manners 2006; Manners and Whitman 2003; Orbie 2008; Orbie and Tortell 2008; Rosencrance 1998; Telò 2006). Though there are many differences between these studies, they share the arguments that EU foreign policy is normatively different from foreign policy as it is traditionally understood, that it differs because it promotes norms and not only interests in its foreign policies, and lastly, that this somehow is linked to the EU polity, to what the EU 'is'.

In many ways, this literature has increased our knowledge of EU foreign policy. Empirically, we now know much more about the EU's international behaviour, ranging from studies of the EU's neighbourhood policies (Barbé and Johansson-Nogués 2008); its policies in Africa (Scheipers and Sicurelli 2008); the EU's promotion of human rights through different foreign policy tools (K.E. Smith 2003); the EU's efforts to abolish the death penalty (Manners 2002); its behaviour in the UN and the UN agencies (Kissack 2010; Laatikainen and K.E. Smith 2006) and the EU's focus on promoting the social dimension of globalisation (Kissack 2008; Orbie and Tortell 2008), just to mention a few of the areas studied in order to shed light on the EU's normative distinctiveness. Analytically, these studies have contributed not least by suggesting that we need different theoretical tools than the ones provided by rationalist approaches in order to capture the EU's international behaviour. This being said, when the aim as in this thesis is to better understand the characteristics of EU foreign policy, analytically, there are however a few challenges linked to the concepts and criteria applied in these studies of the EU’s ‘normative’ or ‘civilian’ power (also see Sjursen 2006a).

First, there is often an implicit (sometimes explicit) assumption that the EU by acting civilian-like therefore somehow is normatively superior to a traditional great power (Sjursen 2006a). By this, it sometimes becomes unclear whether the empirical indicators applied in these studies are meant as tools to guide an assessment of EU foreign policy in normative terms, i.e. whether it is legitimate or not, or if they are analytical tools to describe and explain the EU’s international behaviour.

Second, for the purpose of describing and explaining EU foreign policy, the analytical criteria and concepts defining a ‘normative’, ‘ethical’ or ‘civilian’ power are often somewhat underdeveloped and thus difficult to specify and apply in empirical research. If we want to study whether the EU is a distinct international actor and expect this distinctiveness to be related to some sort of normatively different behaviour than the behaviour of states, we need analytical tools that clearly differentiate between types of foreign policy, between a traditional great power policy on the one hand, and model(s) of norm promoting policies on the other. This is not provided by the existing literature.

The sometimes unclear link between a policy’s normative distinctiveness and the means by which it is conducted gives a good illustration. Following for instance Manners (2006) and K.E. Smith (2005), the EU will most likely change and start acting in favour of its interests instead of promoting norms once it acquires military means. In his much-quoted article from 2002, Manners argues that the EU is constituted by certain values that make it predisposed ‘to act in a normative way’ (Manners 2002: 242). The EU is normatively powerful, it has influence, when other actors adopt these norms – when the EU ‘shapes perceptions of “normal” in world affairs’ (Manners 2002: 239). From the idea that what the ¨’EU does’ derives from what ‘it is’ it however also follows that EU foreign policies will change when it acquires military means. Militarisation risks undermining the EU’s normative particularities because the EU might lose its normative self-perception; it will undermine the EU’s credibility as a normative actor and thus reduce its ability to ‘lead by example'. Lastly, once available, military powers could moreover make the EU more tempted to use its military means in pursuit of its short-term interests (Manners 2006). 'By folding to the supposedly superior hand of military force, the EU discredits and discards its post-modern cards' (K.E. Smith 2005: 76-77) and it becomes more difficult to use the power of norms to influence actors' identity and behaviour' (Diez and Manners 2007: 175). Therefore, 'the militarization of the EU risks making it more like bigger and better great powers' (Manners 2006: 194). The problem, however, is that by linking normative power so explicitly to the means by which it is conducted, these authors end up sharing the rationalist expectation that the EU uses norms mainly as a means of influence. In line with neo-liberal expectations, it follows that the EU's ability to change other actors' behaviour hinges on its soft power means, and in line with a neo-realist perspective, that the EU will change and use force to promote it interests once it gets the chance to do so. In other words, instead of being normatively different, one assumes that there is *not* something normatively distinct about EU foreign policy – it just behaves normatively because it lacks the means to act otherwise. The EUs' distinctiveness becomes a question of means, not about the possible influence of norms in EU foreign policy.

Another interlinked challenge facing some of the research applying these concepts in empirical studies is that they often lack precise analytical definitions and thus empirical specifications, making it difficult to control for whether norms in reality are used instrumentally or rhetorically, in line with what one would expect following rationalist perspectives. Scheipers and Sicurelli (2008: 609) define normative power 'as a practice by which the EU seeks to spread its core norms, such as human rights, democracy, rule of law and environmental protection, internationally.' According to Maull (2005) and Linklater (2008) a civilian actor is one that seeks to contribute to the 'civilising of international relations,' while Stavidris (2001) claims that a civilian power is someone who upholds 'civilian values.' According to Aggestam (2008: 3), the focus when studying an 'ethical' EU foreign policy should be 'on the intentions and purposes behind the active exercise of the EU's power' in order to know whether it is 'ethical' or not. In line with EU developments since 2003 towards a full spectrum of instruments for robust intervention, Manners (2006: 194-195) has argued that a normative power may conduct military operations, but only if force is used 'under a UN mandate, in a critically reflexive context, on a clear, normative basis'. At the same time Diez and Manners' (2008: 187) argue that the United States' foreign policies illustrates that 'normative and military power are not necessarily incompatible […] but it also shows how military power can "take over" and turn into a traditional great power.' However, due to a lack of clear indicators, the analytical framework does not tell us how we know when the use of military capabilities is part of a normative policy and when 'force has taken over' so that the policy conducted instead would qualify as that of a traditional great power. Except from the UN mandate, the different criteria listed above are difficult to specify and study empirically. How do you for instance know a critically, reflexive context when you see one? Or how do you, on the basis of empirical studies, know if a policy's purposes and intentions are normative or if it in reality is based on self-interests, as one would expect of a traditional great power?

This lack of clear analytical indicators seems problematic when the aim is to conduct empirical studies. Without clear criteria enabling us to control for rhetorical action and/or putative imperialism, one easily ends up with equalling normative or civilian like behaviour with altruism, so that normative behaviour becomes analytically distinct to *any* interest-based behaviour, as this is the only way to avoid the rationalist claim that all normative action in reality is interest-based. A concept of normative behaviour based on altruism is however not only difficult to specify empirically – it is in any case unrealistic empirically. All foreign policy actors, also those who putatively base their policies on normative considerations, sometimes pursue their material interests. Thus, to study EU foreign policy, we need categories of normative behaviour that do not imply purely altruistic actors who never pursue their interests. This also means that we need a framework that allows us to differentiate between rhetorical action and norm-based behaviour. We need clear analytical categories that help us identify when a policy can be characterised as normative and when a foreign policy actor is merely using norms instrumentally.

Lastly, we need a framework that distinguishes between different types of norms. There are different types of norms and thus different answers to what constitutes a 'clear normative basis' or 'civilian values'. Even when seeking to more precisely specify the defining indicators of a normative policy, like Tocci's (2008) three-part definition including means, aims and results, what constitutes a norm often remains conceptually under-specified. This is particularly problematic when studying the putative role of norms in foreign policy, as there are numerous rule sets, norms and identities and which ones are appealed to and evoked has significant implications for decision-making outcomes and the types of policies conducted (Sjursen 2002; 2006). In the academic literature on EU foreign policy, the need to analytically distinguish between different norms is not least triggered by the critique that has been raised against the EU's 'spread of values' in its foreign policy. Though some argue that the EU acts as a 'force for the good' (Barbé and Johansen-Noguée 2008), others argue that it conducts an imperialistic foreign policy. Based on studies of EU enlargement, Zielonka (2006) for instance describes the EU as a neo-medieval empire, while Youngs (2010: 6) argues that 'the EU's "civilian power has morphed into a "soft imperialist"' (also see Diez 2005; Hyde-Price 2008; K.E. Smith 2005). Following a rationalist perspective,

> it is fairly obvious that what is "normative" is contested and that all international actors will see their own actions and values as more legitimate than those of other actors – and that each sees others' claim to be normative as self-serving interests (Youngs 2010: 7).

As argued by Hyde-Price (2008: 32),

> the EU is not the only international actor that flatters itself that it pursues an "ethical" foreign policy—the same can also be said of the United States. It is ironic that many Europeans have seen through the Bush administration's claims that what is good for America is also good for the world, but fail to question EU claims that what is good for "Europe" is good for the world.

As this discussion shows, there is a need for further conceptual specification if we want to know what characterises EU foreign policy. The challenge when studying a putative normative foreign policy is to find analytical tools that help us identify such policies empirically without this implying altruistic behaviour; that do not hinge on the means by which foreign policy is conducted; that allow us to control for rhetorical action, and most importantly; that differentiate between types of normative foreign policies.

2.2.2. The approach; the theory of communicative action

To deal with some of these analytical and empirical challenges and contribute to a better understanding of what characterises EU foreign policy, in this dissertation I apply a communicative approach, building on Habermas' concepts of communicative rationality and deliberation (Deitelhoff 2009; Eriksen 2005a, 2009b; Habermas 1996, 1998 (1996); Risse 2000, 2004; Sjursen 2003, 2004, 2006a, 2006b, 20006c).

There are different strands of literature within what has been called 'the deliberative turn' in IR studies. In studies of EU integration, there is, on the one hand, a wide literature that is concerned with the democratic deficit of the EU and that apply Habermas' theory of deliberative democracy in order to evaluate the EU's democratic qualities or to suggest ways in which a possible democratic deficit may be reduced. On the other hand, an increasing number of researchers have since the 1990s applied elements of Habermas' theory of communicative action with an explanatory focus. Instead of seeking to 'establish if and when deliberation can contribute to democratic decision-making', these studies apply elements of communicative action theory to "map, describe or explain action-coordination" at the international level (Stie 2010: 43, see Deitelhoff and Müller 2005; Risse and Kleine 2010 and Thompson 2008 for overviews.). Having a descriptive and explanatory aim, this dissertation speaks to the last of these strands, to the literature that applies a communicative approach for explanatory purposes in studies of international cooperation and European integration. The aim is not to conduct any normative evaluation of EU foreign policy or to say something about the democratic quality of EU foreign policy-making processes.

I apply a communicative approach building on Habermas' concepts of deliberation and communicative rationality because it provides the analytical micro-mechanisms by which norms may influence foreign policy behaviour and thus offers an alternative perspective to that of the rationalist approaches (Sjursen 2003). The contention is that such an approach can help answer both of the two questions raised in this dissertation, i.e. if and how EU foreign policy adheres to different principles than the ones coherent with the dominant perceptions of nation-states' foreign policy behaviour, and if so, how we may account for such a move. Few IR scholars applying a communicative approach for explanatory purposes however explicitly address both of these questions, though they all build on the same basic assumptions. Instead, much of the existing literature focuses on two different areas of EU foreign policy. On the one hand, some scholars have recently drawn on communicative action theory in order to capture the EU's putative normative distinctiveness (Eriksen 2009a; Mitzen 2006; Sjursen 2006a, 2006b, 2006c, 2007). To answer the empirical question of what characterises EU policies, and in particular whether it has a normative dimension, I build on this literature and in particular on Eriksen (2009) and Sjursen's (2006a, 2006b, 2006c and 2007) concept of a humanitarian actor. This is elaborated on in part 2.2.3 of this chapter and is applied in the two articles that analyse EU policies towards the MLC and its launch of Atalanta (articles 1 and 2). As I will argue, I expect that applying this model will help me account for EU policies in these empirical foreign policy cases. It will enable me to say something about the extent to which it differs from EU foreign policy as it conventionally is understood, and if different, to say something about what principles the EU adheres to in its foreign policies.

The third article is an attempt to contribute to further develop analytical tools that may help us better account for why EU foreign policy is based on norms. More precisely, I here in more detail specify and elaborate on the analytical micro-mechanisms that are implicit in the humanitarian foreign policy model and that must be identified and studied in order to understand why norms in any particular case have an effect on policy-making outcomes. In doing this, I in addition apply insights from studies based on the communicative approach in studies of international cooperation, including European integration. In addition to foremost drawing on Habermas 1998 (1996) chapter 7, I here build on elements from Deitelhoff (2009), Elster (2007) Eriksen (2005, 2009b), Eriksen and Weigård (2003) Risse (2000, 2004) and Sjursen (2003, 2004).

2.2.2.1. A communicative approach: The basic assumptions

Though their empirical focuses differ, all scholars applying elements of Habermas' theory of communicative action for explanatory or descriptive purposes start from the basic assumption that humans operate in a given social context where they coordinate behaviour through language. Common understanding between social actors is seen as a precondition for all social life, and such an understanding can only be established through speech-acts (Eriksen and Weigård 2003). Furthermore, as rational choice based perspectives, the theory of communicative action is a theory of action, meaning that all social phenomena are seen as the result of human interaction. Both rationalist and communicative approaches presuppose that human action should be studied as the result of rational behaviour, that is, as intended actions performed to obtain a particular goal or an intention. However, instead of assuming strategically rational actors, the assumption is that socially interacting agents are communicatively rational, meaning that they are rational when they are able to justify and explain their actions (Eriksen and Fossum, 2000; Eriksen and Weigård 2003; Sjursen 2003, 2006). Instead of focusing on monologically acting agents with pre-given motivations, one expects interacting agents operating in a social context who are able to establish common standards and norms, and reach agreement on what policies to pursue in any given situation through the use of arguments (Deitelhoff 2009; Habermas, 1996, 1998 (1996), Eriksen and Fossum, 2000; Eriksen and Weigård, 2003; Sjursen, 2003, 2004, Risse 2004).

In line with other constructivist IR perspectives, when applying a communicative approach, one expects that norms function not only as constraints on actors' self-interested behaviour. Instead, one assumes that norms also constitute the identity, world-views and preferences of the actors and thus that norms might have behavioural consequences also in the field of foreign policy (Adler 1997; Finnemore 1996; Katzenstein 1996; Kratochwil 1989; Ruggie 1998; Wendt 1992). By the focus on the role of language, on the communicative process, one however specifies this argument by saying more about the micro-mechanism by which normative considerations might influence policy outcomes. Given the assumption of communicatively rational actors, norms might influence different fields of common EU because EU policies are constructed through deliberative processes where at least some actors change their positions and behaviour because they learn from each other's arguments (Deitelhoff 2009; Eriksen 2000, Eriksen 2005; Eriksen and Fossum 2000; Risse 2000, 2004; Risse and Ulbert 2005; Sjursen 2003, 2004, 2006a). Through communication, the actors may

> acquire new information, evaluate their interests in light of new empirical and moral knowledge, and – most importantly – can reflexively and collectively assess the validity claims of norms and standards of appropriate behaviour (Risse 2004: 288).

When applying a communicative approach, there is thus an underlying assumption that the actors by communicating with each other are able to learn and see the issue under discussion from different angles. Through reason giving, the actors hear others' opinions and have the ability to learn to see an issue and situation from a different perspective than their own. For coordination of action, what is important is that the arguments and reasons in themselves are such that other reasonable actors can support them. As a consequence they can lead to agreement on a given policy (Deitelhoff 2009; Eriksen 2005; Sjursen 2003). 'Co-operation comes about when the process of reason-giving generates a capacity for change of viewpoints' (Eriksen and Fossum 2000: 257). Through the use of language, through communication, the actors can reach a common understanding of the situation, and most importantly, they must give reasons for their preferences and positions and evaluate the arguments presented by others. If a reason given for a particular policy is perceived as convincing by the other actors, the expectation is that they have the ability to learn from these arguments and change their initial positions and behaviour accordingly. The arguments leading to agreement can refer to material gain or to threats and promises, as part of a bargaining game. However, they could also refer to factual statements or they can refer to norms, to claims about how one ought to behave. 'By conceptualising how norms can have a rational basis we get a better understanding of why a particular policy is conducted instead of any other policy' (Sjursen 2006a: 177).

By this, theoretically, the framework not only opens up for investigating the possibility that foreign policy is based on what is beneficial to the actors but also that it may be based on an assessment of what is right or appropriate in a given situation (Sjursen, 2006a). A foreign policy actor might promote norms in its foreign policies because this is perceived as a valid and rational foreign policy option in and of itself. 'In contrast to a realist or a functionalist perspective, norms are held to be autonomous sources of motivation owing their validity to their impartial justification' (Sjursen 2004: 114).

Norm-based foreign policy becomes an analytical possibility on a par with interest-based behaviour. Interest-based behaviour is a rational choice, but so is behaviour based on norms. Hence, one can spell out alternative hypotheses of EU foreign policy that can be applied in studies of EU foreign policy behaviour in different empirical cases.

On the basis of the conception of actors as capable of assessing the validity of norms, a communicative approach may help us not only say something about whether or not the EU in its foreign policies adheres to different principles than the ones underlying a state-based traditional great power. It can also help us study why collective EU policies putatively are based on norms. It 'provides the micro-foundations that allow us to understand' norms gradual accumulation and binding character (Sjursen 2004: 118): Norms are complied with when the actors accept their legitimacy so that they act upon them. The mechanism through which norms may have behavioural consequences is thus learning on the basis of exchanged arguments, which I specify below (part III) in my concept of 'argument-based learning'. As I will elaborate in the methodology section, it is the argument that persuades the actors to change their positions so that agreement on a collective action can be reached that explains any given policy outcome.

2.2.3. A humanitarian model of foreign policy

On this basis, in order to contribute to a better understanding of EU foreign policy, in article 1 and 2, I as argued apply Eriksen (2009a) and Sjursen's (2006a, 2007) model of a humanitarian actor. The defining criteria of a humanitarian actor is that it seeks to overcome power politics through a focus on strengthening global, cosmopolitan law in the international system, and that in conducting its foreign policy it is willing also to bind itself to such norms. Three main components form the basis of this analytical model. First, it builds on the assumption that actors are communicatively rational and that policy-making outcomes are formed through communicative processes, as elaborated on above. Second, it differentiates between types of norms, between values and rights, thus refining the distinction between interests and norms often applied in the existing literature. Third, it links what is called a humanitarian policy not only to the promotion of rights but also to the promotion of rights through binding law, making it possible to control for rhetorical action.

2.2.3.1 Different types of norms – values and rights

To better conceive of and account for EU foreign policy one must differentiate between types of norms as they may point to very different types of 'normative' foreign policies (Sjursen 2006a, Sjursen 2006b, Sjursen 2006c). The humanitarian foreign policy model therefore builds on an analytical distinction between two types of norms, between values and moral norms/ rights (Eriksen and Weigård, 2003: 135; Habermas 1996; Sjursen 2002, 2006a). As ideal types, ethical-political values are linked to a particular community's conception of the good that might vary between different societies, while rights refer to higher-order principles that claim universal validity. This distinction is well-established in the political science literature, and is evident amongst other things in the debate between what is often called the communitarian and the cosmopolitan traditions in the literature on how to solve normative questions (see for instance Aggestam 2008; Eriksen and Weigård 2003; Miller 1995; Stie 2002). While the communitarian view on politics is that the goal is to realise a society's common good, the Kantian or cosmopolitan tradition argues that there are certain norms that are independent of societal belonging. By applying the distinction between values and rights, I thus assume that there is such a thing as 'cosmopolitan or universal values and interests that transcend those of individual political communities' (Hyde-Price 2008: 32). These are action norms 'to which all possibly affected persons could agree as participants in rational discourses' (Habermas, 1996: 107). Moral norms or rights are thus universal because they can be generalised and accepted by all in a free and open debate, independently of identities and belongings (Eriksen and Weigård 1997; Habermas 1996). They refer to higher order principles and claim universal validity (Eriksen and Weigård 2003: 134-5). They are 'principles that, all things considered, can be recognised as "just" by all parties, irrespective of their particular interests, perceptions of the 'good life' or cultural identity' (Sjursen 2003: 45). The concept of values is, on the other hand, particular, connected to the characteristics of a specific community and to the identity of the members of that community, understood as collective representations of the good that vary according to cultural and social context (Habermas 1996: 256; Eriksen et al. 2005: 240). They are linked to 'an actor's sense of identity or understanding of the "good life"' (Sjursen 2003: 45).

On the basis of this distinction, we can distinguish between policy choices justified by European community-specific values, on the one hand, and foreign policy positions and actions justified by reference to rights, on the other. EU foreign policy could in other words be based on contextual norms of what is perceived as good according to specific European values or internal solidarity, *or* it could be based on concerns for securing what is right or fair for all, independently of communal belonging, on universal rights.

2.2.3.1. Promoting rights through binding and enforceable law

The distinction between values and rights is important in order to develop analytical tools for differentiating between types of norm-based foreign policies. However, it does not solve the problems of hypocrisy or double standards always associated with foreign policy in general and with the EU's claim to promote human rights in particular.

For moral norms or rights to be universally applied, to avoid arbitrariness or that they are only used rhetorically to advance self-interest, they must also be made binding through law (Eriksen 2009a; Habermas 1996). Making universal rights binding through law, i.e. translating them into human rights that are universally applicable, is the only way to meet 'objections that question the universality of a moral understanding of human rights' (de Greiff and Cronin 2002: 18). On this basis, what Eriksen (2009a) and Sjursen (2007) call a humanitarian foreign policy would therefore be one that not only promotes a particular type of norms, namely universal rights, but that also links the promotion of these rights to a system of enforceable and binding law. This is crucial since without being linked to law that is equally binding to all, a 'normative' policy can be used to promote self-interests (or will anyway be accused of doing so), force can be used arbitrarily, on the willpower of the foremost western countries, and is easily accused of being conducted for imperialistic reasons (Eriksen 2009). Neither the intentions behind a certain policy nor the means by which it is conducted solve these challenges.

> There is always a risk that actors will follow their own interests even if they know that this may harm others, or

> suspect that others do so, even if they say the opposite. In order to avoid such risks, common rules are necessary. The law functions as a system of action that makes it possible to implement moral duties or commitments (Sjursen 2006: 244).

Following Habermas, 'human rights are not moral but legal in character; and as actionable claims, rights are conceptually tailored to their implementation in legal orders' (de Greiff and Cronin 2002: 19).

Rights can only become effective through the medium of law (Habermas 1996).

On this basis, the first characteristic of what is termed a 'humanitarian' EU foreign policy is

> that the EU subscribes to the principles of human rights, development and rule of law for dealing with international affairs, hence underscoring the cosmopolitan rights of the people (Eriksen 2009: 102).

A humanitarian foreign policy is cosmopolitan/universal in the sense that its actions would be subjected to global law: To testify to a humanitarian model, the foreign policy actor must bind its foreign policy behaviour to human rights law.

2.2.3.2. Domesticating international relations

The humanitarian model is analytically distinct to the ideal-typical traditional great power model of foreign policy. The foreign policy of the latter builds on the principle of state sovereignty as the constituting principle of international relations. Such powers may bind themselves to law in their foreign policy conduct, but then to the law that regulates interstate relations, to international law. States are the core units, the addressees and right-holders of such international law, and the main principle governing their relations is that they should respect each other's internal and external sovereignty. The 'idea of external sovereignty as the core constitutive principle in the international system' would thus set 'clear limits on the human rights dimension to the foreign policy' (Sjursen 2007: 9). One would as argued above thereby not expect a traditional great power to be willing to bind itself to rules or norms that restrict its ability to act in favour of its interests.

At a contrast, while in an international system states are the addressees of international law and the underlying main principle governing their relations is sovereignty, in a cosmopolitan system, individuals, and not states, are the addressees and right-holders of binding and enforceable law. This law would be equally binding on all and is what in this dissertation is called global law.

What a cosmopolitan system implies in empirical terms is however not always clear on the basis of the existing literature.

> In a cosmopolitan system, all international relations would have to be subordinated to a common judicial order that would transform the parameters of power politics and redefine the concept of sovereignty (Sjursen 2007: 14),

but what this implies empirically in concrete cases of foreign policy is seldom specified more precisely (Archibugi 1998; DeGreiff and Cronin 2002; Zürn 2000. Also see Sjursen 2007). This is challenging when studying a putative humanitarian foreign policy empirically not least because today's world order is very far from being a cosmopolitan system. Most of today's international law regulates the relations between states, building on the principle of sovereignty. After the Second World War, the principles of state sovereignty and non-interference were established in the UN charter with the aim of securing the world from a new devastating war. At the same time, the universality of human rights is established as a principle in the UN charter. According to The United Nations Universal Declaration of Human Rights of 1948, human rights are universal; they apply to all human beings. To assure their universality '[e]veryone is entitled to a social and international order in which rights and freedoms set forth in this Declaration can be fully realized' (article 28). However, individual rights are not institutionalised as positive legal rights and there is no global system that regulates foreign policy actions, including the use of force, in a way that is equally binding to all countries. When the aim is to establish analytical tools that can help capture a putative normative distinctiveness of EU foreign policy, upholding and binding its foreign policy behaviour to global law is thus not in itself a sufficient empirical indicator of a humanitarian power.

A second indicator of a humanitarian actor's foreign policies is therefore that it would be underpinned by the main aim of 'domesticating' world policies through a focus on strengthening binding human rights law (global law) in the international system (Sjursen 2007: 13). By linking the concept of a humanitarian foreign policy to the promotion of a cosmopolitan system of rights, the framework thus identifies a 'critical difference' between a traditional great power and a humanitarian model. '

> It is this emphasis on the "taming" of power politics – on a transformation of the international system from a Westphalian state order to a global cosmopolitan order that constitutes the core, or critical, difference

between the two models (Sjursen 2007:14). A humanitarian actor would not only bind its behaviour to existing global, i.e. human rights law. A humanitarian would also be promoting a change from power politics and 'an exclusive emphasis on the rights of sovereign states within a multilateral order to the rights of individuals in a cosmopolitan order' (Sjursen 2007: 215). One would expect a foreign policy 'underpinned by the idea that the principles of human rights need to become positive legal rights that could be enforced at the global level' (Sjursen 2007: 13-14).

The concept of humanitarian foreign policy is an attempt to establish more precise expectations to what a putative cosmopolitan, normative foreign policy would look like in empirical terms given that the researcher's aim is to explain or describe foreign policy in concrete cases. The concept has however not been systematically applied in empirical studies of the EU's (or any other foreign policy actor's) foreign policy behaviour. An important aim of this dissertation is therefore to contribute in further specifying and trying out the concept's relevance in studies of EU foreign policy. If one accepts the claim that there might be more to foreign policy than the promotion of self-interests, I find the concept of humanitarian foreign policy particularly helpful as an analytical tool for empirical research for several reasons.

First, the underlying distinction between types of norms helps differentiate between a rights-based and a value-based foreign policy. This makes it possible not only to explain more as it nuances the concept of norm-based policies – it is also a first step needed when seeking to empirically control for whether a particular human rights based policy in reality is an example of hidden imperialism.

Second, this concept can be applied to empirical cases independently of the means by which it is conducted. Following the definition of a humanitarian actor, when applied in explanatory empirical research, the question is not whether or not the EU has military means to enforce its perspectives but rather whether the EU in its foreign policies seeks to strengthen a system of enforceable human rights that are equally binding on all – including the EU itself. And moreover, whether the EU binds itself to such global law when conducting its foreign policy. The critical difference is that following the traditional great power, the threat of force would be conceived of as means to protect or promote its own interests. However, following a humanitarian model, the threat of force would be conceived of as a means to ensure that global law is respected and any use of force would be applied as tools in a law-enforcement operation.

Third, the definition of a humanitarian actor as one who not only promotes human rights but also binds itself to global law provides me with a starting point for empirically controlling for rhetorical action. Studies building on communciative theory are often accused of being naïve or of applying a perspective that is too far away from empirical reality. From the outset, there is, however, no reason why a humanitarian actor model should be less able to capture EU foreign policy than a traditional great power model, unless one accepts the rationalist claim that all normative behaviour is instrumental. To the contrary, by focusing on the promotion of binding global law as the critical difference between a humanitarian and a traditional great power, a normative actor does not have to be 'other-regarding' or altruistic in its behaviour. All foreign policy actors advance their material interests as well as their particular values and beliefs on the world scene. However, by linking the promotion of rights to law, it is no longer a question of whether or not a foreign policy actor promotes its material interests. Instead, the existence of enforceable law allows for the legitimate pursuit of self-interests within the limits of this law. Interests may be promoted, but not at the expense of rights. By linking the definition of a humanitarian foreign policy to promoting and acting in accordance with binding human rights law one opens up to the analytical possibility of a norm-promoting policy without by this implying either altruism, rhetorical action or hidden imperialism.

2.2.3.5 Summing up

Hypothesis 2: The EU acts as a humanitarian actor

To sum up, an alternative hypothesis of what characterises EU foreign policy may be that it differs from foreign policy as it conventionally is understood. Instead of acting as a traditional great power, the EU's behaviour might be in line with what one would expect of a humanitarian foreign policy actor, promoting global rights through binding law. If so, it adheres to different principles than the ones coherent with the dominant perceptions of nation-states' foreign policy behaviour. There would be consistency between the internal human rights standards and practices the EU has set for itself in its foreign policies, and the policies conducted in empirical cases of foreign policy. Instead of promoting its interests in whatever way perceived as the most efficient, it would have promoted rights also when this involves costs and it would have bound itself to global law in its foreign policy conduct.

Part III. Why do they agree? Norms and EU foreign policy decision-making processes

As already pointed out in the introduction to this chapter, the empirical analyses suggest that there is evidence in support of the second of the hypotheses outlined above. In both the cases studied (articles 1 and 2), the EU's policies were in line with what one would expect of a humanitarian foreign policy actor. On this basis, the aim of the third article in this dissertation is to contribute in further developing analytical tools that may help account for why this is so – why arguments referring to rights mobilised the common foreign policies conducted in the two cases. In the third article in this dissertation, I apply a communicative approach as an alternative to the rationalist expectation that collective EU policies are reached through processes of bargaining. In a rationalist perspective, norms function only through the mechanism of interest-based behaviour. Following a communicative approach, norms may influence outcomes through the micro-mechanism of what I call argument-based learning. One may however argue that argument-based learning is not the only possible micro-mechanism through which norms may influence actors' positions. There is also a constructivist literature arguing that norms may influence actors' positions and thus policy-outcomes through the mechanism of socialisation. In the following, I therefore start by presenting and discussing some of the literature that apply an alternative constructivist explanation as to why norms putatively influence EU foreign policy due what happens during the policy-making process, i.e. that norms influence collective policies due to norm-internalisation following processes of socialisation. The aim of this discussion is to further substantiate why I believe that a framework based on Habermas' concepts of communicative rationality and deliberation provides a particularly relevant alternative in studies of collective policy-making processes and their outcomes to that of the rationalist perspectives. Lastly, I present the basic assumptions underlying my own concept of argument-based learning and discuss some of the indicators that are not included in the analytical framework that is suggested in the article.

3.1. Alternative micro-mechanisms

According to Warntjen (2010), one can distinguish theoretically between two main ways in which norms may influence common policies due to what happens during the policy-making process (2010). One builds on the communicative approach applied in this dissertation, namely that the actors involved reach agreement 'on the right thing to do' on the basis of normative arguments presented during deliberative processes. The other explanation is that norms may be constructed into foreign policy-making outcomes due to norm internalisation following processes of socialisation. Defined as the process whereby 'actors internalise norms which become part of their identity and prescribe appropriate behaviour for certain types of situations,' socialisation might affect the actors' identity or role-perceptions, or it might cause the actors to act on the basis of particular norms. In both cases, the consequence of socialisation is norm-guided behaviour, meaning that the actors 'follow norms without making a conscious choice' (Warntjen 2010: 670).

3.1.1. Studies in socialisation and role-adaptation

The link between socialisation, changing role-conceptions, norms and EU foreign policy has been discussed by amongst others Elgström and Smith (2006). In their edited book from 2006, several of the authors aim at contributing to a better understanding of why the EU conducts a particular 'normative' foreign policy by the use of role theory. Roles refer to 'patterns of expected or appropriate behaviour', to how actors 'believe they are expected to behave in a particular context or situation' (Elgström and Smith 2006: 5). Roles in other words define expectations to behaviour in line with what March and Olsen (1989; 1998) argue follow from the logic of appropriateness. Following this logic, one would expect that in any given situation,

> actors seek to fulfill the obligations encapsulated in a role, an identity, a membership in a political community or group, and the ethos, practices and expectations of its institutions. Embedded in a social collectivity, they do what they see as appropriate for themselves in a specific type of situation (March and Olsen 2006: 689).

Applied to EU foreign policy, Elgström and Smith hypothesise that a possible reason why the EU conducts a 'normative foreign policy' may be that the member states share a particular role-conception of the EU as a foreign policy actor, which defines what would be an appropriate EU foreign policy behaviour in any given situation. The member states learn and internalise this role during the policy-making processes. 'The roles an actor engages in are in part and effect of learning and socialisation in interactive negotiation processes' (Elgström and Smith 2006: 5). Similarly, Hill and Wong (2011) suggest that norms might influence collective EU foreign policies due to particular identity-building processes or Europeanisation processes that take place within the EU foreign policy machinery. Following their broadest definition, these processes might be important for understanding why norms matter in EU foreign policies as they may result in

> a) "[the e]mergence of shared norms/values among policymaking elites in relation to international politics"; b) "[s]hared definitions of European and national interests" and c) "[a] coordination reflex and "pendulum effect" where "extreme" national and EU positions are reconciled over time via bilateral and EU interactions (Hill and Wong 2011: 3).

Also, studies on the role of socialisation in Council group decision-making processes have focused on how norms effect EU common polices because the member states' officials during the policy-making processes internalise particular norms of appropriate behaviour (see amongst others Beyer 2005; Joerges and Neyer 1997; Juncos and Reynolds 2007). Though not writing about EU foreign policy in particular, one of the most quoted attempts to theorise the concept of socialisation in studies of IR is Checkel's (2006) distinction between two types of socialisation, called type I socialisation and type II internalisation, and between three types of social mechanisms leading to changes in state interests and/or identities (strategic calculation, role playing and normative suasion). Type I socialisation and type II internalisation are processes of cognitive change that happen due to social interaction mediated by political institutions and are identified by changes in actors' behaviour. When actors within an institutional setting move from conscious strategic calculation to conscious role playing, this would according to Checkel suggest that Type I socialisation has taken place, i.e. that they changed their behaviour due to socialisation within this institutional context. If they not only start role-playing but also accept the collective norms of the group as their own, i.e. internalise them as norms defining appropriate behaviour, there is evidence to suggest what he calls Type II internalisation. Norms may thus influence common EU foreign policies because of Type II internalisation, i.e. because the EU member states during their interaction within particular institutional structures have internalised norms of what would be ”the right thing to do” when conducting a collective EU foreign policy (also see Lewis 2005, 2010).

3.1.2. Some analytical challenges

Though the aims, focus and questions raised and the approaches applied in these studies as shown vary considerably, they all share the basic assumption that norms are constructed into EU policies because the actors involved due to socialisation processes internalise particular norms or roles defining appropriate behaviour. Once internalised, one assumes that the actors act upon these norms automatically, which would be why the collective EU foreign policies in different cases are based on norms.

Clearly, these different studies on how norms are constructed into EU policies through socialisation processes affecting foreign policy roles, identities and norms of appropriate behaviour have increased our knowledge both about the actual level of EU foreign policy integration and about the role of norms in this process. Their findings are helpful not least because they by linking policy behaviour to the policy-making process, point to the need to find alternative ways of theorising how policies and decision are made in the EU to that of the rationalist perspectives. While rationalist perspectives treat preferences as exogenous to what happens during the EU policy-making process, these scholars point to how the member states' preferences might change due to what goes on during the policy-making process, affecting not only their interests but also their identities and role-perceptions and thus the common policies conducted. Hence, they "allow both for the development of approaches relating to the ideational basis of policy and for the evaluation of material policy concerns and actions" (Elgström and Smith 2006: 5).

The micro-mechanisms by which norms may influence policy-making outcomes are however analytically underspecified in much of the above-mentioned literature. When the aim as in this dissertation is to say something about why norms influence collective policy-making processes and their outcomes, this is problematic because without clear analytical micro-mechanisms, it becomes difficult to trace the impact of a norm on a particular policy empirically. In the literature referred to, it is often unclear why a particular norm is internalised in the first place instead of any other possible norm; it is sometimes unclear how a particular identity-based or contextual norm is spread or learned amongst a group; and it is sometimes unclear by what mechanisms an internalised norm is acted upon in any given policy-making situation.

The concept of socialisation and its consequences provide a good illustration of some of these challenges (also see amongst others Beyer 2010 for an overview). It is often unclear whether socialisation is an end product, the outcome of a particular process, or if it instead is a mechanism leading to something else. Using Checkel's above mentioned study to illustrate, it is unclear whether these are mechanisms that may *cause* socialisation, or if they are mechanisms *of* socialisation, i.e. mechanisms causing norm internalisation. According to Checkel (2006: 364)

> socialisation refers to the process of inducting new actors into the norms, rules, and ways of behavior of a given community.

> Its end point is internalization, when the community norms and rules become taken for granted.

This internalisation takes place due to the mechanism of normative suasion or persuasion, defined

> as a social process of communication that involves changing beliefs, attitudes, or behaviour in the absence of overt coercion. It entails convincing someone through argument and principled debate […] it is a social mechanism through which the interactions between individuals may lead to changes in interests or even identities (Checkel (2006: 364).

The outcome of socialisation is thus norm internalisation, but at the same time this outcome, norm-internalisation, is also an indicator of socialisation, as it is through norm internalisation that someone becomes socialised. Socialisation thus ends up being the same as a process of norm-internalisation and we are still left with the puzzle of what micro-mechanism that may actually cause norm-based behaviour. What are the micro-mechanisms by which 'arguments and principled debate' lead to a particular collective outcome? In Checkel's framework, socialisation either becomes the outcome of the mechanisms he describes (instead of the mechanism leading to norm internalisation), or 'everything' going on during a social process that somehow effects the outcome ends up being described as an example of socialisation. Both the definitions and the micro-mechanisms leading to change needs to be made more specific if the concept of socialisation shall help us understand why EU foreign policy putatively is based on norms.

This leads me to another analytical problem when applying concepts like socialisation or norm internalisation in studies of EU policy-making processes, namely why one particular norm is internalised and acted upon in any particular case instead of any other particular norm. Studies focusing on how socialisation and norm-internalisation define actors' identities and roles expect that, once internalised, one would assume that the member states in any particular case will adapt their behaviour automatically to their roles or identities, in line with what one would expect following a 'logic of appropriateness' (March and Olsen 1998). It is however somewhat unclear why in any concrete case a particular norm has a particular behavioural consequence – why do norms enter policy-making processes in the first place and what are the mechanisms by which norms are spread, learned and internalised so that one can say that a norm had behavioural consequences? Concepts such as socialisation and norm internalisation build on the analytical assumption that a particular set of norms that new actors can learn or be socialised into already exists. The well-known critique against scholars explaining outcomes due to an internalised logic of appropriateness is thus that it is difficult to explain change (Risse 2000; Sending 2002). As all actors learn and internalise the same appropriateness norms, it is difficult to explain why these norms of appropriateness change.

In sum, the main problem when seeking to apply these concepts in empirical research is the lack of precise alternative analytical micro-mechanisms to those of the rationalist perspectives.

> These alternative conceptualisations of the EU's international actions are not explicit in identifying the driving forces in the political process or in specifying an alternative set of micro-foundations to that of the rational choice/ interest based model. In other words, they suggest alternative ways of conceptualising the EU but do not help us that much in terms of explaining how we got to this peculiar international "actor" […] What are the mechanisms of change? (Sjursen 2003: 43).

Neither norms nor interests transfer automatically into collective EU policies.

3.2. Why do they agree? An analytical approach for studies of international policy-making outcomes

The added value of applying a communicative approach is that it helps to specify the micro-mechanisms by which norms influence policy-making outcomes. 'It is through a communicative process in which norms are rationally assessed that the relevance and binding character of norms is established' (Sjursen 2004: 115). By providing the analytical micro-mechanisms by which norms may lead to changes in behaviour, it provides a particularly relevant alternative approach in studies of collective policies to that of the rationalist perspectives. Communicative theory may moreover help us understand why norms of appropriate behaviour are established and why such appropriateness norms may change. Norms are not taken as given but are instead rationally assessed. By focusing on the process by which normative arguments are presented and considered legitimate so that they are acted upon, it helps us understand how the actors are able 'to establish new international norms (or) to socialise actors into existing ones' how they 'develop a common knowledge concerning both a definition of the situation and an agreement about the underlying ''rules of the game''- a necessary condition also in bargaining processes' (Risse 2000: 2). Through the communicative process, they may 'acquire the social knowledge to function appropriately in a given society' (Risse 2004: 293) or learn of new norms that if considered valid and relevant in a particular policy-making situation may lead to agreement on the normative basis of a particular policy:

> Contrary to rational choice perspectives, the theory of communicative action can thus show how shared respect for norms and institutions is established as the outcome of a process of deliberation in which different viewpoints are communicated and scrutinized (Sjursen 2003: 45).

It also follows from this argument that one would assume that 'social norms and institutions are upheld because the actors consider them valid' (Sjursen 2003: 45). Without assuming that actors are communicatively rational, that they have the competence to explain and justify their positions and proposals and evaluate arguments presented by others, 'collective norms will not be produced in the first place. Neither will they be adhered to and reproduced in concrete situations' (Eriksen 2000).

3.2.1. Challenges in the existing communicative literature

For these reasons, constructivist scholars are increasingly applying elements of Habermas' theory of communicative action in studies of IR and European integration. Empirical studies have shown that deliberation is important for understanding a wide area of different European and international policies.[8] However, in studies of EU integration, most scholars applying a communicative approach have studied policy-making in the Council and the Commission and their committee structures (for an overview, see JEPP special issue 2010). Few empirical studies use insights from communicative action theory when studying integration in the field of European foreign policy. This is puzzling since this seems to be precisely the kind of area where we could need better tools in order to explain common policy outcomes (see however Deitelhoff 2008; Mitzen 2006; Sjursen 2003).

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[8] See amongst others Bächtiger et al 2008; Deitelhoff 2009; Deitelhoff and Müller 2005; Diez and Steans, 2005; Eriksen 2005, 2009; Eriksen and Fossum 2000; Eriksen and Weigård, 2003; Jacobsson and Vifell, 2005; Janssen and

A reason may however be that a main challenge facing researches applying the concepts of communicative rationality and deliberation in studies of international decision-making processes has been to make these concepts relevant for empirical research. There is little scholarly agreement on to what degree deliberation takes place, not to mention what is meant by the concept of deliberation or arguing and thus how to define, specify and empirically measure the concept of deliberation. Few explicitly define the concept when applying it to empirical research (see Bächtiger et al. 2008 and Thompson 2008 for overviews). With so many different approaches and operationalisations it is thus hard to make general conclusions about the role and impact of deliberation in EU policy-making. It makes it hard to draw comparisons across different case-studies, and it makes it more difficult to evaluate the validity of the findings (Janssen and Kies, 2005). Most importantly, there is little agreement on *why* and *how* deliberation affects policy outcomes (see amongst others Bächtiger et al. 2008, Janssen and Kies, 2005; Thompson, 2008). 'The black-box' of deliberation is seldom opened. How reason-giving affects outcomes remains underspecified both analytically and empirically. Even if a main strength of applying a communicative approach in studies of collective policy-making processes and their outcomes as argued is that it provides us with alternative analytical micro-foundations to those of the rationalist approaches, this is seldom reflected when scholars apply the theory in empirical research. In the existing literature, few scholars applying communicative action theory in studies of international negotiations specify and study the micro-mechanisms by which deliberation has

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Kies 2005; Landwehr 2009; Lerch and Schwellnus 2006; Lose 2001; Müller 2004; Naurin 2007; Neyer 2006; Risse, 2000, 2004; Risse and Ulbert 2005; Risse and Kleine 2010; Sjursen 2003, 2004, 2006a; Thompson, 2008.

an effect on policy outcomes (exceptions are Deitelhoff 2009, Sjursen 2003).

Furthermore, claiming that it is difficult to trace the impact of deliberation empirically, scholars of European integration have recently focused not on 'whether arguing takes place in EU negotiations but under which circumstances arguing affects actor preferences'(Dür et al. 2010: 616). The reason for this focus is arguably that 'it is impossible to ascertain actors' true motivations […] and to observe persuasion and the effects of arguing directly' (Risse and Kleine: 711). When studying international negotiations, it is contended that researchers therefore should seek to identify *'the institutional scope-conditions that are conducive to arguing to prevail in multilateral negotiations, and thus, to affect both processes and outcomes'* (Risse and Kleine 2010: 711). Researchers should seek to 'unveil institutional scope conditions for endogenous changes in actors' preferences resulting from persuasion' (Risse and Kleine 2010: 712).

This research has clearly increased our understanding of international and European policy-making processes and their outcomes. It has contributed to a much higher understanding of international policies by specifying the importance of language and thus process for understanding why agreements on collective action is reached as well as how we can understand the outcome of these processes. It has moreover increased our knowledge of how different contextual factors influence EU integration. Policy-making always takes place in a social context and this context is important also for understanding policy-making outcomes. This is not least so in the EU, where common institutions, different types of institutional arrangements, and, as argued above, processes like socialisation and learning have been shown to influence EU integration. [9] Communicative practices are inter-subjective, and learning and policy diffusion should in this context be conceived of 'not just as cognitive processes "inside the human brain", but as inherently social and intersubjective processes' (Risse 2004: 288).

To understand EU foreign policy, it is thus important to identify contextual factors that may increase the likelihood of deliberation or that may influence the possible effect of different types of norms on policy-making outcomes.

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[9] See amongst others Egeberg 2006; Elgström and Smith 2006; Olsen 2007; Pollack 2009; Tonra and Christiansen 2004; Trondal 2010

However, if we want to know why a particular norm influenced a particular outcome we must also analytically specify and empirically study the micro-mechanisms by which arguments have behavioural consequences. One cannot know if a particular outcome was based on particular norms (or interests) without also studying the micro-mechanism behind it. When applying elements of communicative action theory for the purpose of explaining outcomes of international policy-making processes, the empirical question is not only '*whether* actors use arguments and reason to justify their actions and their interests' (Risse 2004: 299). It is equally important to identify whether or not particular arguments also lead to agreement on collective actions so that these arguments have behavioural consequences. Without tracing the impact of arguments on collective outcomes empirically, we risk conducting an explanation that resembles what Hedström and Swedberg (1998: 9) call a black-box explanation of political outcomes. In a black-box explanation,

> the link between input or output, or between *explanans* and *explanandum* is assumed to be avoid of structure or, at least, whatever structure there may be is considered to be of no interest (perhaps because it cannot be observed or because O (the output) can be predicted even though the mechanisms linking *I* (the input) and *O* are unknown.

The reason why such explanations are problematic is that although one knows the output (O; for instance agreement on a particular norm-based foreign policy) and has identified the input (I; in this case the scope-conditions present in a given case), one cannot say what caused the output, what links I and O. One

> says nothing about why this is the case […]. To answer such questions it is necessary to introduce and explicate the generative mechanisms that might have produced the observed difference

or outcome (Hedström and Swedberg: 11). In other words –the fact that there is evidence of deliberation or scope-conditions conducive of deliberation does not in itself tell us why the actors reached an agreement, or why they reached the agreement they did. To know this we must also study the micro-mechanisms by which particular arguments lead to particular outcomes.

For the purpose of explaining policy outcomes at the international level, such as EU foreign policy, there is thus a need to develop more precise analytical tools that can help identify the micro-mechanisms by which arguments may have behavioural consequences analytically so that they can be studied empirically.

3.2.2. Basic assumptions in the analytical approach

On this basis, the aim of the third article in this dissertation is to contribute in this regard by further specifying analytical tools building on Habermas' conceptions of communicative rationality and deliberation. Below I in more detail elaborate on the basic assumptions underlying this analytical framework. In doing this, I build on elements of Habermas' distinction between different types of arguments found in his writing on 'Some Further Clarifications of the Concept of Communicative Rationality' from 1996 (pp. 307-342 in 'On the Pragmatics of Communication', edited by Maeve Cooke from 1998, i.e Habermas 1998 (1996)). I also build on Deitelhoff (2009), Elster (2007), Eriksen (2005, 2009b), (Eriksen and Weigård 2003), Risse (2000, 2004) and Sjursen (2003, 2004).

3.2.2.1. A wish to cooperate

First, as a background factor, I assume that when the aim is to reach agreement on a collective action, the actors involved must have the ability to understand each other. The actors must further enter international negotiations with 'an initial motivation to work together' (Deitelhoff and Müller, 2005: 169). Without this, neither type of communication, neither bargaining nor deliberation, are possible. They will not be able to share a common language and they will not be able to agree that the results are acceptable –independently of whether acceptability is linked to considerations of credible power or resources, on individual preferences, or are based on considerations of the validity of norms. Nor would they be able to ensure that the agreement also is put into practice (Sjursen 2007: 12-13).

3.2.2.2. Always communicatively rational actors

Second, I build on the assumption that all actors who engage in political processes where the aim is to find some sort of common outcome are communicatively rational. According to Habermas (1998 (1996): 315) this form of rationality is 'inherent not in language as such, but in the communicative use of linguistic expressions.' Thus, though bargaining and deliberation/ arguing are characterised by different types of arguments and agreements are reached through different micro-mechanisms, in the analytical framework I assume that the actors' underlying rationality *always* is communicative. This implies that actors have the ability to give reasons for their positions and proposals and that they can change their positions on the basis of what others say. Actors can use arguments in a purposive-rational or strategic way, seeking to promote certain interests or use reference to norms strategically; they can adapt to existing norms, or they can explain their positions and change behaviour due to learning from presented arguments. However, in the framework as it is specified in this dissertation, the underlying assumption of actors' *rationality* remains the same. They don't lose the ability to evaluate what others say or lose the ability to justify their own positions, views or proposals. Instead, in my opinion it is precisely this basic assumption of communicative rationality that *allows* for different types of behaviour being equally rational and thus being considered as equal analytical possibilities when studying collective decision-making processes. Without this ability, political agreements cannot be reached through the use of language, neither through deliberation nor bargaining. As long as one accepts the claim that actors who take part in political negotiations have the ability to present positions and consider the credibility or validity of what others say – independently of whether the speech-acts take the form of threats or promises or if they refer to some sort of norms or any other thinkable justification – one accepts the claim that actors are communicatively rational. Starting from the assumption of communicative rationality increases the range of action-types that are analytically possible. Why they reach agreement in any given case then becomes a question for empirical research.

3.2.2.3. Communicative processes

Third, the analytical framework builds on the assumption that all voluntary and non-violent political decision-making processes are communicative processes, by which I mean that the actors seek to reach some sort of inter-subjective understanding or agreement on collective outcomes on the basis of the arguments presented. This would be in accordance with Habermas' (1998 (1996): 315) specification of what is meant by the communicative use of language. The communicative use of language is composed of three parts; it is about 'a) an actor reaching understanding b) with someone c) about something'. When communicating, the actor 'utters her intentions with the illocutionary aim of having others take them seriously and count on their being carried out' (Habermas 1998 (1996): 319). This definition applies both to processes of bargaining and deliberation/ arguing. Both in arguing/ deliberation and in bargaining processes, "actors try to gain agreement by proposing and evaluating arguments" (Deitelhoff and Müller 2005: 168). In both types of processes or communication it is reasonable to assume that

> the speech act is first of all supposed to be understood by the hearer and then – as far as possible – accepted. The rationality of the use of language oriented toward reaching understanding then depends on whether the speech acts are sufficiently comprehensible for the speaker to achieve illocutionary success with them (or for him to be able to do so in normal circumstances) (Habermas 1998 (1996): 315).

Building on this definition, it is hard to imagine any decision-making processes where there is no communication before a settlement is reached, except in outcomes settled through the use of direct force or in cases where threats of force leads to direct surrender, which do not count as communication according to the definition. Applying this assumption seems like a relatively uncontroversial claim in studies of most international and not least of EU negotiations.

However, this distinction, between actors' rationality, on the one hand, and type of communication, on the other, is not always shared in the literature applying the concepts of deliberation/ arguing and communicative rationality in studies of international negotiations. Instead, one type of action is often linked to one type of rationality, typically linking strategic rationality to bargaining and communicative rationality to deliberation. An example is how it is sometimes implied that the actors change from a strategic to a communicative rationality. For example, Risse and Kleine (2010: 711) write about 'the logic of communicative rationality ("arguing")' and hold that we need to investigate the institutional scope-conditions

> enabling communicative rationality so that arguing actually leads to persuasion and gives rise to outcomes that one would not have expected on the basis of pure bargaining.

3.2.2.4. Actor-relative and actor-independent arguments

Fourth, the framework builds on the assumption that some justifications or arguments can be accepted as valid by all the actors involved in any given social process, including in policy-making processes. To develop clear analytical definitions of deliberation and bargaining that can be applied in studies of international decision-making outcomes, I build on Habermas' distinction between weak and strong communication identified by actor-relative and actor-independent arguments respectively (Habermas 1998 (1996): 307-342). According to Habermas, when communicating, as defined above, the actors justify their positions by what he defines as rational arguments or speech-acts. Rational arguments are

> all comprehensible speech acts, for which the speaker can take on a *credible* warranty in the given circumstances to the affect that the validity claim could, if necessary, be vindicated discursively (Habermas 1998 (1996): 315-316).

These rational arguments can take two forms; they can be actor-relative or they can be actor-independent (Eriksen 2009b calls these different types of arguments 'desire-dependent' and 'desire-independent' arguments respectively). Actor-relative arguments 'constitute good reasons only for the one or the other of them' (Harbermas 1998 (1996): 321). These are arguments that 'can qualify as good reasons only according to premises that are valid for the actor but not for the addressee' (Harbermas 1998 (1996): 322). They are the types of arguments you would expect to find in bargaining processes, when actors engage in weak communication. Deliberation is instead a type of strong political communication, characterised by the actors justifying their positions and proposals by the use of actor-independent arguments. Such arguments refer to something that could be accepted by all affected participants in an open and free debate. The premise of these arguments is not only valid to the person who utters them, but can be accepted by all the actors involved – one can replace the speaker and it would still be valid. They can refer to factual statements or they can refer to commonly acceptable norms, resting on Habermas' discourse principle for establishing valid action norms: 'Just those action norms are valid to which all possibly affected persons could agree as participants in rational discourses' (Habermas 1996: 107).

3.2.2.5. Different micro-mechanisms

Lastly, the framework builds on the assumption that both of these types of arguments may lead to agreement on a collective policy (Deitelhoff 2009; Elster 2007; Eriksen 2009b, Risse 2004; Sjursen 2003). The actors may agree on a collective action due to a presented actor-independent argument, i.e. they may agree on the basis of justifications that in principle can be accepted as valid by all actors involved, for reasons that are intersubjectively shared. Alternatively, they may agree on the basis of an actor-relative argument, which is valid only to the person who utters it. In both cases the actors must present justifications or arguments and the audience must accept at least the credibility of the argument for agreement on a common action to be reached. However, when agreement is reached through weak communication or bargaining, characterised by actors using actor-relative arguments, they must do only this – i.e. the only requirement is that they accept that it is likely that the actor who utters a claim also means it and has the ability and the intention to act upon what she said. These are 'the conditions that have to be met for the actors to interact in a success-oriented and strategic manner' (Eriksen and Weigård 2003:41). As a difference to this, when agreement is reached on the basis of an actor-independent argument, the actors involved reach agreement because they accept the argument as valid according to inter-subjectively shared standards.

On this basis, it follows that the (analytical but empirical traceable) micro-mechanisms by which agreements on collective policies are reached are different in ideal bargaining and deliberation processes. In typical bargaining processes and in line with conventional rationalist perspectives on international negotiations, the actors use arguments in a purposive-rational or strategic way (Eriksen 2009b; Elster 2007). Actor-relative justifications or arguments are 'pragmatically used intentional sentences'; they are oriented towards success for the person who utters them (Habermas 1998 (1996): 319). The aim is to get others to accept the actor-relative arguments presented.

In bargaining processes, it is assumed that the preferences actors bring to the negotiating table are pre-set and fixed; they are thus also independent of what goes on during negotiations (Moravscik and Schimmelfennig 2009). Having entered the negotiation, the rationalist assumption is that all actors aim at maximising their interests.

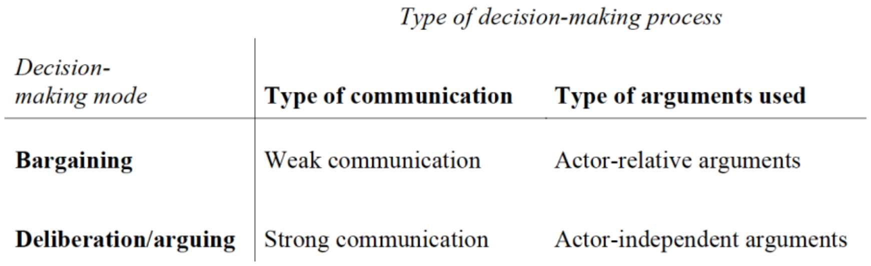
> To bargain is to engage in communication for the purpose of forcing or inducing the opponent to accept one's claim. To achieve this end, bargaining relies on threats and promises […] Bargaining power does not derive from the "power of the better argument, but from material resources, manpower and the like" (Elster 1992:15-16).

The effect of these threats and promises (which are actor-relative arguments) depend on the extent to which they are considered credible by the other actors involved in the negotiations. What matters for such credibility is thus the relative resources or powers possessed by the different actors. A country's resources could be linked to economic or military size, but it could also be linked to so called 'institutional power', i.e. to its 'ability to exit, veto and set institutional agendas' (Bailer 2010: 746. Also see Tallberg 2008; Warntjen 2010). To reach agreement, the main point is however first, that actor-relative arguments are presented, and second, that they are accepted as credible by at least enough co-decision makers for agreement on an outcome to be reached. In other words that particular powers or resources are first, activated, either by threatening to use these powers or by offering rewards on the basis of existing resources, and second, that they are considered credible by the other actors so that they actually act upon them and as such lead to agreement on a common policy. Agreements reached through bargaining are, in other words, reached because the other actors involved find these actor-relative arguments credible and evaluate them against their own interests and resources. The micro-mechanism leading from an actor-relative argument to a collective outcome is thus strategic adaption or credibility/ resource-based learning. By this I mean that the actors involved accept a presented actor-relative argument as credible so that they act upon them.

In contrast, the mechanism leading to agreement in ideal-typical deliberative processes would be what I call argument-based learning. Having defined *deliberation* as a policy-making process where the actors involved justify their positions and proposals by *actor-independent*, i.e. mutually acceptable arguments, by argument-based learning I mean that an actor accepts the validity of a presented actor-independent argument, so that (s)he acts upon it. In the article, I further specify three types of actor-independent arguments that I argue are relevant in the EU context and that when accepted as valid and acted upon might lead to agreement on a given policy. These are law-based arguments, i.e. arguments referring to already existing EU/Community legislation; factual arguments, i.e. arguments referring to scientific or specialist knowledge and lastly norm-based arguments, i.e. arguments referring to commonly shared norms. If any of these actor-independent arguments can explain EU foreign policies, one would expect to find evidence suggesting that three corresponding types of learning led to agreement on common policies.

The main components in the suggested framework are summarised in table 1 and figure 1.

Table 1: Bargaining and deliberation, ideal characteristics.



	Type of decision-making process	
Decision-making mode	**Type of communication**	**Type of arguments used**
Bargaining	Weak communication	Actor-relative arguments
Deliberation/arguing	Strong communication	Actor-independent arguments

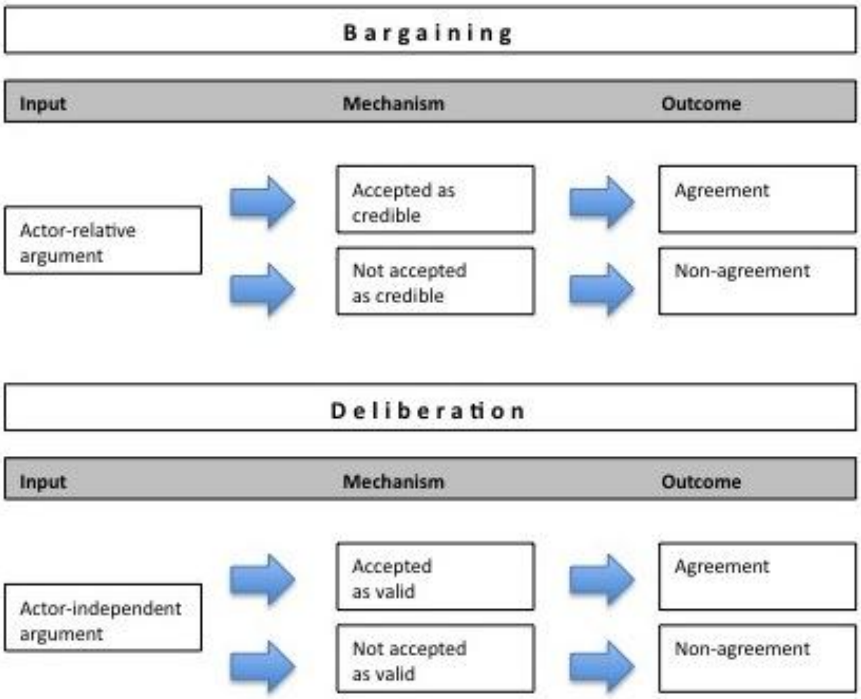

Bargaining
Input
Mechanism
Outcome
Actor-relative argument
Accepted as credible
Not accepted as credible
Agreement
Non-agreement
Deliberation
Input
Mechanism
Outcome
Actor-independent argument
Accepted as valid
Not accepted as valid
Agreement
Non-agreement

Figure 1: Bargaining and deliberation, the communicative micro-mechanisms behind agreement/non-agreement (actor-level).

3.2.3. Why not outcome as an indicator of bargaining/deliberation

In contrast to much of the literature applying Habermas' concept of deliberation in studies of policy-making processes, I do not apply Habermas' distinction between types of outcomes of communicative processes as indicators of whether a process has been characterised by bargaining or deliberation/arguing. According to Habermas, the outcome of a communicative process can take different forms depending on whether the actors accept a presented validity claim for the same or for different reasons. If all actors involved in forming a collective outcome accept a validity claim for the same reasons, this is what Habermas calls an agreement (Habermas 1998 (1996): 321. Eriksen 2009b calls this a rational consensus). Mutual understanding instead comes about when 'one participant sees that the other, in light of her preferences […] has good reasons that are good *for her* – without having to make these reasons his own in light of his preferences' (Habermas 1998 (1996): 321). I.e. when the actors understand each other's reasons for accepting a validity claim/justification/argument but do not share them, the outcome is what Habermas calls a mutual understanding (which is what Eriksen 2003, 2009b calls a working agreement).

If the researcher's aim is to categorise different ideal-typical outcomes of deliberation, this distinction between agreements and mutual understanding may be important. This could for instance be the case when studying the democratic qualities of particular outcomes (see Stie 2010 and Thompson 2008 for overviews). However, also scholars applying the concept of deliberation to explain international policy-making use type of outcome as an indicator of whether a policy process was characterised by bargaining or arguing/ deliberation. Risse (2004: 297, figure 2) for instance argues that the observable outcome of arguing is a 'reasoned consensus, actors submitting to the better argument and changing interests/ preferences accordingly' while the outcome of bargaining is a 'compromise without change in preferences/interests.' Also Eriksen (2009b: 26) argues that 'type of agreement is an indicator for the distinction of bargaining and deliberation when linked to the type of reasons that go with them'. I agree that ideal-typically, one might expect that there is such a link between the type of arguments used and the type of outcome reached. This follows from the very definition of actor-independent arguments, as these are arguments that all participating actors in principle could accept, and is why actor-independent reasons 'permit a stronger mode of reaching understanding than actor-relative reasons' (Habermas 1998 (1996): 321). Outcomes following bargaining will instead typically be compromises. Here, having agreed on the basis of actor-relative arguments, the actors accept the outcome for reasons valid only to themselves.

However, for the question raised in this dissertation, aiming to contribute in developing tools that can help us better understand why norms putatively matter in EU foreign policy, I do not find it helpful or necessary to apply a distinction between compromise, on the one hand, and agreement/reasoned consensus and mutual understanding/working agreement, on the other, in order to develop indicators of bargaining and deliberation/arguing. This is so for two methodological reasons.

First, as I will elaborate on in the methodology section, we can never know the actors' true motives. However, by using the outcome of a process as an indicator of the type of process preceding it, one may easily end up with claiming to say something about the actors' motives. This is so as one must be able to say something about the actors' preferences in order to know if the actors during the negotiation process come to share the same reasons for accepting the outcome. However, if one expects that deliberation must lead to observable preference change and that its outcome should be that the actors share the same reasons for agreeing, it follows that one must also be able to say something about the actors' motivations at the cognitive level. Without such a cognitive focus, one cannot know whether or not preferences really change and thus whether the actors actually agree for the same or different reasons. This was also the conclusion drawn by Deitelhoff, Müller and Risse following their project on deliberation. Precisely because of this reason, because '[t]he authenticity of a "persuasion conversion" as proof of actors' orientation […] [is] impossible to confirm' (Deitelhoff and Müller 2005: 171), which would be needed in order to say whether actors change their preferences or not, they concluded that 'arguing, then, is simply reason-giving'[10] (Deitelhoff and Müller 2005: 176). This conclusion followed partly (in addition to the challenge of data collection) from the use of outcome as an indicator of deliberation – it rests on the idea that deliberation should, ideal-typically, lead to a consensus, which would need at least some of the actors' to change their preferences in cases of initial disagreement. However, when applying a communicative approach for explaining collective agreements and outcomes, I do not see any reason why the researcher needs to identify actual preference change in order to provide an alternative analytical explanatory framework to those of the rationalist perspectives. Rather, this is in my opinion precisely one of the main points of applying a communicative approach for explanatory purposes: As I will elaborate on in the methodology section, what matters for understanding an outcome is the effect of arguments on actors' behaviour – not whether or not one (also) is able to specify the extent to which the preferences actually change due to presented arguments. The effect of arguments can only be indicated by changes in behaviour – by the extent to which actors actually act upon a presented argument.

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[10] As shown, I suggest a different definition, where deliberation is not only defined as reason-giving but a particular type of reason-giving, namely one where the actors justify their positions and proposals by mutually acceptable, i.e. actor-independent arguments.

This leads me to the second and most important reason why I do not use type of outcome as an empirical indicator of the type of process preceding it. Analytically, there is no necessary causal link between process and outcome, and outcome can thus not function as an indicator of process. Deliberation may result in mutual understanding/working-agreements or consensuses as opposed to compromises following bargaining, but from an analytical perspective there is also the possibility that it might not, that there is no such link between process and outcome. One may observe perfect deliberation, where everyone justifies their positions by actor-independent arguments without this therefore resulting in a working-agreement or consensus. The fact that a process is characterised by deliberation may even have no effect on the outcome as all. Thus, outcome cannot be used as an indicator of the process preceding it.

A contributing reason why many scholars nonetheless apply outcome as indicator of process may however be that they build on Habermas' concept of the ideal speech situation and its ideal outcome, rational consensus. However, by applying Habermas' concept of the ideal speech situation and its ideal-outcome (rational consensus) also when having an explanatory aim, many scholars apply criteria and definitions that are relevant when assessing democratic legitimacy or when developing democratic theory but that should not be the main focus when seeking to explain why a collective outcome is reached through communication. Instead, I agree with Stie that by doing this, scholars mix up the use of deliberative theory in studies of policy-making systems' normative validity with the use of communicative action theory as an explanatory theory of collective action (Stie 2010). In my opinion it does not follow from Habermas' link between the ideal speech situation and the ideal type of reasoned consensus that one therefore also can apply a general link between process and outcome when studying collective policy-making outcomes.

It follows that I do not apply another criterion that is often applied in studies of deliberation, namely that everyone participating in deliberation actually expresses his or her beliefs and views truthfully.

This claim is analytically interlinked with the analytical distinction between type of policy-making process and type of policy outcome, as it is only by assuming truthfulness and sincerity that you can know the actors 'true' reason for accepting an argument and thus be able to say something about whether or not an argument is accepted for the same or different reasons. As opposed to Steiner et al. (2004: 20) who claim that a criterion for deliberation must be that 'all participants are open about their true preferences and do not try to deceive and mislead others about their true intentions' (Steiner et al, 2004: 20), I agree with Bächtiger et al. (2008: 3) that we can never know whether participants in communication actually mean what they say.

Part IV. Methodology

4.1. A particular explanation

Following a rationalist understanding of causality, a social/political phenomenon is explained when we are able to establish correlations between events across several cases (King et al. 1994; Parsons 2002). From theoretical assumptions, models are developed and hypotheses drawn which can be tested against reality to find the best explanation of a given outcome. The aim is to generalise, to find correlations that are present *across* different cases. One 'establishes causality by subsuming the explanandum under a covering-law or law like generalisation' (Ruggie 1998: 880). Aiming at generalisability also means that one aims at predicting outcomes. On the basis of previously generalised findings, given the existence of certain conditions, one would expect that actors behave in a particular way, resulting in a particular political outcome. In sum, the claim is that 'scientific theory must be grounded in a set of positive assumptions from which arguments, explanations, and predictions can be derived.' (King et al. 1994): 514). A well-known argument is, however, that there are no generaliseable facts in the social world of human behaviour (Olsen 2010; Kratochwil 1989; Ruggie 1998). Another is that by simplifying, rationalist explanations easily end up being unclear about what it is that explains what, which, after all, is what any explanatory claim is about (Parsons 2007). Rationalist explanations are based on the assumption that action is interest-based, but it easily becomes tautological if the same interest is said to explain behaviour. Most importantly, rationalist explanations are critisised for the often wide gap that exists between the rationalist models used for explanation and the empirical world. By assuming that foreign policy action is always interest-based, contextual factors like the existence of formal or informal norms are not taken in to the analysis, and as a consequence much of what goes on in the social world cannot be captured by the theoretical models.

> [M]any significant elements of political reality can not be systematically accounted for within the framework of these utilitarian theories, for example the importance of implicit or explicit conceptions of justice on the part of the actors, the meaning of trust or the phenomenon of "learning through negotiation" (Müller 2001: 160).

In this dissertation I make a different explanatory claim than the one made by rationalist scholars. I aim at providing what Parsons (2007) calls a particular explanation. While a general or covering-law like explanation stipulate 'that any human acts in certain ways under certain conditions' will resemble a general pattern of behaviour, either deterministically or with an often quantified probability, a particular logic 'explain(s) certain actions as the result of earlier contingent developments that we would not expect to turn out the same way even under identical conditions' (p. 5).

Importantly, however, this is not to say that all outcomes are random. Though aiming only at a particular explanation, this does not exclude the possibility that there are certain behavioural regularities. To the contrary, following different types of constructivist perspectives one would expect to observe regularities, as one expects precisely that factors like norms and institutions –factors that are often relatively stable over time – may influence actors' behaviour and social outcomes (Eriksen 2009; Olsen 2010; Ruggie 1998; Parsons 2007).

4.2. Actor-oriented research

Studying the putative effect of norms on policy outcomes is, needless to say, based on the assumption that normative factors are equally likely (or not likely) to influence collective action as so-called material factors. 'Cultural norms make possible or legitimise certain actions, but do not push anyone to anything. But neither does economic competition (or) a threat of war' (Parsons 2007: 29 footnote 5). However, if one says that norms may explain outcomes they must also be traceable empirically. Thus, though I expect that norms are important for understanding political and societal outcomes, I do not think that explanation of such phenomena somehow or sometimes can be found outside actors' behaviour. Even if norms/contextual factors are important for understanding policy outcomes, in order to explain an outcome I thus agree with amongst others Elster, Little and Parsons that only actors act, which is what Little call 'trivial individualism' (Little 1991: 183 in Parsons 2007: 24.) This means that when studying social phenomena, 'the action being analysed is always action by individuals that is oriented to the behaviour of others' (Hedström and Swedberg 1998: 13). This also means that I make a slightly different argument than the one made by for instance Ruggie (1998) regarding the analytical status of norms or ideas. According to Ruggie (1998: 869) norms or ideas, such as the impact of legitimacy and the 'power of rights', are

> *reasons for actions,* which are not the same as *causes of actions* […] the *aspiration* for a united Europe has not *caused* European integration as such, but it is the *reason* the causal factors (which presumably include bipolarity and economic interests) have had their specific effect […] Absent those ''reasons,'' however, and the same ''causes'' would not have the same causal capacity."

In comparison, I start from the assumption that norms may function *not only* as underlying variables but also as factors that can have independent effect on action and thus policy-making outcomes. I thus start from the assumption that norms or ideas cannot exist independently of persons somehow reacting or acting upon them, and that their effect cannot be empirically identified other than at the actor level. Showing that an outcome would not have been the same had it not been for the existence of certain contextual factors does not therefore, in my opinion, provide a full explanation of a particular policy. If a norm explains an outcome there must also be evidence that the actors acted upon these norms in a given case. The action might be the result of some sort of automatic adaption or it could be an intersubjective reflexive process, but it takes place at the micro-level and it is causal in the sense that something causes something else. To explain, one must find evidence of causal mechanisms linking the norms to the outcome; one must trace 'causal mechanisms that pass through individuals but involve components that do not reduce to them' (Parsons 2007: 25).

4.3. Mechanism explanation

When seeking to explain an outcome by identifying the mechanism behind it, causal relationship has a different understanding than what follows from a general-law based claim to explanation. Saying that one seeks to identify the social mechanism that caused a particular outcome does not mean than one thereby aims at also being able to predict behaviour on the basis of an observed factor. However, it means that the researcher aims to say something theoretically informed about what leads the actors to act in one particular way, or more precisely, to specify 'the well-articulated set of causes responsible for a social phenomenon' (Boudon 1998: 172). It follows that the existence of a norm may be a necessary condition for action but it is not sufficient to identify this norm to fully explain the outcome. Without the pre-existence of a norm, the actors cannot act upon this norm. However, even if the norm exists, it does not mean that the actors therefore act upon it. One cannot say that the existence of a particular norm (or power structures) as such explains the particular policy outcome. To see if a norm had behavioural consequences or not one must be able to trace behaviour back to this norm. 'The mechanism linking *explanans* and *explanandum* must be specified in order for an acceptable explanation to be at hand' (Hedström and Swedberg 1998: 6). Identifying causal variables or statistical correlations is not enough to explain a social phenomenon or collective EU foreign policy, 'the causal mechanism must also be provided, or at least suggested.'(Elster 2007: 21). To explain one must seek to identify the link between explanandum and explanans.

In other words, to explain EU foreign policy behaviour in any concrete empirical cases, I apply what is called a mechanism based explanation, where explanation is linked to the tracing of theoretically informed mechanisms by which certain conditions or variables lead to an outcome within a case (instead of across cases, as is the case when aiming at generalisation) (Hedström and Swedberg 1998; Parsons 2007). A social mechanism is

> a plausible hypothesis, or a set of plausible hypotheses, that could be the explanation of some social phenomena, the explanation being in terms of interaction between individuals or between some individuals and some social aggregate (Schelling 1998: 32).

4.4. Methodological approach

Having established the basic explanatory claims, the next step is to elaborate on how I proceed to trace the impact of norms (or interests) on a particular EU foreign policy empirically – how to 'give an account of why it happened' (Elster 2007: 9) by tracing the mechanism behind a particular policy.

4.4.1. Interpreting meaning from the actors' point of view

To say something about the putative role of norms in foreign policy, I seek to explain policy outcomes through interpretation in the Weberian sense, seeing social science as 'a science concerning itself with the interpretative understanding of social action and thereby with a causal explanation of its course and consequences' (Weber 1922 in Eliaeson 2002:43). I assume that a fruitful 'route to explanation goes through the interpretation of meaning', where the basic assumption is that social action can be explained by interpreting what it was that made it intelligible to the actors involved (Eliaeson 2002: 52). As argued by Parsons (2002: 51) 'it is the actors, not the observers, who define the range across which ideas matter'. Thus, I argue that to understand outcomes and behaviour, one must take the actors seriously and look at their own reasons for behaviour – try to understand the meaning of it from the actors' own perspective.

More precisely, to interpret policy outcomes 'from the actors' point of view' I look at the meanings expressed by the involved actors through language, to find out why the particular actions that were chosen made sense to the actors involved. In doing this, the methodological approach applied in this dissertation is to interpret the arguments the actors give for their actions and positions, in order to discover the arguments that mobilised the actors to agree to and conduct a certain common EU foreign policy (Sjursen 2002). When explaining EU policies, the aim is to discover the reasons behind the outcomes, meaning to identify the arguments that were accepted as credible or valid and therefore acted upon, thus leading to agreement on a particular policy.

This approach builds on the basic assumption made above of actors' communicative rationality (Eriksen 2005, 2009; Habermas 1998 (1996), Sjursen 2004, 2006a). It also builds on the assumption that empirically, social and political 'relationships can be broken down into at least partly observable processes to see mechanisms at work' so that one can explain what lies behind a particular collective policy (Parsons 2007: 22). The approach relies on the possibility to trace empirically the impact of norms in contrast to other possible factors. However, when applying a communicative approach in empirical research, rather than focusing on monological actors with fixed preferences, the analytical focus is put on what goes on between actors who co-ordinate their behaviour and plans through argumentation. Instead of focusing on the actors' motives when interpreting their reasons for behaviour, speech-acts/arguments are treated as the empirical identifiable evidence. It is the argument, what is said during the negotiations, that is important for understanding a particular policy or outcome.

4.4.2. Motives

Importantly, as policy is sought explained through the arguments that have been presented in order to justify it, I make no claims regarding the real or true motives of the actors in the decision-making process. As rational choice theorists argue, we can never get into the actors' heads and discover their "true" behavioural motivations and motives as reasons for behaviour are therefore impossible to discover. This is why, when wanting to explain policy outcomes at the international level, rational choice perspectives simply presuppose that actors' motives are material, seeking to maximise self-interest, and further consider these interests as exogenous to the analysis.

Many constructivist scholars to the contrary focus on cognitive factors in their analytical schemes, arguing that any norm-based explanations of social action must be linked to identifying changes in the actors' actual motives. Instead of assuming instrumentally rational actors, norms are given the same status as interests in the analytical scheme, but to study their respective effects on policy outcomes it is argued that one must study the motives behind the actors' behavioural choices. Tonra and Christensen for instance describe a constructivist approach as a 'hard-core cognitivist approach' (2004: 8) while according to Checkel, to trace the social mechanisms by which norms may influence outcome, one must consider not only

> the observable degree of compliance among agents but also the motives and attitudes that lead actors to abide by normative prescriptions (Checkel 2001: 554).

Using what he calls the mechanism of persuasion as an example, he argues that the key analytical question is whether or not persuasions 'change(s) people's minds, acting as a motor and a mechanism of socialisation' (Checkel 2005: 364). This view is also shared by Parsons (2007: 112), who argues that one cannot study the behavioural impact of norms without thereby also trying to identify actors' motivations.

Clearly, when studying the putative influence of norms on foreign policy behaviour, one cannot assume that actors are instrumentally rational, as this would imply that one does not include the possible impact of norms in the analytical scheme. However, methodologically, it may also be problematic to argue that norms may influence behaviour but that one can only study this from the perspective of actors' motives. This is so for several reasons. First, it is as argued it is difficult, if not impossible, to know the actors' real motives empirically. Second, even if it would be possible to observe actors' true motives, it might in many cases be difficult to distinguish the motives of individual state officials or representatives from the preferences of the state they are representing. Lastly, it is in many instances not least difficult to verify the actual importance of norms in any particular case by studying the cognitive level. Arguing that 'the fact that the adherent perceive it and attribute certain meaning to it are potentially as objective as anything else we might claim' (Parsons 2007: 115) does not solve these methodological problems.

Whereas constructivist approaches focus on the actors' motives when explaining behaviour, following a communicative approach as it is applied in this dissertation, the actors' individual reasons at the cognitive level are not relevant as such. Instead 'actual arguments are what matter, not motives' (Thompson 2008: 6). Instead, identifying why the different actors agreed to a particular outcome means to identify the reasons that lead to agreement – the arguments that were acted upon. By this, one can study the putative impact of norms without therefore having to identify the actors' motives at the cognitive level. By defining actors as communicatively rational, the analytical focus is taken from the actors' individual (or, at the international level – states') motivations to the 'intersubjectivity which is formed between several persons who participate in a communicative relationship' (Eriksen and Weigård 2003: 35). For the coordination of action, what is important is not whether an actor is strategic or not, but that 'the arguments and reasons in themselves are such that other reasonable actors can support them' (Sjursen 2002: 496), that these are arguments and reasons that are considered legitimate or reasonable, and that as a consequence they can lead to agreement on a given policy – independently of whether the individual actors actually believe in these reasons or not. Instead of studying actors' motives, explanation of action is sought in the perceived legitimacy or credibility of the arguments presented, identified by the extent to which they are acted upon.

4.4.3. Arguments are the main units of analysis

By this, in the methodological approach applied in this dissertation, the analytical focus is not on the individuals but on the arguments and justifications they provide in favour or against particular outcomes – the observable data are the arguments presented by the actors involved, controlling for actual behaviour. Thus, when applying a communicative approach in this way, it is the arguments that are the units of analysis, not the individual actors' cognitive beliefs or preferences. When applying this framework in empirical analysis to explain an outcome, the aim is to discover what was said that led to an outcome – whether it was threats or promises, or reference to different types of norms. Independent of the actors' 'true' motives, the explanans are the arguments that were considered credible or valid and therefore were acted upon; that persuade at least enough actors to change their positions so that agreements could be reached and a collective policy conducted.

In this way, treating arguments and justifications as the analytical units under study, communicative action theory thereby helps resolve the dilemma between, on the one hand, assuming that actors are instrumentally rational, and on the other hand, claiming that the explanation must be found on the basis of actors' motives. Thus, when applying the theory of communicative action as an analytical tool I avoid the claim that any ideational theory (or of action in general) must say something about the actors' motives, as this is always impossible or at least difficult to detect. Instead – it is what they say and whether or not this is accepted by others that is important for understanding collective outcomes. By focusing on how the actors base their collective actions on presented arguments, it becomes possible to trace the putative effect of norms on policy outcomes empirically. It provides me with tools necessary to demonstrate 'that the ideational elements do not just reduce to other immediate conditions' but it also provides me with at possibility to 'focus on conditions just prior to the action in question', namely the actors' arguments (Parsons 2007: 109). Norms are complied with when the actors accept their legitimacy so that they act upon them, and the mechanism through which this happens is learning through the exchange of arguments, what I in part III of this dissertation called argument-based learning.

4.5. The articles

4.5.1. The two empirical case-studies

In the empirical case studies (articles 1 and 2) I develop hypotheses on the basis of the analytically distinct types of foreign policy developed above – the traditional great power and the humanitarian model. Having established two ideal-typical models of foreign policy, I seek to systematically identify the arguments that may have mobilised member states to conduct a particular collective policy. Some might however question whether EU policies towards the MLC constitute a good example of EU foreign policy. Seafarer's social and labour rights may not be considered a typical foreign policy issue in the classical sense, where foreign policy issues have been considered distinct from domestic policy issues (Carlsnaes 2002). The case does not concern the EU's 'vital interests' and the policy-making process was not dominated by typical foreign policy actors, such as foreign and defence ministers or heads of states and governments. As also referred to in the introduction to this chapter (footnote 1), in this dissertation I however apply a much broader definition of foreign policy. Understood as 'the ensemble of the international activities of the European Union, including output from all three of the EU's pillars' (Hill 2004: 145), the focus is on 'the EU's international actions' (Aggestam 2006: 11), on its 'relations with the outside world' (Ewans and Newnham 1998). In that context, international organisations are clearly arenas for EU foreign policy (Jørgensen 2009: 3). Hence, rather than being outside the realm of foreign policy, studying the MLC case in addition to the Atalanta case, to the contrary increase our knowledge of EU foreign policy as they cover very different areas of EU foreign policy.

4.5.1.1. Picking cases on the dependent variable

Given the question of if and if so how EU foreign policy differs from foreign policy as it is conventionally understood, what I investigate in the empirical case studies (articles 1 and 2) is primarily whether EU policies were based on normative arguments of a certain kind. More precisely, the question is whether they were in line with what one would expect of a humanitarian actor.

The cases used to study the role of norms in EU foreign policy have therefore been picked on the dependent variable. That is, they are both examples of EU foreign policy cases where the EU claims that its policies are based on normative considerations, but where one following a rationalist perspective would expect that in reality, norms were used instrumentally to achieve certain material goals. In the first case, EU policies towards the MLC, the EU was the main promoter of high standards in the convention and argued that this was due to concerns for seafarers' social and labour rights. In the case of Atalanta, the EU's anti-piracy operation off the coast of Somalia, the EU has claimed that its main concern is to secure the needs of the Somali population. In both cases, it however follows from the core rationalist assumptions that one would expect that these references to rights were used strategically or rhetorically only. In the MLC case, one would expect that high standards were promoted to increase the EU's economic maritime competitiveness by exporting already existing EU rules to the global level. In the case of Atalanta, following a rationalist perspective, one would expect the EU to use its military capabilities to protect its own economic interests, or to balance against other great powers having an interest in the area.

4.5.1.2. Critical cases

Both of the cases may also be seen as critical cases with regard to the debate on what characterises EU foreign policy, and in particular whether or not it has a particular normative distinctiveness, as in both cases, there is a clear conflict between EU interests on the one hand, and pursuing human rights in line with global law on the other (Andersen 1997; Eckstein 1975). In both cases, acting as a humanitarian actor would involve costs to the EU, making them suitable cases in order to study if and if so how the EU differs from a traditional great power in its foreign policies. In the MLC case, there is a potential conflict between the goals of global European economic leadership and competitiveness in maritime activities, on the one hand and, in the field of shipping, to many of the member states the often costly social and labour rights, on the other. In the Atalanta case, there is a potential conflict between balancing against other great powers and/or protecting European shipping interests and ships from piracy, on the one hand, and securing aid to the Somali people and treating pirates in line with their human rights, on the other. If the EU acts in line with what one would expect of a humanitarian actor in both these cases, it strengthens the hypothesis that the EU foreign policy differs from foreign policy as one conventionally understands it, and it can help us contribute to say something about how, if in any way, it is different.

4.5.1.2. Empirical overlaps: Counterfactual approach[11]

In studies of social phenomena, empirically, there will always be support for more than one hypothesis. In studies of EU foreign policy, in any concrete case, I will find evidence both of a traditional and a humanitarian policy. A reasonable question to ask someone studying the putative role of norms (or interests) in EU foreign policy is thus how to know what factor is the most important. If I find evidence suggesting a fit with both models, how much do norms then matter in EU foreign policy? Expect from the fact that I do not think that the effect of different factors can be quantified (Parsons 2007), I seek to solve this problem by focusing on whether there is more to EU foreign policy than the promotion of interests, where norms are used instrumentally. In the two articles (articles 1 and 2), the focus is on if and if so how EU foreign policy differs from foreign policy as we conventionally understand it, and if so whether it acts as a humanitarian actor – which as we recall does not mean that the EU cannot also promote its interests. The question is thus not whether or not interests mattered 20 or 50 per cent. Instead, I am concerned with whether or not human rights norms have an independent effect on the policies conducted and if the EU has bound itself to such norms when conducing its foreign policies, in line with what one would expect of a humanitarian actor. Given the dominance of rationalist approaches in studies of EU foreign policy, I therefore as argued pick cases on the dependent variable and then take a counterfactual approach (Deitelhoff 2009). This means that I first study the extent to which the data support the hypothesis that EU policies were conducted due to particular interests. If this does not provide a sufficient explanation, I go on to study the extent to which an alternative norm-based explanation is substantiated by the empirical data. An important tool in this regard is to find ways to empirically control for rhetorical action, i.e. for the rationalist expectation that norms in reality are referred to and promoted in order to promote or justify particular interests. Following the two foreign policy models, this can be studied by looking at the extent to which the EU is willing to bind itself to human rights norms, even where it involves costs to the EU or to any of the member states. In addition, the possibility of hidden agendas is controlled for by looking at developments in the argumentation over time and by looking at consistency; between the reasons given for a particular policies by different actors; by triangulating across the different data sources; and not least between what is said and what is done, i.e. between words and actual behavior (Checkel 2005).

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[11] The term is from Deitelhoff 2009.

4.5.2. The theoretical article: Specifying the micro-mechanisms of deliberation

The two first articles, the case-studies, suggest that EU foreign policy in these cases do differ from a conventionally understanding of foreign policy as its behaviour was in line with what one would expect of a humanitarian actor. The third and last article is an attempt to contribute to further developing analytical tools that may help us to better account for such a move. To explain EU policies, in the two empirical articles (1 and 2) I build on the assumption that agreements were reached through the exchange of arguments. To explain, the approach was to identify the arguments behind the policies conducted – the arguments that were not only presented but also acted upon, thus functioned as what I, following Sjursen (2002), called mobilising arguments. In the third article I more explicitly specify and trace the micro-mechanisms by which arguments may lead to changes in positions and thus have an action coordinating effect, building on the basic assumptions more thoroughly elaborated on in part III of this chapter. In addition to the distinction between different types of normative arguments applied in the two empirical case-studies, I here differentiate between two other types of mutually acceptable arguments that may be presented during deliberative processes, namely law-based and factual arguments. The micro-mechanism by which they may have an effect on policy outcomes is argument-based learning. In the article, I elaborate on and operationalise the framework, before I try out the relevance of argument-based learning in one of the empirical cases already studied, namely EU coordination towards the MLC.

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Chapter 2

'A matter of principle'? EU foreign policy in the International Labour Organization[1]

Abstract

This article contributes to the debate on the role of norms in European Union (EU) foreign policy by looking at EU policies in the making of a Consolidated Maritime Labour Convention (MLC). Given the economic importance of shipping for many EU members, one would expect the EU to promote its economic interests in the International Labour Organization (ILO). However, the EU was described as a human rights' promoter and had positions on the MLC that after common EU implementation will increase costs for both ship-owners and national administrations. How can this be? I answer by examining the arguments that mobilised the actors to agree to the policies conducted, differentiating between three ideal-types; pragmatic, ethical-political and moral arguments. I conclude that moral arguments, supporting a thesis that a concern for establishing global law for the protection of rights, have been particularly important in mobilising the EU to promote a convention of high standards.

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[1] Published in 2010 in *Journal of European Public Policy*, Vol. 17 No. 4, pp. 581-598.

Introduction

In February 2006 the European Union (EU) member states signed the Maritime Labour Convention for the International Labour Organization (ILO) Maritime Sector (MLC, see ILO 2006), following a five-year process of consolidating and updating almost all the labour and social standards adopted for the sector since 1919. When we look at the EU's positions on the MLC, we are faced with a theoretical and empirical puzzle, namely that the EU has been the main advocate of a convention of high minimum-standards and strict control measures, despite the high, anticipated costs of such a policy for the EU itself. The aim of this article is to explain this puzzle. Here we are faced with a case where powerful maritime EU countries have pushed their particular interests in a process dominated primarily by experts in trade and shipping, actors one would naturally expect to be mostly concerned with the economic dimension of the field. Given the high level of global economic competition and the strong economic shipping interests of many of the EU members one would hence intuitively expect the EU to promote its economic interests in the ILO Maritime. However, the EU has presented itself as a human rights' promoter and has conducted a policy that will entail costs to the EU members and their shipping industries, large and small alike.

The EU's policies seem to contradict what we would traditionally expect of foreign policy behaviour, where the dominant view has been that policy outcomes are linked to the actors' particular interests. How then can we explain that the EU promoted a MLC of high minimum-standards?

From a conventional, rationalist perspective, the answer to this puzzle would be that although the EU has presented itself as a human rights' promoter, in 'reality' EU policies concerning the MLC were interest-based, conducted due to concerns for economic gain. The EU would have used norms instrumentally or rhetorically to reach this goal (Hyde-Price 2006; Schimmelfenning, 2003; Zimmermann 2007). An alternative explanation of EU policies on the MLC might however be that the EU conducted its particular policies because it is a 'normative' or 'ethical' foreign policy actor, pursuing norms and not only material interests in its foreign policies (Aggestam 2008; Lucarelli and Manners 2006; Manners 2002). This is an argument that is also increasingly found in studies of EU-ILO relations (Kissack 2009; Orbie and Tortell 2009). Although sharing the assumption that norms might be important for understanding foreign policy behaviour, several authors have however questioned both the theoretical robustness and the usefulness of the concepts of 'civilian', 'ethical' or 'normative' power Europe for describing and explaining EU foreign policy[i] (EUFP) (Diez 2005; Börzel and Risse 2007; Sjursen 2006a; 2006b). Most importantly, it is argued that all foreign policy has a normative dimension but that 'there are numerous norms […] [that] may point to very different types of foreign policies'. (Sjursen 2006c: 86). Hence, describing the EU as 'normative' is only 'the first step towards saying something about EU foreign policy' (ibid). Identifying what norms is the next, and for this we need a framework that analytically differentiates between different types of norms.

In order to take the putative importance of norms seriously, while simultaneously being able to say more about what types of norms that are important for foreign policy behaviour, this article therefore applies a framework that not only differentiates analytically between interests and norms but also between values and rights. While *values* ideal-typically are linked to a particular community's conception of good, i.e. are subjective norms that might vary between different societies, *rights* refer to higher order principles and claim universal validity (Eriksen and Weigård 2003: 135, Habermas 1996). Analytically, EU foreign policy could hence be based both on contextual norms of what is perceived as good according to specific European values or internal solidarity, *or* it could be based on concerns for securing what is right or fair for all, independent of communal belonging.

Based on this distinction, the methodological approach used to explain EU policies concerning the MLC is to discuss the relative importance of interests, values and rights as mobilising arguments for EU policies on the MLC (Sjursen 2002). After a short description of the case, I discuss the main assumptions behind this approach. Three hypotheses of EU policies concerning the MLC are then discussed. Given the conventional 'truth' in the international relations (IR) literature claiming that policy outcomes follow from the actors' material interests, I first examine whether there is evidence to support a hypothesis that the EU has conducted a policy of promoting high global minimum-standards in order to increase its economic competitiveness in shipping. I then examine the extent to which the two alternative norm-based hypotheses of EU policies can be substantiated. The focus is thus on why the EU pursued the policies it did at the time, and not on the MLC's actual impact or on what characterised the internal coordination process. Nor do I aim at any normative assessment of EU policies in the ILO.

EU policies on the Maritime Labour Convention.

The ILO is a United Nations (UN) specialised agency whose task is to formulate and control international social and labour standards. It has a tripartite structure, where the idea is that workers and employers participate as equal partners with governments in the work of its governing organs. Due to the special global features of the sector, implying that seafarers often spend much of their working lives abroad, questions regarding working conditions in the maritime sector have been considered in distinct maritime sessions. The industry, however, has a history of poor working conditions and the level of ratification of many of the ILO standards has been low. In particular, it has been a problem that seafarers working under 'flags of convenience', where shipping-companies profit economically from lose control regimes, have worked under unacceptable conditions (ILO 2006). In 2001 the ILO therefore started a process of consolidating and updating the maritime ILO instruments, resulting in the adoption of the MLC in 2006. By putting together and revising more than 60 maritime instruments, the MLC is a new phenomenon in international treaty-making. It is further characterised by comparably high minimum-standards and strict enforcement and control mechanisms, even allowing port-state inspectors to withhold ships in cases of serious breaches of the MLC – including ships flying flags of countries that have not ratified it.

As the European Community is not a signatory to ILO conventions, by 'EU policies' I here mean collective positions towards the MLC reached through EU coordination. From 2003, EU coordination meetings were held during and in between the ILO meetings, where concrete positions on different provisions in the MLC draft were discussed. The EU members established common positions on all areas of the MLC prior to its final adoption in 2006. With regard to the question raised in this paper the EU can therefore be treated as a single actor.[ii]

In the EU, the adoption of the MLC has been followed up by an EU Council recommendation on ratification, and will be implemented through two directives, one that deals with supervision and control and one that directly implements all other provisions in the MLC. This common ratification and implementation reflects the process of developing an 'Integrated Maritime Policy' for the EU, where successful implementation of the MLC is among the main goals (Commission 2007a, 2007b). However, the maritime sector is not only becoming increasingly important as a European policy-area in general but also as a part of EUFP. Shipping is significant in terms of external trade and economic performance, but also relates to a wide range of other global issues such as security and anti-terrorism measures or questions of environmental protection, and the EU increasingly plays a bigger role in international forums dealing with maritime issues. However, there are still few studies of EUFP in the UN's specialised agencies, and in particular on the EU's global role in dealing with maritime issues (see however Laatikainen and Smith 2006; Wouters et al. on EU-UN relations; Tortell et al 2009 on the EU and the MLC process). Further, although there is a growing body of literature on EU-ILO relations, much of this literature focus in particular on the EU's role in promoting and adopting the ILO's core labour standards (CLS) (Kissack 2009; Orbie and Tortell 2009; Wouters et al. 2006).

The approach

The approach applied for analysing EU policies towards the MLC builds on an analytical framework developed by Sjursen (2002). Two main points lay the ground for applying this approach. First; that a fruitful 'route to explanation goes through the interpretation of meaning' in the Weberian sense, where the basic assumption is that social action can be explained by interpreting what it was that made it intelligible to the actors involved (Eliaeson 2002: 52). Social science is seen as '[…] a science concerning itself with the interpretative understanding of social action and thereby with a causal explanation of its course and consequences' (Weber, 1922 in Eliason, 2002:43). Second, the approach draws on Habermas' theory of communicative action, increasingly applied in studies of the EU as well as of international relations (Deitelhoff and Müller 2005; Diez and Steans 2005; Eriksen and Weigård 2003; Eriksen and Fossum 2000; Risse 2004; Sjursen 2002; 2006a, 2006b). The basic assumptions are that actors coordinate their behaviour through communication and that they have the ability to justify and explain their actions. When applying these assumptions in studies of policy behaviour, I hence presume that EU policy-making is based on arguments given by proponents and which have to be comprehensible and acceptable for at least some co-decision makers for a decision to come about. This assumption seems particularly relevant for this case-study, where EU positions were reached through extensive exchanges of arguments in EU coordination meetings.[iii] The approach is further helpful when wanting to open up to the putative importance of norms. Instead of linking rationality exclusively to the maximising of self-interest, actors are defined as rational when they are able to justify and explain their actions. By this definition, I hence open up to the possibility that the actors not only act on the basis of their material interests but that they can also 'reflect on the validity of different norms, and why they should be complied with' (Sjursen, 2006c: 88), thus allowing normative behaviour to be considered rational. Norms are complied with when the actors accept their validity, and the mechanism through which this happens is the exchange of arguments.

For explaining EU policies, the aim is hence not to discover the 'true' motives of the actors involved. Since I believe we can never ascertain the actors' true beliefs or thoughts, motives as reasons for behaviour are impossible to discover (Deitelhoff and Müller 2005; Sjursen 2002). When wanting to explain policy outcomes at the international level, rational choice perspectives simply presuppose that actors act on the basis of self-interests and consider these interests as exogenous to the analysis On the basis of the assumptions given above the approach here is rather to look at the arguments that have been presented in order to justify them. To explain EU policies, I hence analyse the arguments the actors presented for their actions and positions in order to identify the arguments that mobilised the actors to agree to and conduct a certain common policy.

Interests, values and rights

This being said, there may of course be several arguments presented for any particular policy, and there is a need for further specification if we want to explain EUFP. There are numerous rule-sets, norms and identities and though it has proven helpful to open up to more than interests when wanting to explain EUFP, one of the problems with much of the empirical literature on a 'normative' EUFP is precisely that it does not differentiate between different types of norms (Sjursen 2006b; 2006c). When wanting to study the putative role of norms in EUFP, this is particularly important since even if the EU is sometimes described as a human rights' promoter, others instead claim that the EU is forcing its own norms onto others.[iv] What is more, the MLC has been directly linked to the goals of securing European seafarers and Europe's maritime heritage in the strategy for an integrated maritime EU policy, underlining the importance of looking at whether community-oriented value-considerations might have been important for EU policies towards the MLC.[v] To explain EU policies, there is hence a need for analytical tools that make a distinction between a policy that is based on what is perceived of as good or appropriate for the EU community vs. one based on considerations of which policy would be just or fair for all, differentiating between values and moral norms/rights.

For establishing indicators in order to better capture the putative importance of these different norms for understanding EU policies concerning the MLC, this article differentiates between two analytically distinct categories of normative arguments; ethical-political and moral arguments, in addition to pragmatic arguments (Sjursen 2002; Habermas 1996). Firstly, pragmatic arguments are characterised by reference to utility. Such arguments would refer to a policy's expected material output, and are here operationalized in strict economic cost-benefit terms, as arguments referring to the EU's economic interests in shipping and to what were seen as the most efficient ways of reaching these economic goals.[vi] Given the relatively strict regulations in many EU countries, one would thus expect actors to justify policies by referring to the need to raise global standards in order to increase the competitiveness of the European fleet. Further if concerns for economic gain can explain EU policies regarding the MLC one would not expect anticipated costs to exceed economic gain and any reference to universal norms will be rhetorical only. Secondly, ethical-political arguments are identified by reference to values. Ideal-typically, values are norms that are constitutive of a particular community, indicating what is considered appropriate or valuable for this community and the persons belonging to it. They are *'collective representations of the good that vary according to cultural and social context'* (Habermas 1996: 256; Eriksen and Weigård 2003: 134), thereby indicating rules of appropriate behaviour for the persons belonging to this community as well as a particular solidarity towards fellow compatriots (Fossum 2000: 119). Hence, if EU policies towards the MLC are based on values one would expect them to be justified with arguments referring to something seen as valuable to the European socio-cultural community in this particular field. More precisely, for an argument to be identified as ethical-political, EU actors would argue for high standards in the MLC by reference to this being in accordance with European policy traditions, that it is important in order to secure a common European maritime heritage or necessary due to a particular solidarity with European seafarers. Lastly, EU policies may instead have been justified by reference to rights. Rights/moral norms are *universal in the sense that they can be generalised and accepted by all in a free and open debate* (Eriksen and Weigård 2003; Habermas 1996), they 'refer to higher order principles and claim universal validity' (Eriksen and Weigård 2003: 134-5 in Sjursen 2006a: 175). As such they are 'concerned with what we are obliged to do when our actions have consequences for others', independent of a particular society's inter-subjective conceptions of what is good or valuable (ibid). Hence, while values are subjective and linked to a particular community's self-understanding, rights are norms that can be universalised. As the MLC provides labour standards for seafarers, this means that one would expect a putative EU rights-based policy to be based on concerns for individual human rights, independent of belonging. However, for these to be 'universal principles applied to all', to avoid arbitrariness and secure their universality, they must be made binding through law (Sjursen 2006b: 246). Rights-based policies are in other words ideal-typically justified not only with reference to individual human rights but also to the need to strengthen these rights through the international legal system, i.e. based on a cosmopolitan notion of rights (Eriksen 2006, Sjursen 2006b). If concern for rights has been important for mobilising EU policies concerning the MLC, one would hence expect arguments that refer to the need to secure all seafarers as rights-holders where these rights are sought to be protected through binding global law.

Methodology and data

It must be noted that the 'real-life' arguments will often be a mix of the different types of arguments. However, here they are treated as analytically distinct categories, as ideal-typical, ordering principles for conducting the empirical analysis on the extent to which the three hypotheses can be substantiated. In practical terms, this means that although I have not counted the different types of arguments, they were qualitatively sorted in accordance with the operationalization in several rounds before they were systematically analysed. In order to explain EU polices, I interpreted the arguments given for these policies, triangulating across the different data sources (see below) and controlling for consistency; between the arguments presented for a particular policy by different actors; between the arguments presented by the EU actors in different forums; and not least between words and actual behaviour, between words and deeds (Checkel 2005: 11). In addition to these systematic controls for consistency, the possibility that during interviews the delegation members presented meaningful arguments for their policy positions is heightened by their strict claims on anonymity. Moreover, since the MLC will be implemented through common EU legislation it is difficult for EU members to try to look good by using a 'pretty language' in the international arena without having to follow up nationally.

Data was collected from multiple sources: First, I had access to and observed the closed EU coordination meetings in Nantes in January 2004 and at the Preparatory Technical Maritime Conference (PTMC) in Geneva 13-24 September 2004. I here also observed the closed ILO government group meetings and the different open tripartite ILO sessions. Second, eleven in-depth interviews with delegation members from different EU countries, several rounds of interviews with a central Commission official and one on-the-spot unstructured interview with a seafarers' representative were conducted during the PTMC.[vii] Since the main part of the material is from the PTMC, a follow up interview was conducted by e-mail with the Commission key-informant later in 2004, and I conducted several interviews with a delegation member key-informant with close contacts to different EU delegations (in particular the Nordic, Dutch and German delegations) in 2005 and 2008. In addition to these observations and interviews, which are the main sources of data, the material consists of official ILO reports from the MLC meetings (ILO 2006) and official and unofficial working documents related to EU coordination in and between the ILO meetings in the period, from the Commission and the different delegations. It must be noted, however, that the EU documentation was obtained mainly from the delegation member key informant and only sporadically after the PTMC.

Increasing the competitiveness of the European fleet?

So then, how can we explain EU policies concerning the MLC? First, is it so that – in spite of presenting itself as the champion of human rights – in reality the EU conducted its policies due to concerns for economic gain? This would be in line with the dominant perspectives on IR that foreign policies are oriented towards maximising interests. To analyse whether this hypothesis can be substantiated, the questions are thus; first, whether there is evidence to support the assertion that EU policies have been justified with reference to economic gain; second, whether there is evidence to support the assertion that normative arguments were used rhetorically, i.e. used rhetorically in order to reach such economic goals; and finally, that the economic gains of EU policies were considered higher than the policies' expected economic costs.

Economic gain?

In accordance with much of the literature on European integration, it would seem self-evident that EU policies regarding the MLC are the results of concerns for economic gain (Moravcsik 1998). Almost 90 % of EU external trade and 40% of its internal trade are seaborne. 40% of the world fleet is controlled by EU-owned companies, making the European shipping-industry the largest in the world (Commission 2007b: 10-11). At the same time, many EU-countries have relatively high social and labour standards for ships flying their flags if compared to other regions, implying higher costs. Thus, all the delegation members interviewed pointed to the need for common international rules in order to secure equal conditions for competition as one of the main reasons for why there was a need to consolidate the maritime ILO instruments.[viii] 'Since we have strict rules in the EU […] we must secure a higher level internationally'.[ix] According to the Commission, 'our common objective and our intention in the short run are to use all means in order to guarantee a level playing field for our ship-owners in the world market'.[x]

Rhetorical action?

At a first glance it thus seems as if concerns regarding economic gain can explain EUFP. When looking at the empirical material, however, it appears that the different actors when referring to the need for global rules as an argument in favour of higher international standards, did not only refer to the economic competitiveness of the European fleet but with few exceptions also to the rights of the seafarers, e.g. 'we must secure the rights of the seafarers and have common rules to allow equal competition'.[xi] The question is hence whether such references to rights were hypocritical, i.e. used rhetorically to legitimise a policy that in reality was based on concerns for economic gain.[xii] In order to study this, if we look at some of the internal EU discussions during the PTMC where for instance the UK or Germany stated they had problems with a draft provision due to its costs, and then compare them with the tripartite, ILO discussions on the same provisions, we see that concerns for costs were only seldom presented in the ILO meetings. This might indicate that the EU in its external behaviour covered up its 'true' economic motives by using normative arguments to get support for its preferred policy-positions in the ILO. However, contrary to what one would expect if the EU argued rhetorically to advance its own economic interests, reference to costs was not used by delegates in the internal meetings as an argument in favour of therefore *not* advancing high standards, even if the costs were expected amongst the other EU countries.

Gain higher than costs?

The main problem with explaining EU policies on the basis of concerns for economic gain is their high level of anticipated costs for the EU members. Although in different areas and to different degrees, concerns for economic costs of EU polices emerge in all the interviews with EU delegation members. Moreover, in all the internal discussions on concrete draft provisions observed during the PTMC there was reference to their potential economic consequences, like the costs of changing national systems or concerns of having to rebuild ships due to stricter regulations.[xiii] Such concerns were also expressed for instance by delegation members from Denmark, Great Britain and the Netherlands, who most actively supported a policy of high standards, referring to the need to avoid economic costs, both in interviews and in coordination meetings.[xiv] The potentially high level of costs resulting from high standards was also known to the European shipping-industry, which therefore has been sceptical to any EU coordination in the area.[xv] That the EU still conducted a policy of advancing high standards is puzzling not least since the MLC will be implemented through EU directives, meaning that the EU members bind themselves to the content of the MLC and as a result there will be a need for changes in all EU countries' national legislative and administrative systems. Although the costs of implementation will vary, this implies direct costs both to the EU members and to their shipping-industries, large and small states alike '[…] many EU countries are terrified of taking on higher commitments than they already have.'[xvi] In particular this is the case for powerful shipping countries like Greece, Malta and Cyprus with traditionally few social and labour regulations on shipping. By conducting a EU policy of high standards, knowing that the MLC will be implemented through EU directives, these countries take on extensive costs both for their shipping industries and for their national administrations.[xvii] Hence, at the beginning of the process Malta, Greece and Cyprus therefore opposed any tightening of labour and social rules in shipping due to its anticipated costs, just as one would expect from a rationalist perspective. To prevent the EU from taking such a stance, Greece and Cyprus even opposed coordination of EU policies in the ILO during a government group meeting in 2004.[xviii]

This being said, although it is clear that the costs of EU policies were considered high and are particularly puzzling given their anticipated costs to Greece, Cyprus and Malta, a rationalist explanation might be that they were conducted since they were in the interest of the great powers which already have relatively high national standards. This is however not supported by the data-material. First, for instance Germany in particular expressed concerns regarding economic costs of EU policies in the internal meetings.[xix] Second, there are no indications from interviews or on the basis of observations that the MLC-process was part of a wider EU package-deal that was created to increase some countries' competitive ability.[xx] Actually, in interviews some of the EU members instead expressed concerns that high standards in the Convention might actually lead to fewer ratifications, and as such reduce the competitiveness of EU ship-owners:

> The Convention will inevitably become common regulation, but other regions will not ratify and this will reduce our competitive ability, and this will be a disadvantage to the EU.[xxi]

Hence, there seems to be '[…] more to this than economic interests'.[xxii] However, what?

Norms and EU foreign policy

Thus far, the analysis suggests that concerns for economic gain alone cannot explain EU policies. The question is then if normative considerations have been important for EU policies and positions in the ILO? And if so – concern for which norms? Is there evidence to support a hypothesis that EU policies were conducted on the basis of specific European values, i.e. based on a sense of solidarity with European seafarers or concerns for European traditions? Or that they instead were rights-based, i.e. conducted due to concerns for securing individual rights through establishing global law?

Looking after their own?

First the question of whether value-based concerns can explain EU policies will be addressed. If we look at the background-papers for the adopted 'Integrated Maritime Policy for the European Union', two of the main reasons given for a common maritime policy are the need to protect and 'promote Europe's maritime heritage' and to increase the 'number and quality of maritime jobs for European citizens.'[xxiii] Although an overall goal of strengthening the maritime sector is economical, the Commission refers to the need to 'highlight our common maritime heritage' (ibid) and to the importance of having European seafarers on-board ships flying EU flags in order to uphold these traditions. The MLC is explicitly referred to as important in reaching these goals since it will remove the previously existing labour-law exceptions in the maritime sector, seen as necessary 'if Europeans are to be attracted to the sector' (ibid: 9) and to protect the 'seafarers in the EU' (2007b: 38). On this basis it seems plausible that EU policies towards the MLC, partly conducted in parallel with the development of the 'Integrated Maritime Policy', might have been based on a sense of a special obligation to protect European seafarers and European maritime traditions. To what extent is this hypothesis substantiated?

Looking at the empirical material, we find that the Commission and two of the delegation members in interviews referred to the need to protect European workers through the development of higher international standards as a reason behind the EU's positions on the

MLC.[xxiv] One of these delegates even claimed that '[…] the Commission is more concerned with ensuring that European seafarers are not out-competed by cheap labour than by the ability of the fleet to compete.'[xxv] Further, the Commission has according to the two delegation members further linked the MLC process to a wider agenda of reassessing the maritime exemptions in community labour-law, i.e. linking changes in global standards to issues of European integration.[xxvi] However, we find no other references to the needs of European seafarers in particular in the empirical material. Nor do we find any references to the link between the MLC and the need to protect and uphold European maritime traditions or a European heritage, neither in coordination meetings, nor in global meetings nor in interviews. Instead, in interviews concerning the goal of protecting European seafarers, the delegation- members referred to this as illegitimate Commission 'hidden agendas' for increasing one's own competences or standardising regulations in the inner market.[xxvii] Although concerns for European workers in particular may influence the implementation of the MLC through the role of the Commission, ethical-political arguments have hence not functioned as mobilising arguments for EU policies towards the MLC. Instead the above quoted arguments again indicate that policies have been justified with reference to the needs of the individuals working onboard ships, regardless of their nationality. However, two of the delegation members claimed during interviews that the EU by promoting human rights in the ILO in reality is pushing its own values on to others by saying that 'the EU is seen as arrogant – they think they are better and know everything,'[xxviii] and that it is a

> problem that the EU is increasingly trying to say "we know best, we should rule the world". The EU wants other countries to have the same high level of protection, even if they are much less developed.[xxix]

This critique might indicate that the proclaimed focus on rights was not so universal after all, but rather based on particular European conceptions of human rights protection. However, if we look at the empirical material, we find no examples, in the observed meetings nor in the interviews, of actors arguing in favour of a policy of promoting high standards by referring to what would be in accordance with European values or traditions in particular. Hence, to study the basis of EU policies concerning the MLC further, we turn to the question of whether there instead is support for a hypothesis that they were based on concerns for securing individual rights through binding law.

Securing individual rights through binding global law?

First, if concerns for human rights have been important for mobilising EU policies, one would expect arguments that refer to the need to secure human rights. Second, if concerns for human rights were not only hypocritical but actually influenced on EU policies, the EU's actual behaviour should have supported their statements. Most importantly, there is evidence to confirm that individual rights were not sidestepped in concrete cases where they implied costs. Third, as argued these rights must be universally applied. Hence, for the rights-based hypothesis to be substantiated, we also look at: firstly, whether the expressed concern was for the rights of these seafarers as individuals independent of belonging; and secondly, whether the EU sought to secure these rights through the international legal system, where there also is evidence to confirm that the EU was willing to bind itself to upholding these rights.

Focus on human rights?

Looking at the data we see that the importance of protecting human rights was extensively referred to as an argument for particular EU positions on the different MLC provisions, both in coordination meetings and in different ILO meetings. This argument was further used in all the interviews, both when explaining particular EU positions and when explaining why there was a need for a new convention.[xxx] For instance, positions in favour of high standards were justified by reference to 'fair treatment'[xxxi] and the MLC was described both in interviews and in coordination- meetings as the best way to ensure that seafarers' rights are respected and enforced under jurisdictions with traditionally poor conditions and little protection,[xxxii] like 'seafarers working on ships flying flags of convenience cannot be treated like this any longer.'[xxxiii] Further, it was argued internally that the others 'will respect the EU view'[xxxiv] and that the EU must 'push others that behave badly into better behaviour'.[xxxv]

Again, the question is whether these references to rights were only empty words. As shown, the material does not support a hypothesis that normative arguments were only rhetorical. However, does it support a hypothesis that a concern for universal rights has influenced EU behaviour? On the one hand, the widespread and systematic use of rights-based arguments over time, in different forums and by different actors, is a first indicator that concerns for rights are important for explaining the EU policies conducted. The question, however, is whether this human rights' focus was also followed up when implying costs.

Words and deeds?

A way of studying this is to look at discussions on provisions in the MLC where costs clearly conflicted with advancing high minimum-standards. Systematically researching the coordination meetings at the PTMC, we find several discussions on MLC provisions where delegation members used rights to defend a policy of high standards despite its known costs to some or all the EU members. For instance, the need to secure rights was used as an argument against the Commission in cases where it referred to European interests, but the Commission also used arguments of the type; 'how can you secure the seafarers with this proposal.'[xxxvi] However, in all the discussions observed, rights-based arguments were in such cases *not* met with counter-arguments referring to costs, hence in these cases resulting in the EU conducting a policy of advancing high standards despite their costs. After the initial attempt of some EU members to oppose EU coordination, there was never a question of promoting a policy at the expense of rights or to use costs as an argument for a policy opposing high standards in cases of conflict between interests and rights. The arguments in interviews by some of the cost-oriented actors such as 'the EU is more focused on reputation and on promoting human rights than big business' further underline that interests were sidestepped for human rights' concerns, influencing the policies conducted.[xxxvii]

Furthermore, that the EU's human rights' focus is more than empty words is evident when comparing both the EU's argumentation and its behaviour to that of other countries and regions. Most importantly, the empirical material indicates clear differences when comparing the EU to the United States, also when discussing concrete draft MLC provisions during the closed government group meetings.

Although they generally kept a low profile, the United States threatened to veto or referred to its already existing legislative system or interests much more often when arguing for certain positions than the EU group.[xxxviii] What is more, the EU was the only block of countries that from the beginning of the process had no objections to the seafarers' demand that the fundamental labour rights (CLS) should be included in the MLC, and it was much due to the active support of the EU that these were finally taken into Article III and thereby made binding.[xxxix] The United States, on the other hand, having ratified very few ILO conventions, for a long time argued against such a reference in Article III and instead preferred a reference in the preamble to make them non-binding, saying it would be 'a severe obstacle' to American ratification.[xl] Although all the people interviewed had problems explaining the American policy, the general conception was that the reason was to avoid a situation where these (or other international instruments) can be used as positive rights in American courts, i.e. to avoid binding itself to global law.[xli] Hence, these examples not only indicate a difference in EU and American behaviour – by arguing and actively working in favour of making the CLS a part of the MLC, the EU argued for the importance not only of securing seafarers' labour rights but also of making the fundamental labour rights binding on the signatory countries.

Securing social- and labour rights through law?

Linked to this, different EU actors in different forums often referred to the importance of obtaining a widely ratified instrument and avoiding duplication with other international instruments.[xlii] On the one hand, this focus on establishing global law was justified with reference to efficiency in the sense that it is more practical to have single comprehensive and well-known instruments.[xliii] However, not only is it clear that the EU actively contributed to a convention of high standards, by knowing that the final MLC will be made binding, the EU members through their common policies bind themselves to the content of this convention. What is more, even as early as 2004, several delegation members pointed to the importance of not only raising the level of international standards but also linked this concern to the importance of securing its actual implementation.[xliv] Although this is advantageous from a perspective of competitiveness, and is one of the reasons behind the EU's focus on strict port-state control, there was also what was described as a more 'idealist element' to this focus on implementation: 'the EU clearly sees itself as a guardian of international law',[xlv] and according to a representative for seafarers, the 'EU is a locomotive internationally' when it comes to the promotion of right [xlvi] Some, including seafarers' representatives, even saw the importance the EU increasingly attaches to international law as a general tendency in EUFP, pointing to the EU's role as an international forerunner, or arguing that this tendency was particularly evident in this case in the EU's focus on strict control.[xlvii]

A last indicator supporting that concerns for human rights are important for understanding EU policies is the consequent EU argumentation that it is the seafarers who are the focus of the MLC, both in internal and external meetings and in interviews.[xlviii] This might seem self-evident when the topic is consolidation of the maritime ILO conventions, but following conventional perspectives on international law-making one would rather expect the actors' focus to be on the interests and rights (and perhaps values) of states or alliances of states. However, in the EU actors' argumentation, the reference was systematically to individuals, even though the discussions were focused on very concrete issues. For example, when internally discussing EU positions on the definition of 'ship-owner' and 'ship' – having consequences both for costs and the scope of ratifications – delegates justified high standards despite the cost by arguing that this 'should apply to seafarers, not to the size of ships'[xlix] or that 'we must make sure that no-one falls out of the general rights'.[l] This argumentation was also used towards other countries in the closed government group meetings, for instance when discussing the scope of the MLC arguing that 'the seafarers must know who to address if they have complaints'[li] or that the 'seafarers are the entities'[lii] of the Convention.

Concluding remarks

This article sought to explain why the EU's policies regarding the MLC have been to advance high minimum-standards and strict control measures. In order to answer this, I discussed three hypotheses. First, that EU policies can be explained by cost-benefit calculations. Although the analysis showed that concerns for economic gain have influenced EU polices, this cannot on its own explain them. I then examined the importance of norms for explaining EU policies; first by looking at whether a hypothesis that concerns for European traditions or European seafarers in particular can explain the policies conducted; and second whether a hypothesis that rights, i.e. a concern for securing individual rights through global law, can explain EU policies. Summing up the findings, I did not find support for the first of these hypotheses. What the data shows instead is that a concern for establishing law for the protection of human rights has been particularly important in mobilising the EU to advance a convention of high standards despite its costs. Moreover, rights have not only influenced behaviour – in several cases of conflict, rights trumped material interests. Instead of supporting a hypothesis of a rhetorical use of norms, the material indicates that, after the initial opposition by some to coordinated EU policies, it was not seen as legitimate to use concerns for economic costs as arguments in favour of preferred policy positions when this conflicted with rights. When an argument referring to rights was put on the table it was not questioned and in this way it influenced the policy that was conducted. Hence, this finding also indicates that there might be something about the EU that contributes to a rights-based foreign policy, that there are certain rules for legitimate behaviour for an EU member and that these may be important also for understanding EUFP outcomes.

The analysis further underlines the importance of norms for understanding EU foreign policy behaviour. However, what it takes to be a 'normative power' has been underspecified in the literature discussing EUFP. To deal with this challenge, this article applied a framework that differentiates between foreign policies based on values and rights. On the one hand, concerns for European values did not turn out to be empirically relevant for explaining EU policies concerning the MLC. On the other hand, however, it allowed important findings that we would not have found without this distinction. Most importantly, the findings support the empirical relevance of using efforts to 'strengthen […] the cosmopolitan dimension to international law' as an indicator of a 'normative' foreign policy (Sjursen, 2006c: 249). Hence, when wanting to understand the characteristics of EU foreign policies, it underlines the theoretical and empirical relevance of further studying the extent to which the EU not only promotes a change in the international system towards a focus on the rights of individuals, but also is willing to bind itself to such global law.

Acknowledgements

I want to thank Maria Martens, Johan P. Olsen, Kolja Raube, Guri Rosén, Anne Elizabeth Stie and Pieter de Wilde for helpful comments and suggestions. In particular I want to thank Helene Sjursen for all her help and guidance throughout the process of writing this article, and Haakon Storhaug for sharing his empirical knowledge and insights. Thanks also to the participants at the Arena-seminar 1 March 2008 and the panel on The EU as a Global Actor II at the Fourth Pan-European Conference on EU Politics 25-27 September 2008. I am grateful to the Norwegian Ministry of Defence for financing this research. This article emanates from RECON (Reconstituting Democracy in Europe), an Integrated Project supported by the European Commission's Sixth Framework Programme (contract no. CIT4-CT-2006- 028698).

Notes

[i] I.e. 'the ensemble of the international activities of the European Union, including output from all three of the EU's pillars' (Hill 2004: 145).

[ii] The countries that became members in May 2004 took part in EU-coordination from 2003.

[iii] Observations 2004; interviews 13-24/9 2004, 8/12-2008.

[iv] Diez 2005.

[v] Commission, 2007a, 2007b.

[vi] From a realist perspective, there is intuitively the possibility that security concerns might explain EU policies. Two possible hypotheses were considered but not supported: That EU polices have been justified by anti-terrorism considerations, and; that the process was linked to concerns of how to reduce the risk of ship-pollution.

[vii] Delegations from 21 EU-countries were represented at the PTMC. Not present: Czech Republic, Hungary, Austria, Slovakia.

[viii] Interviews 13/9-24/9-2004.

[ix] Interview,20/9-2004.

[x] Questionnaire November 2004.

[xi] Interview 16/9-2004.

[xii] Schimmelfennig 2003.

[xiii] Observations 13/9-24/9-2004.

[xiv] Interviews and observations 13/9-24/9-2004.

[xv] Interview 23/5-2005.

[xvi] Interview 23/5-2005

[xvii] Interviews 13/9- 24/9-2004 and 23/5-2005.

[xviii] Interviews 23/5-2005, 11/2-2008.

[xix] For instance on provision 1.4 in coordination-meetings 13/9, 17/9, 18/9-2004 and in government-group meeting 13/9-2004.

[xx] Interviews 23/5-2005, 28/2-2008; observations 2004.

[xxi] Interview 20/9-2004.

[xxii] 23/9-2004.

[xxiii] Commission 2007a: 15.

[xxiv] Questionnaire November 2004; interviews 18/9-2004, 23/5-2005.

[xxv] Interview 18/9-2004.

[xxvi] Interviews 18/9-2004, 23/5-2005.

[xxvii] Interview 18/9-2004.

[xxviii] Interview 20/9-2004.

[xxix] Interview 23/9-2004.

[xxx] Interviews 13/9-24/9-2004, 23/5-2005; coordination-meetings 2004; questionnaire November 2004; ILO 2006.

[xxxi] PTMC committee one 17/9-2004.

[xxxii] Interviews 15/9, 16/9, 18/9, 21/9, 22/9, 23/9; coordination-meetings 2004.

[xxxiii] Interview 21/9-2004.

[xxxiv] Coordination-meeting 21/9-2004

[xxxv] Coordination-meeting 13/9-2004

[xxxvi] Coordination-meeting 17/9-2004.

[xxxvii] Interview 20/9-2004.

[xxxviii] Observations 13-24/9-2004; interviews 23/5-2005, 28/3-2008.

[xxxix] Interviews 23/5-2005, 12/2-2008.

[xl] Government-group 13/9-2004.

[xli] Interviews 13/9-24/9-2004, 23/5-2005.

[xlii] Interviews 13/9-24/9-2004; coordination-meetings 2004; ILO 2006.

[xliii] Ibid.

[xliv] Interviews, 13/9-24/9-2004; questionnaire November 2004.

[xlv] Interview 28/2-2008.

[xlvi] Interview 21/9-2004

[xlvii] Interviews 21/9-2004, 28/2-2008; informal discussions during the PTMC.

[xlviii] Observations and interviews 13-24/9-2004.

[xlix] Coordination-meeting 14/9-2004.

[l] Coordination-meeting 14/9-2004.

[li] Government-group 13/9-2004.

[lii] Government-group 13/9-2004.

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Chapter 3

Finally flexing its muscles? Atalanta – the EU's naval operation against piracy[1]

Abstract

What happens to EU foreign policy when the EU has military force at its disposal? Will it then still be correct to talk of the EU as a 'normative' power, or will military capabilities make the EU more inclined to act as a traditional great power and instead promote its interests on the world scene? This article aims to contribute to an answer by studying why the EU launched its first naval operation, operation Atalanta. The analysis suggests that taking responsibility for the long-term protection of humanitarian aid to Somalia was a mobilising argument behind Atalanta and that this has been followed up in practice. Opposed to what one would expect of a traditional actor, the EU has not prioritised to protect European ships, and has bound it self to global law when using force against pirates. Piracy is defined as criminal acts and pirates have been treated in accordance with their human rights.

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[1] Published in 2011 in *European Security*, Vol. 20 No. 3, pp. 385-404

Introduction

Scholars studying EU foreign policy have argued that it differs from the way in which we traditionally conceive of foreign policy. Duchêne described the EU as a 'civilian power' already in 1973, but in particular since the 1990s, the EU has been characterised as an 'ethical' (Aggestam 2008), 'civilian' (Orbie 2008, Maull 2005, Télo 2004), 'normative' (Manners 2002), or 'soft power' (Cooper 2003, Nye 2004).

But what happens to the EU when it has military force at its disposal? Will it then still be correct to talk of the EU as a 'normative' or 'civilian' power, or will military capabilities make the EU more inclined to instead promote its interests on the world scene? Following much of the literature on EU foreign policy, this is precisely what will happen. According to for instance Manners (2006/2010), Télo (2004) or Smith (2005), militarisation will change the EU's foreign policy behaviour. The EU risks becoming 'more like bigger and better great powers' and will be 'more tempted to use short-term military response' when faced with different international situations (Manners 2006/2010: 194). Following a realist perspective, this transformation will happen almost automatically once the EU develops enough hard instruments. From such a perspective, the EU is only a normative or soft power *because* it is a civilian power, because it lacks the military capabilities necessary to make credible threats in order to promote its interests. With military strength, the EU doesn't have to act 'beyond power' anymore and would therefore, like any other traditional great power, use these powers to pursue its first-order interests (Hyde-Price 2008).

Following much of the literature on EU foreign policy, one would in other words expect that once it gets the capacity to do so, the EU would start behaving differently. Instead of promoting norms, it would promote its own interests and it would force through its own perspectives, if necessary at the costs of others. The aim of this paper is to investigate the relevance of this hypothesis by asking why the EU launched its first naval military operation, EU Naval Forces (NAVFOR) Somalia – operation Atalanta (Atalanta). This is a useful case for examining whether the EU's behaviour changes when it acquires military means or if there is something normatively distinct about EU foreign policy that is independent of the means by which it is conducted. Atalanta was launched in December 2008 to fight piracy off the Somali coast and in the Gulf of Aden. Here, strong economic and strategic interests are at stake. Thus, if the EU with military means at its disposal stops conducting a normative/civilian/ethical foreign policy and instead starts acting in favour of its interests, one would expect this to be reflected in its decision to launch Atalanta – i.e. that it was launched to promote particular interests. However, despite using military means, the EU claims that its policies continue to be in line with what would be a civilian like alternative. It claims that Atalanta was launched due to a concern for the Somali people, to protect vessels carrying humanitarian aid for the World Food Program (WFP). If this is right, it is a challenge to much of the literature on EU foreign policy as this would suggest that the EU continues to conduct a civilian-like policy even when militarised.

Perspectives expecting the EU to change behaviour once it has acquired military means cannot explain such behaviour. To investigate whether or not the EU continues to be a 'normative/civilian/ethical' power despite acquiring military means, we need a concept of the EU's international role that allows us to capture this possibility. Building on Eriksen (2009) and Sjursen (2006a, 2007), this article argues that the defining criteria of what will be called a 'humanitarian foreign policy' should be linked to whether the foreign policy actor seeks to overcome power politics through a focus on strengthening cosmopolitan law in the international system, and that in conducting its foreign policy it is willing also to bind itself to such norms. If the EU is a 'humanitarian actor', one would thus expect that Atalanta was launched not only due to concerns for the rights of the Somali people but also that the EU in its dealings with pirates has bound itself to human rights law, even if this involves costs to the EU itself. Has this been so? Does the EU's decision to launch Atalanta suggest that it is a humanitarian actor even if it is no longer 'civilian'?

The article has four parts. Firstly, I give a short description of operation Atalanta. Secondly, I lay out the theoretical framework and the methodological approach used in order to study why the EU launched Atalanta. Thirdly follows the analysis where I look at whether there is evidence that Atalanta was based on more than strategic and economic self-interests, and if so; whether it was launched to protect aid and the EU has bound its behaviour to global, i.e. human rights, law. Lastly, I sum up the findings.

What is EU Atalanta

Conducted since December 2008, Atalanta is the EU's first naval military operation. The NAVFOR forces can use military force to 'contribute to the deterrence, prevention and repression of acts of piracy and armed robbery off the Somali coast' and to escort vessels chartered by the World Food Program (WFP) to carry humanitarian aid to Somalia (Council 2008a). Atalanta was initially scheduled for one year, but has been extended until December 2012. Though not an explicit part of its mandate, the EU also escorts vessels of the African Union Mission in Somalia. As with all EU Common Security and Defence Policy (CSDP) operations, the member states decide whether they want to contribute militarily to Atalanta. The contributing states cover the operational costs themselves. The military operation is however conducted under common EU command. There is thus also a joint budget, foremost covering the running costs of the Operational Headquarter in Northwood, United Kingdom (UK) and the Force Headquarters in theatre. Most EU member states have contributed with forces and/or military personnel to the operational headquarters (EU press 2011). Several EU member states have also contributed with military forces to the North Atlantic Treaty Organization (NATO) operations 'Allied Protector' and 'Ocean Shield' and/or to the Combined Task Force 151 (CTF-151) led by the United States (US). However, by EU policies I here strictly understand the member states' *common policies* conducted as a part of Atalanta.

> It does not replace or subvert the individual foreign and security policies of individual member states' and action 'on the part of a single member state in no way implicates either the EU as a whole or ESDP (i.e. European Security and Defence Policy) (Howorth and Menon 2009 pp. 733-734).

The debate on EU foreign policy

Rationalist perspectives: Traditional great power policies

Following rational choice based perspectives, one would expect that the EU's launch of Atalanta testifies to a traditional great power model of foreign policy. One would assume that Atalanta was launched to promote particular interests and that the EU forces through its own perspectives, if necessary at the costs of others.

Structural realism - The Great Power balancing hypothesis

From a structural realist perspective, one would expect that Atalanta was launched due to strategic concerns. The basic assumption is that foreign policy actors operate in an anarchical environment where they engage in a zero-sum game with the aim of increasing their relative powers vis-à-vis other great powers, what in the realist terminology is called 'balancing' (Waltz 2000, Walt 1998, Mearsheimer, 1994/1995).

On this basis, greater military power is seen as the crucial factor for the EU to be taken seriously on the international scene (Hyde-Price 2008, Posen 2006, Waltz 2000, Walt 1998). It follows that the EU is developing military capabilities in an attempt to establish the EU as a global force, 'to increase both its autonomy from the United States and its ability to act on the international scene' (Howorth and Menon, 2009 p. 731). Atalanta would be part of this strategy, launched as part of a strategy to a) balance other great powers present in an area seen as an EU sphere of interest, and/or b) increase the EU's international autonomy, in particular vis-à-vis the US. The protection of WFP shipments would be part of the strategy, as the EU would want to win also the 'hearts and minds' of the Somali population to increase its influence in the region. However, as normative concerns following realist assumptions always are secondary to strategic interests, they will be sidestepped if conflicting with other interests (Hyde-Price 2008).

Neoliberal intergovernmentalism – The economy hypothesis

Instead of focusing on zero-sum power balancing and military rivalry, neoliberal intergovernmentalist foreign policy accounts start from the assumption that states aim at promoting their foremost economic preferences in an international environment characterised by interdependence (Moravscik and Schimmelfennig 2009). EU member states are amongst the worlds' biggest shipping countries, more than 40 % of the world-fleet is owned by European companies, and most of Europe's freight exchanges with the rest of the world are seaborne (Borg 2009). When piracy outside Somalia exploded in 2008, it threatened to stop the free movement of ships through one of the world's most vital waterways. Following a neoliberal perspective, one would thus expect that Atalanta was launched to keep the sea lines open and to protect European shipping interests. One would moreover assume that the EU's reference to norms and its aid assistance to Somalia is part of the EU's use of its 'smart' or 'soft' power (Cooper 2003, Nye 2004), used instrumentally to create a favourable environment or to get legitimacy and support for a policy that in reality is based on economic concerns (Schimmelfennig 2003).

A civilian-like policy with military means?

Scholars like Manners (2002, 2006/2010), Orbie (2008) Smith (2005) and Télo (2004) share the rationalist expectation that the EU when militarised will change and start acting as a traditional great power. According to Manners militarisation risks undermining the EU's credibility as a normative actor and, once available, military powers will make the EU more tempted to use its military means to pursue its short-term interests (Manners 2006/2010). The empirical reality is that the 'EU's normative power is being undermined by […] unreflexive militarization' (ibid, p 194).

Against this claim, others have argued that the EU might *not* change its foreign policies even if it acquires military means. Stavidris (2001 pp. 43-44) for instance argues that military means might sometimes be necessary for the EU 'to act as a real civilian power in the world, that is to say a force for the external promotion of democratic principles'. According also to Aggestam (2008), the EU might continue to be an 'ethical power' also when militarised, The analytical focus when studying EU foreign policy should therefore not be on its foreign policy means, but rather on why it pursues the policies it does, on whether or not it is 'proactively working to change the world in the direction of its vision of the 'global common good' (2008 p. I). On this basis, an alternative hypothesis of why the EU launched Atalanta might be that the EU is conducting a civilian/normative/ethical foreign policy despite using military means, in other words that it was launched 'to do good', due to concerns for the Somali people.

Although sharing the assumption that norms might be important for understanding foreign policy behaviour, several scholars have however questioned the usefulness of these concepts for describing and explaining EU foreign policy (Diez 2005, Eriksen 2009, Mitzen 2006, Riddervold 2010, Sjursen 2006a). Most importantly, this is so as all foreign policy has a normative dimension but different types of norms might point towards very different types of foreign policy (Sjursen 2006b, p. 86). If we want to study a putative 'normative' foreign policy, we need analytical tools that help us differentiate between different types of norm-promoting policies. This is important not least when studying EU foreign policy, as even if the EU is sometimes described as a human rights' promoter, others instead argue that it is merely pushing its own, Eurocentric values on to others (Diez 2005, Hyde-Price 2008, Smith 2005).

The humanitarian EU foreign policy model

Building on Eriksen (2009) and Sjursen (2006a, 2006b, 2007), in this article I apply a framework that not only differentiates between types of norms, between values and rights, but that also links the definition of normative behaviour to the promotion of human rights through binding law. Rights or moral norms are universal in the sense that they can be generalised and accepted by all in a free and open debate, independently of identities and belongings (Habermas 1996 quoted in Eriksen and Weigård 2003, p. 134). Values are instead particular norms, connected to the characteristics of a specific community and to the identity of the members of that community, 'understood as collective representations of the good that vary according to cultural and social context' (ibid). By applying this distinction it becomes possible to differentiate not only between a 'normative' and a traditional great power policy. It also allows for the differentiation between two substantially different types of 'normative' foreign policies, between a value-based foreign policy based on what is perceived of as good or appropriate for the EU community, versus a rights-based policy based on considerations of which policy would be just or fair for all, independent of communal belonging. However, following Eriksen and Sjursen (ibid), when studying a putative 'normative' foreign policy, it is not enough to study whether or not a particular policy was based on concerns for human rights. For these rights to be universally applied, they must also be made binding through enforceable law (Eriksen 2009, Risse 2004, Sjursen 2006a). Without linking rights to enforceable law 'human rights politics easily degenerates into empty universalistic rhetoric,' force can be used arbitrarily, on the willpower of the foremost western countries, and is easily accused of being conducted for imperialistic reasons (Eriksen 2009, p. 105)

On this basis, the defining criteria of what in this article is called a 'humanitarian' foreign policy is that such an actor 'subscribes to the principles of human rights, development and rule of law for dealing with international affairs, hence underscoring the cosmopolitan rights of the people' (Eriksen 2009, p. 102). Today, however, the world order is still mainly built around the principle of external sovereignty. Individual rights are not institutionalised as positive legal rights and there is no global system that regulates the use of force in a way that is equally binding to all countries. Therefore, a second defining characteristic of a 'humanitarian actor' is that it is promoting such a development. That it is promoting a change from power politics and 'an exclusive emphasis on the rights of sovereign states within a multilateral order to the rights of individuals in a cosmopolitan order' (Sjursen 2007, p. 215).

This concept is particularly relevant when studying foreign policy cases like EU Atalanta not only because it differentiates between types of norm-based foreign policies. First, by studying whether or not a given foreign policy is in line with what one expects of a humanitarian actor, analytically, the policy-models are no longer connected to means. When applied in explanatory empirical research, it is no longer a question of whether the EU has military means to enforce its perspectives or not *per se* but rather whether the EU in its foreign policies seeks to strengthen a system of enforceable human rights that are equally binding on all – including the EU itself. And most importantly, whether the EU binds itself to such global law when conducting its foreign policy. Second, by linking the definition of a humanitarian actor to the extent to which it promotes and binds itself to binding global law, one avoids the claim that a humanitarian actor must be 'other-regarding' or strictly altruistic. This is so as the existence of enforceable law opens up to the possibility that a 'humanitarian' actor can pursue its material self-interests within the limits of global law, in line with human rights. Lastly, this definition allows us to empirically control for whether a norm-promoting foreign policy 'in reality is nothing more than own interests wrapped up as universal values' as one would expect of a traditional great power (Hyde-Price 2008, p. 33). A humanitarian actor promotes a certain type of norms, namely cosmopolitan norms (individual rights) even when it implies costs, it seeks to make them binding through enforceable law, and it is willing also to bind its behaviour to such law.

Methodological approach

Building on Habermas' theory of communicative action, the methodological approach applied in this article is to study the justifications given for Atalanta in order to uncover the mobilising arguments behind it (Sjursen 2002).

The relevance of this analysis, as well as the credibility of its findings, might be questioned on the grounds that there is often a considerable gap between what policy-makers say and what they actually mean. In the analysis, this is controlled for by triangulating between different sources, by examining the consistency of the arguments presented, and not least by controlling for consistency between what is said and what is actually done. Most importantly, I make no claims regarding the real or true motives of the EU actors. As rational choice theorists argue, it is impossible for us to reach into the 'hearts and souls' of policy-makers and uncover their 'real' or 'sincere' beliefs and convictions. For methodological reasons, rationalist perspectives therefore assume that actors are motivated by the aim of maximising self-interest. The approach applied in this article instead builds on two alternative assumptions. First, I expect that social action can be accounted for by interpreting what it was that made it intelligible to the actors involved (Eliaeson 2002, p. 52). Second, I assume that actors are *communicatively* rational, meaning that they have the ability to justify and explain their actions, and that they coordinate their behaviour through communication (Deitelhoff 2009, Eriksen and Weigård 2003, Risse 2004, Riddervold 2010, Sjursen 2002, 2006a). Thus, I assume that also EU policy-making is based on arguments given by proponents that have to be comprehensible and acceptable for at least some co-decision makers for a decision such as that on Atalanta to come about. Uncovering the arguments that led to a particular decision or action thus amounts to an explanation of this outcome. The arguments leading to agreement on a given policy (i.e. the mobilising arguments) can of course refer to material interests, as one would expect if Atalanta was launched due to economic or strategic concerns. However, by defining actors as communicatively rational one also opens up to the possibility that the actors can 'reflect on the validity of different norms, and why they should be complied with' (Sjursen, 2006b, p. 88), hence allowing also normative, and thus humanitarian, behaviour to be considered rational.

Empirical expectations

In line with the two models of EU foreign policy outlined above, i.e. the traditional great power and the humanitarian model, I make an analytical distinction between two types or categories of arguments that might have been used to justify its launch (Sjursen 2002).[i]

Traditional great power – pragmatic arguments

First, *pragmatic* arguments are characterised by reference to utility. Such arguments refer to a policy's expected material output and is what you would expect to find if the EU with Atalanta testifies to a *traditional great power* model.

For the *great power balancing-hypothesis* to be supported, one would first, expect justifications referring to the importance of establishing EU military means in order to increase the EU's international power vis à vis the other great powers, and second, that that there is evidence of 'autonomy-seeking' behaviour, suggesting that the EU 'goes it alone' (Posen 2006) in its projection of military power (Howorth and Menon 2009, p. 733), i.e. that it does not cooperate with other great powers, neither politically nor in the field.

As 'preferences regarding the degree of autonomy that ESDP should enjoy from NATO (is) a good indicator of the strength of the desire to balance U.S. power' (Howorth and Menon 2009, p. 734), if the 'softer' version of the balancing-hypothesis is substantiated, one would first, expect justifications referring to how Atalanta proves the EU's international autonomy from the US, second, that the EU would not draw on US or NATO capabilities or cooperate with the US, politically or operationally, and lastly, one would expect a negative reaction from the US, as 'the inherent logic of the balance of power would suggest that an absence of American suspicion would provide compelling evidence of a lack of balancing behavior' (Howorth and Menon 2009, p. 733).

If the *economy-hypothesis* is supported, one would instead expect first, that the EU actors refer to the economic consequences of piracy when justifying Atalanta, to how a maritime military operation was necessary in order to protect European economic interests. Second, though the EU might sometimes protect WFP shipments with aid to Somalia, it will not pursue norms at the expense of its own interests or when involving costs. Instead, having the means to do so, one would expect that the NAVFOR force is used foremost to protect and escort EU flagged vessels and that it has not prioritised aid shipments before the protection of European self-interests.

In either case, as a traditional great power, the EU would not be willing to bind itself to any human rights law that restricts its external sovereignty when using force against pirates. The traditional great power model of foreign policy builds on the principle of state sovereignty as the constituting principle of international relations, Taking action against piracy would consequently be seen as a sovereign right to self-defence, and piracy would be regarded in the same manner as terrorist attacks or attacks by other states. A main aim would be to prevent further attacks on EU ships by deterring others from becoming pirates, and pirates captured in the field would thus be treated accordingly, having limited rights.

Humanitarian actor – moral arguments

Moral arguments are characterised by reference to rights and is what one would expect to find if the EU instead conducts a humanitarian foreign policy despite having the military means to behave otherwise. One would expect to find arguments in favour of Atalanta that refer to the need to secure WFP ships in order to help the individuals in Somalia in line with relevant United Nations Security Council (UNSC) resolutions, and that refer to the importance of doing this in a way that is consistent with human rights law. If this is more than rhetorical action, one will expect that these references have been followed up in NAVFOR's mandate and in its actual behaviour. The EU might also pursue its interests, but not at the cost of normative concerns. Instead, the EU will consistently prioritise the protection of WFP shipments, over the protection of EU ships. As the principle underlying the foreign policies of a humanitarian actor is universal rights, its foreign policies would be underpinned by the main aim of 'domesticating' world policies through a focus on strengthening binding human rights law (global law) in the international system (Sjursen 2007: 13). In conducting its foreign policy it would also bind itself to such law. This means that one would expect the EU to promote a comprehensive and enforceable legal global system for the prosecution and punishment of individuals who are suspected of maritime piracy. A problem when studying this, however, is that today there is no comprehensive global (or European) law that regulates the detention, prosecution and punishment of pirates. Both practitioners and lawyers disagree on how such a system should look like, which makes it difficult to operationalise these expectations. However, if testifying to a humanitarian model, the EU must be willing to bind itself to existing human rights law when dealing with pirates. The threat of force would be conceived of as means to ensure that global law is respected. Thus, Atalanta would be conducted as a law-enforcement operation. One would expect that pirates are treated as criminals. Suspected pirates that are detained by the NAVFOR forces would be prosecuted, convicted and serve their sentences at the national level in a way that is consistent with global human rights law, including in cases where this involves costs to the EU itself.

Data

Being an ad-hoc operation under the second pillar, the formal decision to launch an ESDP operation was taken by the Council. However, except from a few members of the European parliament (MEP) who opposed the use of military means on principled grounds, both the Commission and the European Parliament (EP) strongly supported Atalanta, and they were involved in the decision-making process. Thus, for the question raised in this paper, why Atalanta was launched, the EU can be treated as a unitary actor.[ii] To conduct the analysis the following documents regarding Atalanta were downloaded from the different EU institutions' web pages in December 2009/January 2010: First, from the Council, legal basis documents regarding Atalanta, Presidency conclusions, and a selection of press releases and fact sheets, second, Commission background documents, yearly reports and a selection of speeches and press releases, and third, EP motions for resolutions, debates, reports, adopted texts and press releases regarding Atalanta.[iii] To control for consistency with the EU's actual behaviour, I also collected the following data: First; interviews were conducted with four civil servants specialist (two naval military specialists and two foreign policy specialists), of which two were present in theatre at the time of Atalanta's launch, second; the UK House of Lords' report on Atalanta (House of Lords, 2010), amongst other things containing hearings of Atalanta military personnel, and last; documents containing references to Atalanta from the WFP's web pages.

Why Atalanta?

A traditional great power policy?

So, did the EU launch Atalanta as part of a balancing game and/or to protect European shipping-interests, as one would expect if the EU with Atalanta is acting like a traditional great power? First is there evidence to suggest that Atalanta was launched as part of a balancing strategy against the great powers and/or against the US in particular?

Great power rivalry over influence?

According to Helly (2009, p. 399) the 'heavy presence of military vessels in this particularly sensitive area […] reflects growing geostrategic competition between powers around Eurasia.' All the great powers, including India, China, Russia and Japan, in addition to the US led CTF-151, NATO and the EU, have forces outside Somalia. Actually, China is present in the Indian Ocean for the first time in centuries (ibid). Following a realist logic, one might also argue that the fact that Atalanta has been used to escort vessels of the African Union Mission in Somalia fits well with a great power balancing-hypothesis.

However, although the great powers are present with forces in the waters off Somalia, there is no evidence to suggest that they are engaged in a zero-sum power game over influence, or that the EU launched a military operation in a balancing attempt in an African sphere of interest. To the contrary, the EU has *contrasted* balancing strategies by promoting formal and informal cooperation with all the other great powers operating in the area. Operationally and in the field, the EU has established a wide range of framework agreements and cooperation arrangements 'to enable Operation Atalanta to cooperate effectively with other naval forces and assets deployed in the region' (EU Press 2011). The NAVFOR force 'is in permanent liaison with […] CTF-151, NATO, Russian, Indian, Japanese, Malaysian and Chinese vessels' (ibid). Politically, *Atalanta* has been instrumental in developing dialogue with global actors like Russia or China' (Helly 2009, p. 399), amongst other things through meetings in the Shared Awareness and Deconfliction (SHADE) group and in The International Contact Group on Piracy off the Coast of Somalia (CGPCS) (EU Press 2011). Thus, instead of testifying to a great power rivalry hypothesis, the level of in-field cooperation between all states and organisations present with forces off the coast of Somalia can be characterised as unprecedented. The interviewees' characteristics of the international anti-piracy cooperation confirm this finding (interviews 17/6, 21/6, 24/6 and 27/8-2010). But what about the 'softer' version of the balancing hypothesis – was Atalanta launched to increase the EU's autonomy from the US?

Increased autonomy from the US?

In line with the hypothesis that the EU launched Atalanta to increase its autonomy from the US, in contrast to previous big EU military missions (in Bosnia and in the former Yugoslav republic of Macedonia), Atalanta is conducted independently from NATO. 'To avoid that NATO takes the credit', the EU decided not to draw on the Berlin Plus agreement and use NATO's capabilities, but rather to use one of the EU national operational headquarters (interview 17/6-2010). Also, when asked why Atalanta was launched in a hearing in the House of Lords in 2009, operation commander rear Admiral Jones replied:

> It was a very strong sense from almost all Member States that this was an activity that needed countering…and that this was an opportunity to launch a maritime operation under the ESDP, for the first time.

He also underlined that 'the fact that we were able to stand up the operation so quickly has proved the intent that was there in the Member States to do that' (House of Lords, 2010), something that was confirmed by the interviewees. 'There was a very strong will and a wish in the EU to do something militarily' (interview 27/8-2010). It was moreover 'easy to choose this particular thing because it involves few risks for the military personnel and because it is for a good cause' (interview 17/6-2010). This 'was an opportunity to prove the EU's capability. Suddenly they (the member states) were able to provide the forces that NATO had been asking for, for years' (interview 17/6-2010). In particular the MEPs moreover justified their support for a military EU operation by referring for instance to how this 'would be an important sign of visibility for Europe' (Ramos PSE group, EP 2008a). 'Would the increase in acts of sea piracy not be a chance for the European Union to use the means to defend its values and interests, if necessary and whenever necessary?' (Morrillon, ALDE group, EP 2008a).

However, opposed to what one would expect if the EU launched Atalanta to strengthen its autonomy vis–à-vis the US in particular, EU, NATO and CTF Commanders have since November 2009 coordinated their counter-piracy fighting in the field. Their military assets are coordinated, they share common communication systems, and the EU and the US co-chaired the monthly SHADE meetings until January 2010, just to mention a few areas of EU-US cooperation (EU Press 2011, Interview 27/8-2010). Close cooperation with other great powers and with the US in particular was also part of Atalanta' initial mandate. In the Council joint action establishing Atalanta it says that Atalanta shall 'liaise with organisations and entities, as well as States […] in particular the "Combined Task Force 150" maritime force' (Council 2008a). Neither is there evidence of negative reactions from the USA, as one would expect following a realist balancing logic. Instead, coordination between Atalanta and the US led CTF-151 has been described as unprecedented also by US military personnel: 'Considering there is no direct chain of Command between us, there is an unprecedented level of cooperation and coordination at every level' (US admiral Gortney in NAVFOR press 2009)

Thus, though a wish to prove the EU's ability to act autonomously on the international scene seems to have contributed to Atalanta's launch, it was not launched as part of a great power rivalry strategy or to balance against the USA in particular, as one would expect following a structural realist perspective. To the contrary, the high level of cooperation, both politically and in the field, testifies against these hypotheses. These findings thus support Howorth's argument that (2007, p. 52)

> it is simply not the case that ESDP has been driven by considerations of how to deal with overwhelming American power. Such considerations have not been absent, but they have not been primary.

The EU's launch of Atalanta might however still testify to a traditional great power model, if it was launched to protect European economic interests. If so, one would expect first, that Atalanta was justified with reference to its expected gain and second, that there is evidence to support the assertion that normative arguments were used instrumentally in order to reach such goals.

Economic interests

In line with the hypothesis that Atalanta was launched due to economic concerns, according to Commissioner Borg (2009, p. 6), the EU takes piracy 'very seriously – not least because maritime transport carries 90% of world trade and 40 % of the world's merchant fleet is owned or operated by EU interests.' Before its launch, the Commission and many of the MEPs moreover argued in favour of Atalanta by referring not only to the importance of keeping the shipping lanes safe from piracy, but also by referring to the economic costs of Somali piracy to the EU in particular. For instance, in its first resolution on maritime piracy in October 2008, the EP expressed 'its serious concern about […] criminal assaults against Community fishing, merchant and passenger vessels' (EP 2008b).

… but also norms

On the one hand, these quotes suggest that Atalanta was launched due to concerns for European shipping interests. On the other hand, however, there are no references to the need to use force to protect *European* shipping interests in particular in any of the Council documents establishing Atalanta. There are references to 'vulnerable vessels' and maritime trade in general, but nowhere does the Council in its decisions, conclusions or press releases refer particularly to European ships or European interests when justifying a military operation. Instead, 'under the conditions set by the relevant international law and by UNSC resolutions"…"the protection of vessels of the WFP delivering food aid to displaced persons in Somalia, in accordance with the mandate laid down in UNSC Resolution 1814 (2008)" is listed as Atalanta's principal task – above the protection of vulnerable vessels and the deterrence and prevention of piracy against merchant ships (Council 2008a).

Hypocrisy?

The question, however, is whether these references to the need to launch a military operation to help the Somali people were hypocritical only, used rhetorically to give legitimacy to an operation that in reality was based on self-interests. The humanitarian situation in Somalia has been severe since the 90s. Somali piracy however only became a serious problem for the shipping industry in 2008, the same year as Atalanta was launched.

> International attention to the piracy problem has risen […] significantly more when the main victims were the international shipping companies than when it "merely" affected Somali civilians' (Møller, 2009, p. 2).

This might suggest that it is the quotes referring to European shipping interests that tell the real story about EU Atalanta.

Suggesting support for such an hypothesis, although Somalia has received aid and the Council has discussed the severe humanitarian situation in Somalia earlier as well, the data does not suggest that there were any discussions in the EU on whether to launch a military (or civilian) EU operation in order to help the Somali people receive humanitarian aid prior to 2008. For instance, in May 2007, the Council urged 'the Somali authorities to do the outmost to remove any obstacles to the free movement of aid' and concluded that the EU would 'step up urgent humanitarian assistance to the population' (Council 2007), but it did not mention the possibility of using military means to reach this goal. This might indicate that Atalanta in reality was launched to secure EU economic interests. Further underlining this possibility, when the MEPs, representatives of the Council Presidency and representatives of the Commission discussed a military operation against piracy in the EP in September 2008, the Presidency argued in favour of Atalanta by referring not only to the need to secure WFP shipments. He also said that 'the truth is that if nothing is done, the freedom of circulation for shipping in the Gulf of Aden and off the coast of Somalia may well disappear entirely' (Bussereau President-in Office of the Council in EP 2008a).

However, if Atalanta was launched due to European economic interests only, one would expect that this was reflected in Atalanta's mandate, in its actual tasks, and that European interests have been prioritised also in theatre. This has not been the case with Atalanta. On the contrary, some MEPs have complained that the EU has prioritised the protection of WFP ships at the *expense of* European interests. For example, 'operation Atalanta is inadequate. It has to become possible to protect not only the routes along which humanitarian aid moves, but also community fishing and merchant vessels' (de Grandes Pasqual, PPE, EP 2009). Also prior to the launch of Atalanta, several MEPs complained that the NAVFOR forces would *not* be protecting European economic interests. For instance, since some European countries have strong economic interests linked to fishing in Somali waters 'the House regrets that the action taken by the Council does not concern the fishing areas in the region' (EP 2008b). Atalanta's mandate was in December 2009 extended to include the monitoring of fishing activities, but this was not part of its original mandate, and the EU force has not been given the mandate to escort fishing vessels. Most importantly, contrary to what one would expect of a traditional great power, the EU force is not used to escort European flagged (or owned) vessels. At a difference to forces from for example China or Russia who have mandates only to protect nationally flagged vessels (interview 27/8-2010), the EU forces' mandate is to prevent piracy and to organise transits of *all* vulnerable merchant ships, in addition to escorting WFP shipments. Actually, for this very reason, both French and Dutch frigates have while at sea occasionally changed from EU flag to national flags in order to escort (or provide military personnel onboard) their nationally flagged ships through areas associated with high risks of attacks. Such escorts cannot be done under the EU flag as it is not part of Atalanta's mandate. Instead, Atalanta's principled task is to escort WFP chartered ships going with aid to Somalia, and this has been followed up even when it involves costs. Since it launched Atalanta, the EU has taken the responsibility for escorting the WFP aid shipments, something that according to the WFP itself 'has offered the long-term solution sought by WFP to provide protection of its shipments' (WFP 2009). According to EU operation commander Rear Admiral Jones 'protection of World Food Program shipping […] is the number one thing that I must do.' To ensure that this happens in practice, 'my force commander in theatre will always allocate sufficient shipping to cover that task', despite this being 'one of the most vulnerable things we do' as the transits are often long and risky (House of Lords 2010). The interviewees supported this claim, arguing for instance that 'a couple of ships are reserved for this task' (interview 17/6-2010). All the interviewees moreover pointed to how Atalanta's focus on WFP shipments makes it different from other international missions, including NATO's Ocean Shield. WFP protection is 'always Atalanta's priority number 1' (interview 21/6-2010). 'The main difference between NATO and the EU is that if they have to choose (what ships to protect), the EU chooses WFP ships' (interview 27/8-2010), even if this is done at the expense of protecting merchant ships. As argued by EU operation commander Major General Howes at a ship-owners' seminar in November 2010 'WFP protection remains the

EU priority. Twenty percent of the (NAVFOR) force is always committed (to this task). It is worth keeping in mind that your ships are less protected because my ships are protecting aid-carrying ships' (Howes 2010).

A humanitarian policy?

Thus, though concern for international and indirectly thereby also European seaborne trade contributed to the EU's decision to act militarily off the Somali coast, there was clearly more behind Atalanta than considerations of economic gain. Instead, so far the analysis suggests that the EU launched Atalanta to secure aid shipments for the WFP. So, was the EU's decision instead in line with what one would expect of a humanitarian actor? If this is so, one would first, expect arguments that refer to the need to launch a military operation in order to protect the ships that carry humanitarian aid for the WFP line with the UNSC resolutions. Second, piracy must have been regarded and treated as criminal acts and the EU must have been willing to bind itself to human rights law when conducting the operation.

Responding to an increased humanitarian problem

The Council's decisions regarding Atalanta suggest that it initially was based on humanitarian concerns. The Council increasingly expressed its concerns about the consequences of piracy for the Somali people, and justified its decisions accordingly. For instance, in its conclusions on the 26 May 2008, the Council 'expressed its concern at the upsurge of piracy attacks off the Somali coast, which affect humanitarian efforts and international maritime traffic' (Council 2008a). Then, on the 15 September, the Council decided to implement a military coordination cell (EU NAVCO, which was later taken over by Atalanta) foremost in order to coordinate and support the military protection of WFP vessels that had been escorted by amongst others some of the EU member states since December 2007. The same day, based on the UNSC resolutions on Somalia, it decided on a 'strategic military option for a possible EU naval operation' (Council 2008a). In justifying these decisions, the Council consistently referred to the UNSC resolutions that were decided on throughout 2008, and humanitarian aid was consistently ranked as the main concern. It is argued that Atalanta was launched in support of UNSC resolutions 1814, 1816, 1838 and 1846 from 2008. These form the mandate of the operation and are listed as parts of Atalanta¨s 'legal basis' on the

Council's web pages. Atalanta is moreover presented as 'part of the European Union's overall action to stabilise Somalia' (GAERC 2008). Also according to the Commission, who most clearly focused on the economic consequences of piracy, it is 'evident that we have a deeper purpose in being here… The Somali people, grossly abused, deprived of their fundamental human rights, deserve a better deal' (Barrosso, 2009: 2).

The hypothesis that EU launched Atalanta to secure aid to Somalia was supported by all the interviews. The threat posed by Somali piracy both to the merchant fleet and to world trade in general is clearly important for understanding why Atalanta has been extended until 2012 and why the military mission has grown bigger. However, initially, Atalanta was launched due to the increase in attacks that happened to the WFP ships prior and in parallel to the increase in attacks on the merchant fleets. 'It (Atalanta) has grown bigger due to the merchant fleet' but 'the initial aim was to protect WFP shipments' (interview 27/8-2010). 'Initially, the increasing problem with the WFP ships was the main concern. It was the media that started focusing on the piracy attacks on merchant ships' (interview 17/6-2010). Most aid going to Somalia is seaborne, and when piracy exploded, 'the problem became too big. Something had to be done, and this was something that the EU could do' (interview 24/6-2010). At the same time, NATO was very reluctant to do something related to Somalia. Its members were therefore only able to agree on short term-operations (like 'Allied Provider' from October to December 2008) and could not provide the 'long-term security of WFP deliveries to Somalia' (UNSCR 1838) called for by the UN (interview 17/6-2008). Faced with a situation where ship-owners were becoming increasingly reluctant to let their ships to carry aid for the WFP, 'the countries that genuinely wanted to do something had to do it through the EU' (interview 17/6-2010).

'A law enforcement operation'

According to the EU, Atalanta is 'a law enforcement operation rather than a war against pirates or an armed conflict' (Commander Dow, House of Lords 2010). This distinction, between an operation launched against international crime and a war-like operation launched against terrorism, was underlined both by the EP and the Council prior to Atalanta's launch. The EP for instance stressed that

> under no circumstances should acts of piracy be considered acts of war […] Council should clearly distinguish between this mandate and the anti-piracy tasks performed by its Member States within the framework of Operation Enduring Freedom-Horn of Africa aimed at countering terrorist activities' (EP 2008b).

In line with this, when asked in the EP in September 2008 why there was a need for a separate EU mission against piracy, the President-in Office of the Council replied, 'dealing with piracy is not within NATO's remit. It does have a mandate for terrorism. They may look similar, but they are not the same thing' (Bussereau in EP 2008a).

However, if the EU acts like a humanitarian actor, the focus on differentiating between piracy on the one hand and acts of war on the other must have been followed up in the EU's actual treatment of pirates. Consequently, pirates that are detained by the NAVFOR forces must be prosecuted convicted and serve their sentences in a way that is consistent with global human rights law, including in cases where this involves costs to the EU itself. Few cases have however been tried in the EU. Instead, the EU signed an agreement with Kenya in March 2009 (and later the Seychelles) about handing over suspected pirates for prosecution and imprisonment, in return for different types of aid. The main reason why the EU hands over pirates to third countries in the region is that 'no-one wants to take the pirates home' for prosecution because this in practice would mean that they seek asylum (interview 17/6-2010). Thus, opposed to what one would expect of a humanitarian actor, the fact that 'all the member states are deterred by the possible risk of asylum-seekers' (EU operation commander Howes 2010) might indicate that the EU has not been willing to bind itself to global law when it involves costs to the EU itself. The agreements made with countries in the region are moreover bilateral agreements, and as such do not constitute an attempt to establish binding global law to secure fair and equal treatment of pirates, as one would ideal-typically expect of a humanitarian foreign policy actor.

On the other hand, the agreements made between the EU and third countries on the transfer of pirates explicitly refer to pirates as criminals and not as persons conducting acts of war, and they contain detailed annexes that describe how pirates should be treated so that their human rights are respected. The EU moreover focused on how to in practical terms make sure that captured pirates are treated as criminals in accordance with their rights also before launching Atalanta. In the Council Joint Action establishing Atalanta it for instance says in Article 12.2 that

> no persons […] may be transferred to a third state unless the conditions for the transfer have been agreed with that third State in a manner consistent with relevant international law, notably international law on human rights' (Council 2008a).

What is more, although this is something that must be studied further, three of the interviewees claimed that the argument that piracy must be treated as a criminal act and not as a terrorist act or an act of war contributed to the member states' decision to establish an autonomous EU anti-piracy mission: A legal framework for the handling of pirates that would not only solve the immigration problem but would do this in a way consistent with human rights law made an EU anti-piracy operation more legitimate than for instance NATO's anti-piracy operations (interviews 17/6, 24/6 and 27/8-2010). One interviewee even suggested that the fact that the EU legal services already in the autumn of 2008 was succeeding in establishing such a framework was a reason why some European states decided to contribute operationally to the NAVFOR force instead of NATO. 'Many countries, like the Netherlands and Germany who initially planned to contribute to the NATO operation changed hats and took part in EU operation instead' since NATO lacked (and still lacks) the legal framework necessary for dealing with pirates in a legitimate way (interview 17/6-2010).

The EU's focus on treating pirates in accordance with their rights has been followed up also in practice, despite its costs. Due to considerations of 'what you do with them and to whom can you hand them over and still be satisfied that their basic human rights are going to be well looked after' (EU operation commander Jones, House of Lords 2010), no detained pirates were handed over to Kenya or any other third country until agreements were in place. The US signed the same type of agreement with Kenya in January 2010, but handed ten pirates over for prosecution already in 2006. In general, if there are unclear evidence or 'the prosecution of the […] individuals in (a) specific case (can) not be initiated with confidence'

(Navfor press 2010), the NAVFOR forces will release and assist any detained pirates even if this strongly reduces the Atalanta mission's deterring effect on potential pirates. The EU has a strong self-interest in arresting and prosecuting pirates or else 'they have a fairly strong sense that there is no risk of capture' (EU operation commander Jones, House of Lords 2010). Still, as the 'EU is very worried about whether the pirates will make it ashore' NAVFOR will provide them with fuel and food to reach shore in cases were arrest is not possible (Howes 2010). According to Major General Howes this is so because 'piracy is a crime' and the response must therefore 'be proportionate to that crime. We are not at war with the pirates' (ibid). By this, the EU's policies towards pirates is very different from what one could expect of a typical traditional great power who mainly acts to protect its own interests and citizens: 'In early May (2009), Moscow sent special forces to act against the hijackers of oil tanker Moscow University, with a pirate killed and 10 captured in a shootout. The Russians said that they put the corpse and the 10 prisoners in a boat, gave them food and water but no navigation equipment, and let them go. Media reports suggest none of the hapless boatload survived' (Leviev-Sawyer 2010).

Concluding remarks

The aim of this paper has been to contribute to a better understanding of EU foreign policy through a study of its first naval military operation, operation Atalanta. To account for Atalanta's launch, I applied a framework that differentiates between two models of foreign policy, namely a 'humanitarian' and a 'traditional' foreign policy.

The analysis confirmed that the EU used the increase in piracy outside Somalia as an opportunity to prove its self-sufficiency as a foreign policy actor. It also suggested that the EU was concerned with protecting world shipping from piracy due to its economic consequences. However, Atalanta was not launched to protect European shipping interests or to balance against other great powers. Rather, Atalanta was initially launched to promote and uphold UN resolutions in a legitimate way. In particular, the analysis suggests that taking responsibility for the long-term protection of humanitarian aid to Somalia was a mobilising argument behind Atalanta and that this has been followed up in practice. Contrary to what one would expect of a traditional great power, the EU has not prioritised its own interests (European ships), and has bound itself to global law in its dealings with pirates. With Atalanta, military means were established to uphold global law, as part of a law enforcement operation.

These findings could not be captured by the existing literature, where the type of policy conducted often has been linked to the means applied or to whether or not it is other-regarding. To capture a putative 'normative' policy involving the use of military force, this article applied a framework that defined a 'humanitarian actor' as someone who binds its actions to global law as the main indicator. This made it possible to control for whether or not the EU used norms rhetorically only, and it showed that the EU conducted a humanitarian policy without necessarily being altruistic. Without applying this framework I would not have been able to see whether or not Atalanta was based on more than self-interests.

Atalanta proved to be a case that is particularly suited to examining the relevance of the concept of a humanitarian actor. This is so as here, the 'target' of the mission, the pirates, is a relatively easily identifiable group. This made it possible to empirically distinguish a law enforcement operation conducted in line with global law from an operation where the use of force is applied in defence of particular interests, in accordance with the principle of sovereignty. Conducted as a law-enforcement operation, the analysis found that the EU's behaviour very much was in line with what one would expect of someone seeking to domesticate international relations.

However, one might question whether these findings can be generalised to other cases involving the use of force in third countries. In some ways, Atalanta is not a typical example as the use of military means is limited, targeted only towards pirates at sea. It might thus prove more difficult to operationalise the idealised concept of a humanitarian policy in cases such as military interventions. With military interventions, what it means to domesticate international relations and to bind one's behaviour to global law may be less clear than when dealing with pirates off the coast of Somalia. The difficulties involved in empirically specifying the concept of a humanitarian foreign policy in a world that is still mainly organised around Westphalian principles was also evident in the Atalanta case. Though it is clear that a humanitarian policy must respect the rights of all individuals, the framework did not help me specify what kind of changes in global law one would expect the EU to promote in order to testify to a humanitarian actor. This being said, on the basis of this analysis, it is clear that a particularly important indicator would be whether or not the threat of force is conceived of as a means to ensure that global law is respected, i.e. the extent to which it is applied as part of a law-enforcement operation. Only then would the EU be contributing to a domestication of international relations, from power politics to the equal protection of individuals. If so, the EU must act in accordance with human rights law, including in cases where this involves costs to the EU itself.

Though accounting for Atalanta, this study did not aim at saying anything about *why* the EU, by acting like a humanitarian actor, is different from foreign policy actors as we conventionally perceive of them. However, the analysis of why it launched Atalanta suggests that the EU's foreign policy particularities might be linked to the member states' perceptions of what constitutes legitimate common EU foreign policy behaviour. There is one finding in particular that point in this direction. The fact that member states contributing with military forces to the Atalanta operation lower the EU flag and operate strictly under national flag when they want to protect particular interests indicates that the 'rules of behaviour' are different under EU than under national flag. If this is so, if certain norms of legitimate behaviour are important for understanding why the member states act differently under EU and national flag, the EU might have what can be called a 'civilizing effect' on its member states. An implication might also be that two parallel but very different security systems are developing within Europe – one European, underlined by the principle of global law in line with a humanitarian model, and one composed of the member-states acting in favour of their particular national interests, on par with other nation-states, either unilaterally or as part of other multilateral constellations.

Notes

[i] Empirically, the two types of arguments will always overlap.

[ii] This does not imply that there was no disagreement amongst the different actors, for instance on Atalanta's mandate. The aim when conducting the analysis is however to discover what it was that mobilised action, even though some might have disagreed to what became the final decision.

[iii] Selections based on the search-words 'Somalia' and 'piracy'.

Acknowledgements

I want to thank Dirk Peters and an anonymous reviewer for helpful comments and suggestions. In particular I want to thank Helene Sjursen for helping me sort my arguments and make them into an article, and Guri Rosén for reading and commenting on more than a few draft. Thanks also to the participants at the panel on Operation Atalanta at the 7th Pan-European IR conference, Stockholm 9-11 September 2010 and at the Recon Workshop 'What kind of democracy for what kind of European foreign and security policy?' in Oslo 16-17 September 2010. I am grateful to the Norwegian Ministry of Defence for financing this research. This article emanates from RECON (Reconstituting Democracy in Europe), an Integrated Project supported by the European Commission's Sixth Framework Programme (contract no. CIT4-CT-2006-028698).

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Chapter 4

From reason-giving to collective action: Argument-based learning and European integration[1]

Abstract

The aim of this article is to contribute to the further development of deliberative theory as to make it more applicable to research on EU integration by establishing alternative and more concise micro-mechanisms to those of the rationalist bargaining perspectives. It suggests that the micro-mechanism through which deliberation has an effect on outcomes is what is termed *argument-based learning*. Argument-based learning means that an actor accepts the validity of a presented argument so that (s)he acts upon it. The article moreover differentiates between three types of argument-based learning that is considered relevant in the EU context. On this basis, it suggests a two-step analytical approach for studies of EU decision-making processes. To try out the empirical relevance of the framework, it is applied to a case where one would not expect agreements on common EU policies to have been reached due to argument-based learning, namely EU coordination towards the Maritime Labour Convention (MLC). The framework proved helpful for accounting for agreements that are puzzling from a rationalist perspective.

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[1] Forthcoming in 2011 in *Cooperation and conflict.*

Introduction

Following the rapid growth in international institutionalisation since the early 1990s, an increasing number of studies are finding Habermas' theory of communicative action helpful when seeking to explain international agreements that are puzzling from a rationalist perspective.[i] Following rational choice based perspectives; states enter negotiations when collective action is perceived necessary to achieve their goals. Agreements are then reached through processes of bargaining, where factors like asymmetrical interdependence decide the final outcome (see, amongst others, Bailer, 2010; Moravcsik, 1998; Tallberg, 2008; Ward, 2002). The actual level of international cooperation is however much higher than one would expect on the basis of these assumptions. This is not least so in the European Union (EU). To account for European integration, scholars applying the theory of communicative action instead start from the assumption that actors operate in a social context where they coordinate behaviour through language. The basic assumption is that actors are communicatively rational, meaning that they are able to justify and explain their positions, and that they have the ability to evaluate arguments presented by others. By this, one opens up to more ways in which states voluntarily may reach agreements on collective action. Analytically, agreements can be reached through bargaining reflecting their relative interests and strength, *or* they can be reached through deliberation, through processes of reason-giving where at least some actors change their preferences due to arguments presented (Eriksen, 2005; Habermas, 1996; Sjursen, 2004).

When wanting to explain why states commit themselves to binding cooperation, the strength of using Habemas' theory of communicative action is the focus put on the policy-making *process*, on how preferences might change during negotiations as the actors involved are convinced by each other's arguments. A main challenge facing researchers applying deliberative theory has, however, been to make the theory relevant for empirical research. There is little scholarly agreement on what is understood by the concept of deliberation, when it is defined it is often underspecified, and it is thus often difficult to operationlise and study empirically. In particular, few deliberative scholars are clear on *why* and *how* deliberation matters for international or European integration – on how and why deliberation affects policy-outcomes (see amongst others Bächtiger et al., 2008; Janssen and Kies, 2005; Thompson, 2008).

Many claim that deliberation is important for understanding European integration, but few have opened the ‘black box’ of deliberation and specified the mechanisms by which deliberation might lead to agreement on common policies (see however Deitelhoff, 2009; Eriksen, 2009 and Sjursen, 2004.)

The aim of this article is to contribute to making deliberative theory more applicable to studies of European integration by establishing alternative and more concise micro-mechanisms to those of the rationalist bargaining perspectives. It is argued that deliberation has behavioural consequences only when actors change their positions due to arguments presented (Eriksen 2009). Thus, when applying the theory of communicative action as an explanatory theory, there is a need to analytically specify and empirically study the micro-mechanisms through which arguments influence positions and thus establish a basis for collective action (Eriksen, 2009; Sjursen, 2004). One must specify what is meant by deliberation; the mechanisms by which it putatively affects policy-outcomes as well as how to study this empirically. To contribute to this, this article suggests that *deliberation* should be defined as a policy-making process where the actors involved justify their positions and proposals by *actor-independent*, i.e. mutually acceptable, arguments (Habermas, 1996). It moreover suggests that the micro-mechanism through which deliberation has an effect on outcomes is what is termed *argument-based learning*. Argument-based learning means that an actor accepts the validity of a presented actor-independent argument so that (s)he acts upon it. In studies of any empirical case, this implies that one must study first, whether there is evidence of deliberation, i.e. of actor-independent arguments, and second, whether there is evidence to suggest that these arguments influenced the actors’ positions and thus had an action-coordinating effect. Without evidence to suggest that at least some of the actors involved learned from the arguments presented – i.e. accepted some of the arguments as valid and changed their behaviour accordingly so that agreement could be reached – one does not know if deliberation had any effect on the outcomes.

To illustrate the empirical relevance of this framework, it is applied in a study of EU coordination in the process of consolidating and updating the International Labour Organization (ILO) maritime conventions, resulting in the adoption of the Maritime Labour Convention (MLC) in February 2006.[ii] As EU foreign policy formally is intergovernmentally organised and goes to the core of the member states' sovereignty, this is an area where one given rationalist assumptions would *least* expect common policies to be the result of more than strategic bargaining between the member states.[iii] Shipping is moreover an area where many member states have strong national interests and traditions and the opposition towards forming a common EU policy therefore has been particularly strong.[iv] From the outset, one would thus not expect binding EU agreements towards the MLC to have been reached due to argument-based learning, making it a suitable case for testing out the relevance of the analytical framework.

The article is organised in three parts. First, it spells out the concept of argument-based learning and presents the analytical framework and the methodology used to study if such learning helps account for collective agreements, using agreement on common EU positions towards the MLC as an example. In the second part, the framework is applied in empirical analysis. As a first step, it is shown that perspectives focusing on bargaining between actors with given preferences cannot fully account for common EU positions. The analysis then goes on to study if argument-based learning helps account for some of the agreements that are particularly puzzling from a rationalist perspective. In line with the conceptual framework, this is done by first, looking at whether or not there is evidence to support that the EU actors justified their positions and proposals by actor-independent arguments, and second, if the data also suggest that they accepted such arguments as *valid*, and therefore agreed to common EU positions. Lastly follows a summary of the main findings and a discussion of some of this article's theoretical implications.

Theoretical framework: How to account for agreement?

The conventional understanding: strategic bargaining

At the core of all rationalist IR perspectives lies the basic assumption that actors are strategically rational (see amongst others Mingst, 2004; Moravcsik, 1998; Snidal, 2001; Ward, 2002). States will always choose the action that best serves their preferences, on the basis of cost-benefit calculations in light of other actors' presumably equally strategic behaviour. They enter international negotiations when collective action is perceived necessary in order to achieve their goals. If agreement is reached, it equals the sum of the states' exogenously set, fixed preferences, which are aggregated through processes of bargaining, i.e. processes where agreements are reached 'through credible threats and promises' (Elster as cited in Eriksen, 2009: 22). Ideal type bargaining is thus a form of communication characterised by actor-relative arguments, i.e. arguments that are linked to the properties of the speaker and that constitute good reasons only for the one who utters them (Eriksen and Weigård, 2003; Habermas, 1996: 321). For the coordination of action, it is not the substantial content of the argument as such that matters, but rather the credibility of the speaker presenting the threats or promises. It is the power-relations, the relative strength and asymmetrical interdependence between the actors, which decide the final outcome (Bailer, 2010; Moravscik, 1998).

The EU MLC process: Puzzling agreements

These expectations do not seem to fit EU coordination towards the MLC. When EU coordination started in 2003, the member states' preferences strongly diverged. Prior to the MLC process, there were no formal or informal practices of consultation or coordination amongst all the member states in the ILO maritime. Instead, at the outset, many of the member states even resisted the very idea of forming a common European policy towards the MLC. Shipping is strongly linked to perceptions of national identity and constitutes an important part of the national economy in a number of member states. These countries have therefore sought to maintain their sovereign right to define policies related to the maritime sector. Thus, when EU coordination towards the MLC started in 2003, there was not much European legislation to speak of on the matters to be dealt with in the Convention (Hoffmeister 2007, Riddervold 2010). Only certain health and safety requirements were covered by existing Community regulation. Policy on other issues such as social security, repatriation, regulations on pay, enforcement and control were fully or partly decided upon at the nation state level (for an overview, see Tortell et al., 2009: 119-22). The maritime sector is moreover a sector in which there have been large discrepancies in national legislation. Greece, Malta and Cyprus have had little labour and social regulation in shipping, and their preferences were initially closer to the positions of countries like Liberia and Panama than with many of their European partners.

These countries were not only sceptical to EU coordination, but also opposed to a strengthening of the social and working rights of seafarers. A stricter global rights regime for seafarers made binding on the EU member states would be very costly for them. Other member states with strong shipping interests, such as Germany, the UK and the Nordic states, had already introduced relatively strict regulations of seafarers' working conditions. However, also these member states opposed a common EU policy in a wide area of issues covered by the Convention. The Nordic countries, the Netherlands, Belgium and the United Kingdom (UK) for instance strongly opposed to form a common EU position in the area of social security. While Germany and Denmark threatened not to ratify the convention or to leave the EU discussions unless their positions on particular provisions were reflected in the coordinated EU positions, flagging these positions as non-negotiable (on regulations 1.4 and 2.3 respectively).

Still they later agreed to different outcomes. Despite the member states' diverging interests and their resistance towards a common European stance, during EU coordination held in between and during the different ILO meetings discussing the MLC draft, common EU positions were formed towards all parts of the comprehensive Convention. This was so also in the many areas that fall outside community competence, resulting in the EU becoming the main promoter of high standards in the Convention. From a rationalist perspective, these agreements seem difficult to explain; in particular as the member states knew that the outcome would be made binding through common implementation.[v]

Communicative action: deliberation

When seeking to explain why states commit themselves to binding cooperation, the main problem with rationalist perspectives is that they do not allow for the possibility that the actors' preferences might change during the policy-making process (see amongst others Kratochwil, 1989; March and Olsen, 1998; Ruggie, 1998; Sjursen, 2004). A growing number of studies are therefore applying elements of Habermas' theory of communicative action.[vi] From this theory it follows that states might reach agreement on collective action not only through interest-aggregation but also through *deliberation*, through policy-making processes where they justify their positions and proposals by mutually acceptable arguments (Eriksen, 2005;

Habermas, 1996). A main challenge facing researchers applying deliberative or communicative theory has however been to make the theory relevant for empirical research. There is little agreement on what is meant by deliberation and, most importantly, on *why* and *how* deliberation affects policy-outcomes (see amongst others Janssen and Kies, 2005; Thompson, 2008). Claiming that it is difficult to trace the impact of deliberation empirically, scholars of European integration have therefore focused 'on the social and institutional context in which arguing takes place' (Risse, 2004: 300), arguing that

> instead of stipulating *whether* actors use arguments and reason to justify their actions and their interests, we need to focus on the conditions under which arguing and reason-giving actually matter. (ibid., 299).

This is problematic. Of course, deliberation/arguing does not take place in a social vacuum. On the contrary, deliberation takes place in a social context and that this context is important also for understanding policy-making outcomes. Factors like the existence of certain institutional structures or standards for appropriate behaviour (March and Olsen, 1998) might for instance be important in order to understand why states enter into negotiations in the first place or why some arguments lead to agreements while others do not (Eriksen, 2005; Risse, 2004). This is not least so in the EU, where the level of institutionalisation is high and where contextual factors like common norms and socialisation have been shown to influence negotiations.[vii]

However, the explanatory effect of deliberation lies at the micro-level: It is only when actors are convinced by the arguments presented and therefore change their behaviour accordingly that deliberation has an effect on outcomes. When using the theory of communicative action as an explanatory theory, one must thus ask not only whether or not there is evidence of deliberation, but also whether or not this deliberation mattered for the outcomes. This cannot be deduced from scope-conditions. Even if the researcher finds that certain contextual factors were present in a given case, one cannot conclude that the policy-process therefore was characterised by deliberation. And even though one also observes extensive reason-giving one cannot conclude that the arguments and justifications used actually had any effect on the policy-outcomes agreed to. In other words, observing the existence of certain contextual factors cannot tell us whether or not the actors are deliberating. And evidence of deliberation in itself does not tell us what led to agreement on a given policy. Thus, if one wants to use the theory of communicative action to better understand collective action at the international level, the question remains: What are the mechanisms through which deliberation might lead to agreement on common policies; why do arguments influence policy-making outcomes?

To contribute towards answering this question and thus make deliberative theory more applicable in empirical research, this article argues that one needs to develop an analytical framework that more clearly specifies the mechanisms through which deliberation influences the actors' preferences and thereby has an action coordinating effect. It is argued that *argument-based learning* is one such mechanism.[viii] Argument-based learning means that an actor accepts the validity of an actor-independent argument so that (s)he acts upon it.

This analytical claim builds on three assumptions. First, it builds on the assumption that actors are communicatively rational, meaning that they are able to justify and explain their actions and to evaluate the validity of arguments presented by others (Eriksen, 2009; Risse, 2004; Sjursen, 2004). Second, it builds on the assumption that some justifications can be perceived as valid by all the actors involved in a given policy-making process. The ideal type of deliberation 'always involves reference to a mutually accepted external authority to validate empirical assertions' (Risse, 2004: 298). As these are arguments that in principle can be accepted by all in a free and open debate, such arguments can be called actor-independent arguments (Habermas, 1996: 320-325). Hence, analytically distinct to bargaining, deliberation is in this article defined as a process where the actors justify their positions by reference to actor-independent, i.e. mutually acceptable, arguments. Third, defining actors as communicatively rational implies that, when faced with a common problem, actors 'try to reach an agreement on how it should be understood and solved' (Eriksen, 2009: 27). Reaching agreement on the nature of the situation and the norms that apply is an integral part of a deliberative process (Deitelhoff, 2009; Eriksen, 2005; Risse, 2004).

Argument-based learning: empirical expectations

On this basis, if a particular collective policy-making outcome outcome can be explained by argument-based learning, one would expect to find evidence of actor-independent arguments *and* to be able to empirically trace concrete agreements back to these arguments. The argument is the independent variable, the 'first mover', but it only explains a policy-outcome when it is accepted as valid so that it is acted upon. In empirical terms this means, first, that one would expect the negotiating actors to justify their positions and proposals with actor-independent arguments. Actor-independent arguments are characterised by reference to 'intersubjectively recognised validity claims' (Habermas 1996: 333) – they refer to something that in principle could be accepted as being true or right by all actors in a given social context. Empirically, such arguments are thus characterised by reference to facts or norms. In a heterogeneous setting such as the EU, they may refer to expert knowledge, to existing EU legislation,[ix] or to universally acceptable norms (i.e. individual human rights). These are arguments that are more likely to be accepted as valid by all the member states in situations where their material interests or socio-cultural norms diverge (Eriksen, 2009; Risse, 2004).

The illustrative case, the MLC, covers social and labour law based on basic rights in the area of shipping. If EU negotiations towards the MLC were characterised by deliberation (i.e. reason-giving where the actors use actor-independent arguments to justify their positions) one would thus expect three types of actor-independent arguments: law-based arguments, i.e. arguments referring to already existing EU/Community legislation; factual arguments, i.e. arguments referring to scientific or specialist knowledge relevant for specific provisions in the convention, and lastly norm-based arguments, i.e. arguments referring to seafarers' social and labour rights.

However, empirically identifying actor-independent arguments is only the first step in the analysis. Even if there is evidence of deliberation, i.e. one observes that different actors in different forums use actor-independent arguments; one cannot from this conclude that these arguments led to agreement on particular collective policies. The next step is therefore to study if there is evidence to suggest that the actors considered such arguments as valid so that they acted upon them. This means first that one must show that the outcomes are more than package-deals reflecting the actors' resources and their relative interests in the different issues discussed (see also Deitelhoff, 2009). In the EU MLC context, the most powerful actors are in general 'the big three': Germany, UK and France. In addition, Greece, Malta, Cyprus, Denmark and Italy are considered to be powerful in economic terms in the area of shipping also (UNCTAD, 2007). Second, if instead any of the actor-independent arguments outlined above led to agreements, one would expect to find evidence suggesting that three corresponding types of learning led to agreement on common policies: (i) law-based learning, meaning that arguments referring to the existence of common EU legislation were accepted as valid; (ii) factual learning, meaning that arguments referring to expert knowledge in the field were accepted as valid; (iii) norm-based learning, meaning that arguments referring to the individual rights of the seafarers were accepted as valid by the actors involved so that they acted upon them.

Methodology

In order to study if EU coordination towards the MLC was characterised by actor-independent arguments, and if so, if there is also evidence to suggest that such arguments led to agreements on common EU policies, the delegation members' interventions during observed EU coordination meetings, most importantly at the Preparatory Technical Maritime Conference (PTMC) in Geneva 13-24 September 2004 were interpreted and sorted. This shows if the actors used threats, promises or opened up to package-deals, and it gives an indication of the type of arguments the actors used to justify their positions during these meetings.[x] Learning on the basis of arguments was then studied by tracing and qualitatively interpreting the development of the actors' argumentation during the observed EU meetings, and by triangulating with other data, first and foremost from interviews conducted with the different actors.[xi]

Given the overall theoretical aim of the article and the high number of issues covered by the MLC, this article only focus on accounting for EU agreement on specific provisions and policies where there was strong initial disagreement, or where one of the powerful countries expressed that it had particularly strong interests. These are agreements where one from the outset, following rationalist assumptions, would not expect the member states to reach agreements on common polices given their initial preferences.

Why did they agree? The importance of argument-based learning

Package-deals?

Following the suggested framework, the first step in the analysis is to study if there is evidence to suggest that the outcomes are more than package-deals reflecting the member states' relative powers.

During the observed EU meetings at the PTMC, roughly one third of the member states' interventions regarding specific provisions referred to their national interests or to the draft provision's expected economic consequences (coordination meetings, 13-24/9-2004). Threats of not ratifying the convention were used seven times by Germany and Denmark on two specific issues at four different coordination meetings; when discussing regulations on recruitment and placement (regulation 1.4) and whether or not to exempt the master from regulations on hours of rest and work (regulation 3.2) respectively (coordination meetings, 13/9, 16/9, 17/9 and 18/9-2004). Both countries threatened to not ratify unless their particular national positions were reflected in the final MLC. For instance: 'Germany can not ratify the convention' unless the proposed reg. 1.4.3. is deleted, because it would be 'impossible in Germany' due to the perceived costs of changing existing German law and administrative procedures (coordination meeting, 13/9-2004).

However, these threats did not make the other member states accept Denmark or Germany's proposals. This was so despite the fact the other member states perceived the threats as credible, indicated for instance by how the Presidency following Germany's threat to veto focused the discussions on 'finding a solution to the German problem' (coordination meeting, 13/9-2004). Actually, threats or references to national interests or costs did not lead to agreement on common policies in any of the meetings observed – even when used by the powerful countries in discussions on issues referred to as nationally sensitive or non-negotiable. Neither did the member states open up to package-deals. In the meetings observed they did not trade support in one area for support on another, or relate the discussion to other issues as part of package-deals (interviews and coordination meetings, 13/9-24/9-2004). There is no evidence to suggest that the EU MLC process was part of a wider EU package deal and none of the observed EU discussions ended in voting, as one would expect in typical bargaining sequences.

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

Influence linked to resources?

During interviews, all the member states claimed that EU coordination influences their national positions, but only one member state linked this to the member states' asymmetrical powers, arguing that 'strong countries are more influential' in terms of determining the common EU position (interview, 15/9-2004). When asked, all the interviewees, including the delegate also referring to power, instead referred to the importance of having convincing arguments, saying for instance that 'those who talk and raise the right topics', who have 'competence and experience' (interview, 15/9-2004) were the most influential actors in the discussions.

In practice, however, this meant that 'the old 15 are more influential together with Malta and Cyprus. They have resources and do better preparation, have more experts […], are always prepared, informed' (interview, 15/9-2004). Moreover, there were informal contacts between the countries traditionally seen as close. There was for instance close cooperation between the Benelux-countries and between Malta, Cyprus and Greece, and several Nordic meetings were held during the process (observations, 2004; interviews, 21/9-2004, 23/5-2005). The interviewees confirmed that there were such informal alliances. However, opposed to what one would expect if the EU agreements reflected informal package-deals formed within or amongst these groups, the interviewees did not refer to the same alliances or groupings. None of the interviewed suggested that informal package-deals amongst the member states were decisive for understanding any of the outcomes (interviews, 13/9-23/9-2004). Nor did the observations suggest a clear link between having a lot of resources and being active in the discussion on the one hand and influencing on the outcomes on the other. Instead, it is particularly puzzling that countries with a lot of resources during the process changed their positions in areas they initially flagged as sensitive or even non-negotiable, like the UK, Germany, Greece and Denmark. This is not something one would expect if EU agreements reflected informal package-deals, decided on amongst the powerful member states prior to the coordination meetings. What is more, also small countries had influence. For instance, according to one interviewee, 'Luxembourg have come up with many good suggestions' that solved internal EU-disagreements, despite being a country with few resources both in terms of power, delegation size and national preparations (interview, 21/9-2004).

From bargaining to deliberation

Clearly then, though influence on common outcomes was linked to the level of preparation and expertise and thereby indirectly to resources, there was more to EU coordination towards the MLC than one would expect from a bargaining perspective. Instead, opposed to what one would expect in bargaining processes, there was a development over time from 'a deep distrust towards EU coordination when it all started' towards 'less strategic behaviour and less use of threats' and 'after a while very open discussion' (interview, 8/12-2008). From 2003 and up to the start of the PTMC in September 2004, 'there was quite a lot of 'we either do it this way or we won't proceed with the coordination meetings' (interview, 23/5-2005), illustrated for instance by Germany and Denmark's use of direct threats of withdrawal, or by how Greece explicitly opposed EU coordination during ILO meetings. Threats of exiting or not ratifying the MLC however decreased during the PTMC onwards and finally fully disappeared from the delegation members' argumentation (coordination meetings, 13-24/9-2004; interview, 23/5-2005; interview, 8/12-2008).

> The PTMC was a watershed (in EU coordination) where everyone understood they had to behave and focus on the content […] from then on there has in general been a good tone in the discussions' (interview, 8/12-2008; observations 2004).

Much of this early distrust and suspicion was related to disagreement on the appropriate role of the EU in the ILO. Once it was agreed that the Council should decide on a negotiation mandate, settling the role of the Commission in the process, it was easier to focus on the substantive content of the convention (observations and interviews, 2004; interview, 23/5-2005; interview, 8/12-2008). However, even if important for the tone and issues discussed at the meetings, this removal of a sensitive topic, thereby reducing conflict, does not in itself explain the increasingly more open discussions and the disappearance of the use of threats. Instead, the data suggest that we must look at the effect of exchanging arguments during discussions in EU coordination meetings. By taking part in these meetings and discussing the different issues, the delegates 'got used to talking to each other, they trusted each other more' and 'we saw that it was helpful to talk things through' (interview, 8/12-2008).

This development, from bargaining and distrust to a situation of discussions characterised by openness and 'a very good tone' (interview, 8/12-2008), contradicts the rationalist expectation that bargaining will become tougher as the negotiations proceed towards a final decision, in particular when the outcome is binding. What is more, opposed to what one expects of bargaining processes, where all seek to optimise their interests and resources are decisive, 'some countries are seen as positive, trying to find good solutions' (interview, 23/5-2005). These were seen as more influential than 'the negative countries that block good solutions' and might 'win battles but not the war […] Others are irritated because this is not a constructive way of working' (ibid.). Instead, to influence on outcomes 'you need rational arguments, good arguments' (interview, 23/9-2004). As argued by one delegate, the EU meetings are helpful because one 'understands the issues better when hearing different views, [they] give you a better picture' (interview, 16/9-2004). Is there evidence to suggest that the member states reached agreements on controversial issues because at least some of them changed positions due to argument-based learning?

Convinced by actor-independent arguments?

Law-based learning?

When asked during interviews if they might change their national positions on the MLC and if so why, all 11 member states said that the EU meetings are important because one learns of existing common legislation, arguing for instance that 'it is impossible to know of all relevant EU legislation since the Convention is so broad' (interview, 6/9-2004).

During the observed coordination meetings, both the member states and the Commission justified particular positions by referring to existing Community law, foremost in discussions on health and safety-related regulations (observations, 13-24/9-2004). In particular, according to an interviewee, the Commission's legal clarifications regarding the content of the MLC and its relevance for existing EU-regulation 'have been very useful since we can't know everything' (interview 22/9-2004). Also the member states referred to existing EU-regulation when arguing for or against different positions, primarily in discussions on health and safety-related regulations. When presented, and explained and clarified, such references to existing Community law led to agreement on common positions in several of the meetings observed. Examples are 'we want to strengthen the principles […] in accordance with the framework directive on health and safety' (coordination meeting, 22/9-2004), or 'we believe that this is not in accordance with the working-time directive' (coordination meeting, 13/9-2004). When the issues discussed clearly fell under Community competence, positions justified by such regulations were supported, settled the discussion and led to agreement on EU policies. As these examples suggest, EU positions were thus settled because arguments referring to existing Community directives were presented, the member states accepted their relevance for the issue discussed and therefore adapted their positions accordingly. This would be in line with findings from previous studies (Tortell et al., 2009), suggesting that international EU positions often reflect a wish to project already existing EU regulations onto international standards.

However, in many cases of initial disagreement, law-based arguments did not automatically gain acceptance. Many of the longer and more intense discussions eventually leading to agreement were on the issues that fully or partly fall *outside* of Community competence (observations, 2004; interview, 8/12-2008). During these discussions, the member states often disagreed on whether or not an issue fell under Community competence as well as on what EU-directives might be relevant. Examples are the discussion regarding the regulations on onshore complaint procedures, discussions on conditions of employment (including employment-contracts and working time, which Germany and Denmark initially flagged as non-negotiable), the control and enforcement of the Convention, and social security. Law-based learning is important for understanding agreement on common EU positions on several of these issues. One example of how law-arguments when accepted as valid led to changes in member states' positions so that common EU position could be formed is the agreements reached in the area of social security (regulation 4.5). As the Community is responsible for the coordination of social security schemes, the Commission argued that social security falls under Community competence (Commission, 2005: 3) but this was strongly opposed by for instance Belgium, the Netherlands, the UK and Denmark (coordination meeting, 18/9-2004; letter from the Netherlands to the Commission). This changed during the process. During the coordination meetings these member states accepted the Commission's argumentation and therefore agreed to form a common policy. Of particular importance was the UK's change of positions. It accepted the Commission's argumentation and therefore changed its position to instead promote 'a European approach' (coordination meeting in Brussels 26/2-2004). Another example of how arguments presenting a new or different interpretation of legal provisions are important for understanding common EU positions is the agreement reached following the changes in Germany's positions on employment agreements. Initially, Germany argued that its position on this regulation was non-negotiable and threatened to veto. However, during the coordination meetings, also according to the German delegation itself, Germany understood in what way the draft MLC provision was in line with existing EU legislation (interviews, 15/9-2004, 11/2-2008, 28/3-2008).

Factual learning?

The data also suggest that EU agreements were reached because powerful member states changed their positions due to factual learning – they accepted arguments referring to scientific or specialist knowledge as valid during the meetings and changed their positions accordingly. One example is the change in the UK's position on complaint procedures. In this case, expert-information running contrary to the UK's initial position was presented at a coordination meeting (18/9-2004). Due to this argument, the UK delegate asked for time to get a new national mandate and later changed the UK's position accordingly. Also German positions were influenced by factual arguments. An important example is its positions on regulations on employment agreements (regulation 1.4), which initially was flagged as a threat to German ratification. During the discussions in and between the ILO-meetings Germany however changed its position on this issue because it 'understood that it had to be different' (interview, 11/2-2008). Based on the arguments presented, Germany was convinced that the draft provision was a good way of organising employment agencies and that it was in line with EU legislation – it accepted both factual and law-based arguments as valid and therefore changed its position accordingly so that agreement could be reached (observation, 2004; interviews, 11/2-2008, 28/3-2008). According to the German delegate, German preferences changed also as a result of listening to the discussions during the internal meetings (interview, 15/9-2004). This impression was shared by the other delegates later in the process: 'Germany has given in on a lot due to learning during the process. They have learned what is really in the convention' (interview, 23/5-2005).

Normative learning?

Roughly one third of the interventions regarding specific provisions observed during the EU PTMC meetings foremost referred to the individual rights of the seafarers. Most importantly for understanding agreements, references to seafarers' social and labour rights were not met with counter arguments referring to costs or to national interests, and as a consequence, due to these arguments, common positions were set (see also Riddervold, 2010). A telling example of how normative arguments led to changes in member states' positions and thereby to agreement on common EU positions is from the EU discussions on the scope of the MLC (coordination meeting, 17/9-2004). When interviewed, a delegation member said that her country due to economic considerations had a national interest in limiting its scope. Still, in the EU meetings the same member state refrained from opposing a common EU position that ran contrary to the country's initial position when it was justified with reference to its importance for securing the seafarers' social and labour rights. By not opposing the suggested position, the member state agreed to an outcome that differed from its initial preferences, without this being part of a compromise or a wider package-deal. Another example of how normative arguments led to EU agreements is how UK 'with its very strict view on rights and rules has exercised much influence on EU positions as 'no one could argue against' its reference to rights (interview, 8/12-2004). This was observed, for instance, in the EU discussions leading to agreement on article III (coordination meeting, 14/9-2004), and regulation 1.8 (coordination meeting, 13/9-2004), where the UK justified its positions by referring to rights, no one opposed these proposals and common positions were formed. Arguments referring to seafarers' social and labour rights are important also for understanding what led Denmark to change its positions on regulation 2.3. In this case, the Danish interpretation of the relevant EU regulations was different from that of the Commission and the other member states. Disagreement was however not settled during the coordination meetings. Instead, the topic was taken to the Council, where the member states finally agreed that masters are not exempted from regulations on hours of work and rest, thereby leading to a different common position than the one initially preferred by Denmark. According to two delegation members, the UK's insistence on the importance of limiting fatigue was important for settling this position because 'Denmark couldn't argue against that argument' (interviews, 23/9-2004, 8/12-2004; coordination meeting, 13/9-2004).

Consequently, the fact that arguments referring to seafarers' social and labour rights were not objected to and thereby settled concrete coordinated positions indicates that the actors involved accepted the validity of these arguments so that they acted upon them. In particular, such learning seems important for understanding the changes in the positions of Greece, Malta and Cyprus. The fact that they changed positions from initially opposing any regulation in this area to in the end being parts of an EU group promoting high standards suggests that they accepted that seafarers' rights should form the basis of common EU policies during the process. To some extent, Malta, Cyprus and Greece learned the rules of the EU game 'the hard way' by having to explain their outspoken opposition to EU coordination in a closed Council meeting in 2005 (interview, 23/5-2005). However, though the Council in the 2005 negotiation-mandate made it clear that it is not appropriate to oppose EU positions internationally, this does not explain why they accepted a policy of promoting high standards. These countries were 'originally opposed to (the) costs' following EU implementation of strict standards, but during the process 'they understood that it is rational with one instrument' (interview, 28/3-2008). Despite initially underlining that many positions were absolute, also according to these countries themselves, coordination 'has helped to better understand the positions of the others and take these into consideration' (interview, 20/9-2004). According to an interviewee, Cyprus and Malta 'almost had to change identity […] [from] in the beginning identifying with the other open registers to becoming EU members' (e-mail, 20/3-2009).

Main findings and theoretical implications

The aim of this article was to contribute to the further development of deliberative theory as to make it more applicable to explanatory research on EU decision-making processes.

Starting from the assumption that integration might come about through deliberation as well as through bargaining, the argument was that deliberation has behavioural consequences only when actors change their preferences due to presented arguments. Thus, when using the theory of communicative action as an explanatory theory of collective action, one must analytically specify and empirically study the micro-mechanism(s) through which arguments might influence preferences and thus establish a basis for collective action (Eriksen, 2009; Sjursen, 2004). This article claims that that what is termed *argument-based learning* is one such mechanism. Analytically distinct to bargaining, *deliberation* was defined as a policy-making process where the actors involved justify their positions and proposal by *actor-independent*, i.e. mutually acceptable, arguments (Habermas, 1996). *Argument-based learning* means that an actor accepts the validity of a presented actor-independent argument so that (s)he acts upon it.

By focusing on argument-based learning, it was possible to specify how to proceed in order to empirically study the putative action-coordinating effect of deliberation. To study EU decision-making processes, the article suggested an approach where one firstly studies if there is evidence to suggest that the policy-making process was characterised by deliberation, i.e. actor-independent arguments, and secondly studies if there is evidence to suggest that the actors considered such arguments as valid so that they acted upon them. This is important as hypothetically, one might observe perfect deliberation, where all actors involved justify their positions by referring to actor-independent arguments. However, without evidence to suggest that at least some of the actors involve learned from these arguments – i.e. accepted any of these arguments as valid and changed their behaviour accordingly so that agreement could be reached – one does not know if deliberation had any effect on the outcome.

To account for outcomes, the framework moreover differentiates between three types of actor-independent arguments that were considered relevant in the EU context. By definition, actor-independent arguments refer to something as being true or right and that in principle can be accepted by all actors in a given social context (Habermas, 1996). Empirically, such arguments are characterised by reference to facts or norms. In the highly institutionalised and heterogeneous EU setting, they may refer to expertise knowledge, to existing EU legislation, or to universally acceptable norms (i.e. individual human rights).

Deliberation is an ideal type construct. In reality one would never find a case where all agreements were reached because the actors involved accepted actor-independent arguments as valid so that they acted upon them, as one would expect if all agreements were reached due to argument-based learning. Still, applying this framework proved helpful for explaining puzzling EU agreements towards the MLC. Contrary to what one would expect given the often heard criticism that communicative action theory is too idealised and that it therefore is irrelevant for empirical research, this article found that tools building on Habermas' concepts of deliberation and communicative rationality may be helpful in order to capture EU foreign policy making processes.

The framework proved helpful in accounting for how decisions and policies were agreed upon in the MLC process. The analysis showed that the actors used threats and referred to their self-interests when arguing for certain common positions and that they justified their positions by actor-independent arguments. However, it was the latter, not the actors' threats and promises, that lead to agreement on common policies. Even in the critical case of EU foreign policy, there is more to policy-making outcomes than bargaining. In the examples studied, integration came about through deliberation. This is something one would not have seen by only studying the member states' interests and their relative power. Neither would it have been apparent if the analysis had mainly focused on studying the extent to which the actors justified their positions by actor-independent arguments. Without studying the link between the presented arguments and the policies agreed to, it would not have been possible to tell whether or not deliberation actually influenced behaviour and thus outcomes. It is not only analytically necessary but also empirically possible to study the micro-level through which arguments influence policy-making outcomes.

Furthermore, by differentiating between three types of actor-independent arguments and tracing outcomes back to arguments, it was possible to explain why the EU member states agreed to the positions they did and thus why, on these MLC provisions, the EU presented its particular positions in the ILO. The analysis found that some agreements were based on facts, others on existing EU law, while other controversial issues were settled when normative arguments were accepted as valid and acted upon. Without applying an approach of looking not only at what types of arguments were used by the actors, but also whether or not there is evidence to suggest that the member states acted upon them, it would not have been possible to say anything about the link between the arguments presented and the common EU positions in the ILO Maritime. Differentiating between three types of actor-independent arguments thus increased the explanatory power of the framework.

By tracing agreements back to the different types of arguments, the analysis also found that the member states perceived some arguments to be more legitimate than others. It was not perceived as legitimate to argue against human rights, and this settled many controversial issues. Particular norms, i.e. human rights, defined legitimate behaviour, and when referred to during the negotiation-process they had behavioural consequences. However, there was no agreement on such norms amongst all the member states at the outset of the process. Instead, reaching agreement on the standards and norms that should guide common EU positions in the MLC process was an *integral* part of the coordination process. During the coordination process, the member states reached a common understanding of the norms that applied in this particular decision-making process – on the arguments that were considered relevant and legitimate for common positions towards the MLC. In line with what Risse (2004) has suggested earlier, common norms of appropriate behaviour developed during the process (see also Eriksen, 2005). Thus, the study supports the claim that in order to see what norms are acted upon and which ones are not, one must study the communicative micro-level by which norms are made relevant and activated so that they have behavioural consequences. It is through the micro-level, the giving and taking of arguments, that norms are contextualised and activated. As it is the arguments and not the motives of the actors that are important for understanding outcomes of deliberative processes, it is the arguments that must be traced when studying decision-making processes where the outcomes are puzzling from a rationalist perspective.

In other cases, it may however be more difficult to clearly differentiate empirically between the three types of actor-independent arguments than was the case in the MLC process studied in this article. Though analytically distinct, the three types of actor-independent arguments suggested in this article will always overlap empirically. Facts are never neutral, the law can be interpreted in many ways and in some cases, law-based and norm or rights-based arguments may overlap. It may moreover be argued that the approach developed and applied in this article covers up underlying power structures that may influence the policy-making outcomes. In the analysis, this was taken into consideration by controlling for the impact of alliances and for the relative influence of powerful member states. However, there are also other factors that may influence the policy-making process but that due to the empirical focus on the communicative process only to a limited extent were included in the analysis. Potential factors are the impact of different external actors, of geopolitical factors and of institutional factors such as time limits, meeting-placing or particular decision-making rules (see for instance Jørgensen 2009; Mintz and DeRouen Jr. 2010). When applying the framework in further studies, one might therefore consider to more systematically study the impact of factors that are external to the communicative process but that may influence the effect of arguments on the policy-making outcomes. For the theoretical purpose of this article, however, the framework proved helpful. The aim was to make deliberative theory more applicable to studies of European integration by establishing alternative and concise micro-mechanisms to those of the rationalist bargaining perspectives. By making theory into workable hypothesis, showing how deliberative processes may be studied empirically, this article makes an important contribution to the existing literature on how decisions and policies are agreed upon in the EU.

Notes

I want to thank, Meng-Hsuan Chou, Erik Oddvar Eriksen, Maria Martens, Kolja Raube and three anonymous reviewers for helpful comments and suggestions. In particular I want to thank Daniel Gaus, Guri Rosén and Anne Elizabeth Stie for taking the time to read and comment on several drafts of this article. A special thanks to Helene Sjursen for all her help during the different stages of writing this article, and to Haakon Storhaug who has been an invaluable source of information. Previous versions of the article have been presented at the ECPR General Conference in Potsdam, September 2009 and at the EUSA Eleventh Biennial International Conference in Los Angeles, California April 2009. I am grateful to the Norwegian Ministry of Defence for financing this research. This article emanates from RECON (Reconstituting Democracy in Europe), an Integrated Project supported by the European Commission's Sixth Framework Programme (contract no. CIT4-CT-2006-028698).

[i] Called the 'deliberative turn' in the IR-studies (Neyer as cited in Risse and Kleine, 2010: 709). See also Acta Politica special issue (2005), Deitelhoff (2009), Deitelhoff and Müller (2005), Diez and Steans (2005), Eriksen and Weigård (2003), Journal of European Public Policy special issue (2010), Sjursen (2004), Thomson (2008).

[ii] Issues regarding working conditions in the maritime sector have been considered in distinct maritime ILO sessions (ILO Maritime). For more about the MLC, see ILO (2006).

[iii] Deliberative theory has seldom been applied to studies of EU foreign policy. See however Deitelhoff (2008), Mitzen (2006) and Sjursen (2004).

[iv] By 'common EU position' I understand what at the international level (ILO) appeared as an EU agreement, both when presented by the Presidency or by other member states on behalf of the member states present, and when individual member-states expressed support for (or did not object to) the same draft proposal or wording.

[v] One directive will cover provisions on enforcement and compliance and one will implement the rest of the MLC.

[vi] See footnote 1.

[vii] For an overview of the state of the art, see Journal of European Public Policy special issue (2010).

[viii] For a discussion on other possible deliberative mechanisms, see Eriksen and Fossum (2011).

[ix] I.e. legislation or regulation that is binding on the member states.

[x] Though clearly helpful when seeking to account for policy-making outcomes, participant observation is not necessary to conduct this type of analysis. Data could also have been obtained by the use of interviews, if possible conducted in several rounds, and if available, agendas and minutes.

[xi] Semi-structured interviews with 11 delegation members and a central Commission official were conducted during the PTMC. A follow-up interview was conducted via e-mail with the Commission key-informant later in 2004, and I conducted several in-depth interviews and had regular contact with a specialist key-informant with close contacts with different EU delegations (in particular the Nordic, Dutch and German delegations) in 2005, 2008 and 2009. Lastly, the material consists of official and unofficial working documents, from the Commission and different delegations. This EU documentation was however foremost obtained from the key-informant and was not collected systematically.

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Chapter 5

Summary of main findings

Empirical findings

The analyses of the two empirical cases (articles 1 and 2) suggest that EU foreign policies differ from foreign policy as it, following a rationalist perspective, conventionally is understood. Both in the Maritime Labour Convention and the Atalanta case the EU acted mainly in accordance with what one would expect of a humanitarian actor, promoting human rights through law, including when such a policy involved costs to the EU itself.

The analysis of EU policies towards the MLC suggests that a concern for establishing law for the protection of human rights was particularly important in mobilising the EU to advance a Convention of high standards despite of its costs. What is more – though also advancing material interests, justifications through rights did not only influence behaviour. In several cases of conflict, rights trumped material interests. Despite the strong economic interests of many member states, the EU acted in accordance with what one would expect of a humanitarian actor. The EU continued to act differently from what one would expect of a traditional great power also when applying military means. By studying why the EU launched its first maritime military mission, Atalanta, I was able to test whether or not the EU promotes norms due to its lack of military means. Instead of supporting such a hypothesis, the analysis of Atalanta suggests that taking responsibility for the long-term protection of humanitarian aid to Somalia was a mobilising argument behind EU policies and that this has been followed up in practice. Opposed to what one would expect of a traditional great power, the EU has not prioritised to protect European ships, and has bound itself to global law when using force against pirates. Military means were established as part of a law-enforcement operation – not to protect European interests. Thus, also in the case of Atalanta, the EU's behaviour testifies to a humanitarian model of foreign policy.

The analyses moreover suggest that the EU's behaviour was linked to the member states' perceptions of legitimacy. In the ILO, the data strongly suggest that, after the initial opposition by the member states to coordinate EU policies in different areas of the MLC, it was not seen as legitimate to use economic concerns as an argument in favour of particular positions when this conflicted with rights. When an argument referring to rights was put on the table it was not questioned and by this it influenced the policy conducted. In the Atalanta case, the fact that the contributing member states' ships lowered the EU flag when they were not behaving in accordance with a humanitarian policy indicates that norms of legitimate EU behaviour influenced the collective policy conducted.

By this the studies suggest that taking part in EU foreign policy cooperation defines norms of legitimate behaviour that limit the EU member states' policy options available, consequently resulting in a situation where they to a lesser extent act in favour of their interests. If this is so, it would imply that being part of the EU collective limits the member states' behavioural options – that taking part in EU foreign policy cooperation has a civilising effect on the member states.

The two articles thereby also suggest that this civilising effect is linked to what happens during the policy-making process – that there is a link between the EU foreign policy making process and the humanitarian policies conducted. In the third article, I conducted an in-depth study of the link between the policy-making process and its outcomes. The aim was to find analytical tools that could help us trace the impact of arguments on policy-making outcomes empirically to find out what arguments have behavioural consequences and thus be better able to explain policy-making outcomes. To be able to in more detail study how norms may influence EU foreign policy due to what happens during negotiations, I developed an approach based on the concept of argument-based learning. Applying the concept of argument-based learning in the EU's policy-making process towards the MLC helped me say more about why norms in this case influenced the policy-making outcomes. The analysis corroborated with the finding from article 1, that it was not considered legitimate to argue against proposals and positions referring to human rights, thereby settling many common EU positions. It however took the argument a step further by identifying the micro-mechanisms by which such norms had such an effect on the outcomes. It found that agreements on common policies were reached because the member states changed positions on the basis of listening to each other's arguments. In several areas of initial disagreement, common positions were formed through deliberation. The study also suggests that the perceptions of legitimate behaviour found to influence common EU policies in the first article developed during the process. In the MLC case, there were no pre-existing norms of appropriate behaviour that were acted upon automatically by the EU member states, as one would expect following role-theory or if all the member states had been socialised into particular norms of appropriate behaviour. To the contrary, some of the member states instead initially held positions that run contrary to a rights-based or humanitarian foreign policy. Agreement on the norm that EU foreign policies should be based on human rights developed during the argumentative process, through the mechanism of argument-based learning. The development of such a norm guiding legitimate behaviour is important for understanding the concrete outcomes as it restricted the actors' behavioural choices and thus the possible outcomes (also see Eriksen 2005 and Risse 2004)

Theoretical implications

One cannot draw any final conclusions about what characterises EU foreign policy or of how and why norms influence the collective policies conducted on the basis of two cases and three articles. However, the findings in this dissertation have several wider theoretical implications. First, the analyses support earlier findings suggesting that rationalist perspectives are insufficient for understanding EU foreign policy because they are based on assumptions that are not always reflected in the EU reality. The analyses thereby confirmed the contention that the still dominant rational choice based IR approaches cannot fully capture EU foreign policy. Instead, they suggest that in order to explain EU policies both in the ILO and in the waters off the coast of Somalia, the importance of norms for foreign policy behaviour must be taken into account. Instead of simply being the sum of the member states' aggregated national interests, norms are important for understanding common EU policies. This is something that would not have been possible to detect without applying a framework that allows norm-based behaviour to be considered equally rational to that of interest-based behaviour so that both possibilities could be studied empirically.

Regarding the contemporary theoretical discussion on the role of norms in EU foreign policy, this dissertation thereby confirms the argument that there is something particular about EU foreign policy if compared to foreign policy as one traditionally conceives of it and that this particularity is linked to the promotion of norms. What it means to be a 'normative/ethical/civilian power' has however been underspecified in much of the literature discussing EU foreign policy. If there is more to EU foreign policy than one would expect following a rationalist perspective, I therefore argued that there is a need to further develop and empirically specify alternative analytical frameworks that can help capture a putative normative distinctiveness. In doing this, I argued for linking a communicative approach to the analysis of the EU's external actions.

Applying an approach that builds on Habermas' concepts of deliberation and communicative rationality helped provide an account not only of if but also of why norms matter in the EU foreign policy cases studied. This supports Elgström and Smith's (2006: 1) contention that there is much to gain in pursuing new ways of analysing the EU' behaviour on the international scene.

First, empirically specifying and applying the concept of humanitarian foreign policy helped capture the normative distinctiveness of EU policies. In particular, not only distinguishing between different norms but also focusing on the role of binding global law in the actors' foreign policy behaviour helped take the conceptual apparatus for studying foreign policy behaviour a step further than what has been provided by the existing literature.

By applying a framework that defined a 'humanitarian actor' as someone who promotes and acts in accordance with global law as the main indicator, it was possible to control for whether or not the EU used norms rhetorically only, as one would expect following a traditional great power model of foreign policy. This enabled me to say something also about how norms matter in EU foreign policy. Instead of functioning through the mechanism of self-interested behaviour, being used strategically or rhetorically, norms had an independent effect on EU foreign policy behaviour in both the cases studied.

Furthermore, in applying an analytical distinction between values and rights I was able to say more not only about whether or not norms have influenced EU foreign policy, but more importantly – about what types of norms mobilised the common policies conducted. This made it possible not only to answer the question of whether these foreign policies differ from foreign policy as it is conventionally understood, but also in what way the EU behaves differently. Both in the MLC and the Atalanta case, the norms promoted by the EU were linked to universal principles and not to ethno-political values or internalised habits. Without making such a distinction, I would not have seen if the EU's behaviour was in line with what one would expect of a humanitarian actor, or if the EU was mainly enforcing its own values onto others.

The analysis also found that the EU conducted a humanitarian policy without being altruistic. In both the ILO and the Atalanta cases, the EU also promoted its interests, but still its behaviour testified to that of a humanitarian actor. Without applying a framework that does not use altruism as a main criterion of a 'normative actor' I would have stopped the analysis and concluded that the EU was not acting normatively after having discovered that economic arguments were important for understanding Atalanta. However, I would then have missed the fact that the EU's behaviour testified to a humanitarian model: Although the EU was also concerned about the free movement of ships, it bound itself to human rights even when it involved costs. The analysis of Atalanta also testified against the realist hypothesis that the EU has only been a "normative" power because it has lacked the military strength needed to strategically pursue its own interests, and that it therefore almost automatically will turn into a traditional foreign policy actor once such means are acquired. Instead, the analyses suggest that there is something normatively distinct about EU foreign policy independently of the means by which it is conducted. These findings could not have been captured by the existing literature, where the type of policy conducted often has been linked to the means applied or to whether or not it is other-regarding.

The finding that the EU in both the cases studied acted as a humanitarian foreign policy might also have implications for how we perceive of sovereignty and the workings of international relations. In a broader perspective, the findings point to how the nature of foreign policy is changing and how the EU is contributing to this transformation. This is so as a policy directed at human rights protection through binding law would imply that the EU is working towards a different global system than the one we conventionally know, one where the objects of security and addressees of law are no longer only states but also individuals. The studies conducted indicate that the EU is contributing to change international law away from the Westphalian system of regulating inter-state relations towards a more explicit focus on individuals as the addressees or the rights-bearers of such law. In both the cases studied, there is evidence to suggest that the EU's foreign policy was underpinned by the aim of domesticating international relations. As such, both analyses support Lerch and Schwellnus' (2006) claim that a particular characteristic of EU foreign policy behaviour is that it promotes a stronger human rights protection than what is found in international law today. However, it takes this argument further by indicating that the EU in its foreign policy not only is contributing to a change in the focus of international law from states to individuals, but also that it is submitting itself to such law and is seeking to ensure its actual implementation.

Lastly, this dissertation has important implications for studies of EU foreign policy as it helps to further specify the link between the process through which policies are made and the policy outcomes agreed to. The study underlines the importance of researching the micro-mechanisms through which actors' positions and behaviour might change during the policy-making processes. Without applying an approach of looking not only at the existence of certain scope-conditions or at what types of arguments were used by the actors, but also whether or not the member states acted upon these arguments, the link between the arguments presented and the common position could not have been established. In this way, the analytical framework proved helpful not only because it allows for the possibility that norms influence policy outcomes, it also helped specify alternative micro-mechanisms to those of the rationalist perspectives with regards to why norms matter in EU foreign policy: It is when a norm is accepted as valid and acted upon by the actors involved that the norm explains the outcome. In the MLC case, norms entered EU policies through deliberation. Norms mattered for policy-making outcomes through the mechanism of argument-based learning.

Thus, contrary to what one would expect given the often heard criticism that communicative action theory is too idealised and that it therefore is irrelevant for empirical research, this dissertation found that tools building on Habermas' concepts of deliberation and communicative rationality may be helpful in order to capture EU foreign policy. In this thesis, I have systematically investigated the empirical relevance of this approach and found that elements of Habermas' theory of communicative theory can provide the basis for practical research tools. One may even argue that foreign policy is a particularly helpful case for testing out the relevance of a communicative approach, as it is the area where, following conventional understandings of IR, it is least likely to expect that policy outcomes are more than the sum of the member states interests' in areas where they face common problems. The findings in this dissertation support the claim that it makes 'sense to talk about deliberation and actors seeking agreement through arguments also in the issue area of European security' (Sjursen 2004: 123), as well as in foreign policy more generally.

More research should be done to study the extent to which the EU's behaviour also in other cases of foreign policy is in line with what one would expect of a humanitarian foreign policy actor, and whether or not this can be explained by the possible deliberative characteristics of the foreign policy making process proceeding it. This dissertation suggests that such research will further increase our knowledge of what characterises EU foreign policy.

This is not to say that rationalist approaches are irrelevant in the studies of European foreign policy or in other areas of EU integration or in IR more generally. To the contrary, the humanitarian foreign policy model and the concept of argument-based learning should be thought of as analytical tools that can be applied in addition to rationalist analytical tools in order to better understand the empirical reality. As underlined in the theoretical section above, the point is rather that by assuming communicatively rational actors one opens up to more possible explanations of a political phenomenon and is thereby able to capture more of the empirical reality than if assuming strategically rational actors. Whether policies are based on interests or norms becomes a question for empirical analysis.

Methodological contributions

A main contribution of this dissertation to the existing literature is that it has helped to further develop analytical tools that can capture a foreign policy's putative normative distinctiveness. I have specified and operationalised theoretical models and helped refine how to apply communicative theory in empirical research. Earlier work has applied communicative theory to theorise about the role of norms in EU foreign policy, not least represented by the humanitarian foreign policy model developed by Eriksen (2009a) and Sjursen (2006a, 2006b, 2007) presented above. However, the model has not been systematically operationalised and applied in empirical studies. By empirically specifying theoretical models and concepts, and making them into workable hypotheses, the dissertation thus makes an important contribution to the existing literature applying communicative theory for explanatory and descriptive purposes in EU and IR studies.

In particular, the three types of argument-based learning have contributed to the existing literature in further making communicative theory into workable hypotheses. Though building on assumptions already established in different parts of the literature, the framework developed in the third article as a whole represents something new in relation to the existing literature. As an analytical concept, it defines deliberation in a new way and it specifies the micro-mechanisms by which arguments may have behavioural consequences. Most importantly, the framework shows how deliberative processes can be studied empirically. By focusing on arguments as the main units of analysis, I have showed how it is possible to observe changes in behaviour resulting not only from material rewards and punishment but also from norms.

The analytical and methodological findings of this dissertation are not limited to the EU but can be applied to studies of IR in general. Though the EU may be sui generis in empirical terms, meaning simply that it at present in many ways is different from other international entities such as states and international organisations, most of the tools we apply to study it are not limited to studies of the EU. To the contrary, norms may matter in the foreign policy of all international actors, and we therefore need theoretical tools that allow us to capture this dimension. This dissertation has found that tools building on communicative theory may be helpful in this regard. The analytical distinction between a traditional and a humanitarian foreign policy can be applied in studies also of other international actors. So can the concept of argument-based learning. The third article moreover in particular provides insights into the process of international negotiations, which are central to scholarly debate about policy-making not only in the EU but at the international level in general.

Some challenges

However, there are still challenges that need to be handled when applying the analytical concepts and models applied in this dissertation. First, it is difficult to operationalise precisely what it means to act as a humanitarian actor in a world that is still mainly organised around Westphalian principles. This was evident in the Atalanta case, as today, there is no global (or European) law that regulates the detention, prosecution and punishment of pirates, and both practitioners and lawyers disagree on how such a system should look like in empirical terms. There are thus no clear answers to what type of global law a humanitarian actor would promote in this area in order to contribute to transform the international system towards a global system where individuals are the addressees of binding and enforceable law. This makes it more difficult to operationalise the expectations one would have to EU foreign policy behaviour when, for instance, studying EU policies in the on-going process of reforming international standards and procedures in the handling of international maritime piracy. Similar difficulties will probably be evident also in other empirical cases. This notwithstanding, on the basis of the analyses conducted in this dissertation, it is clear that a particularly important indicator would be the extent to which the EU is contributing to a domestication of international relations, from power politics to the equal protection of individuals. If so, the EU must aim at securing the rights of individuals through binding law, and it must act in accordance with human rights law, including in cases where this involves costs to the EU itself.

Second, there are also challenges linked to the analytical framework developed in the third article, where a distinction between deliberation and bargaining was drawn on the basis of the types of arguments presented. One is that there in other cases may be more difficult to clearly differentiate empirically between the three types of actor-independent arguments and corresponding types of argument-based learning. As noted in the article, though analytically distinct, empirically, the three types of actor-independent arguments will always overlap. Law can be interpreted in many ways, facts are never neutral and in some cases, law-based and norm or rights-based arguments may overlap.

One may moreover argue that the strict micro-level, actor-argument focus applied in the article, treating arguments as units of analysis, cover up underlying power structures that may influence the outcomes of discussions. When conducting the analysis of EU coordination towards the MLC, this was to a certain extent taken heed of by controlling for the impact of the member states' relative power and for possible influential alliances. There are however also other factors that have been shown to influence foreign policy decision-making and its outcomes, but that were not systematically included in the analysis of EU negotiations towards the MLC. Potential factors that may influence the effect of arguments on policy-making outcomes are the influence of external actors, such as other states, international organisations or national interest-groups, of geopolitical developments, or of institutional factors like institutional arrangements, such as time-limits, meeting-placing or particular decision-making rules and procedures (for a discussion of different factors, see for instance Chryssochoou et al 2003; JEPP special issue 2010; Jørgensen 2009: Mintz and deRouen Jr. 2010). Systematically including even more explanatory variables in future research will thus further increase our knowledge both of EU policy-making processes and their outcomes. However, for the main purpose of the article, aiming to contribute in further developing analytical tools that might help us account for why collective EU foreign policies are based on norms, the suggested framework proved helpful as an alternative to rationalist perspectives. The concept of argument-based learning contributes in making communicative theory more applicable to studies of European integration by establishing alternative and concise micro-mechanisms to those of the rationalist bargaining perspectives. By this, it makes an important contribution to the existing literature on how decisions and policies are agreed upon in the EU. Thus, even if much remains to be studied, this thesis has taken us closer to a better understanding of if, how and why norms matter in EU foreign policy.

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Annex 1. Interview guide Maritime Labour Convention. Member state delegates

Point of departure/before discussions start

- Why do the EU-members try to coordinate their policy in the ILO on the consolidation of the maritime labour conventions?

- Do you regard the EU-meetings as important? Why/why not?

- Are there some areas where your country has a particular strong interest, where you won't change positions no matter what? Examples - and why.

- Does your country have special problems with some of the proposed titles/paragraphs? Why? Will you present this to the other EU member states? In what way/how?

- What determines the national positions before you come to the meetings? What decides a specific position on a specific issue?

- How is your mandate here? Are your positions fixed? On all issues? On what issues? Why?

- Are there some issues that are not taken in to the discussions at EU level - and why?

- Is EU-coordination seen as a advantage or as restricting a member state internationally?

- What is the role of the EU in the ILO?

Process/the interaction

- Are there 'groupings' inside the EU-group, if so, who are part of these and who are not?

- Do some member states have extra meetings where others are left out? Who and why? Is this normal? Are alliances sought before EU-meetings/towards the other EU-members? Examples and why

- How do you see the Commission's role in the process? What is its role? For what purpose? With what effects?

- Is the Commission influential? Does it influence the outcomes? Why and how?

- Are there factors that limit your possibility to act according to your national positions in the ILO process?

- Are some member states particularly influential in the EU meetings? Why do you think this is so?

- What is needed to be influential in the EU discussions? How to get positions through?
  Does it matter if you are from a small or a big country?

- What characterises the discussions in the EU-meetings?

- Are the discussions different from the discussions in the committees and if yes, what is the difference and why is this so (in your opinion)?

- Do you think there are some clear dividing lines in the EU group, eg between flag states and port states?

What arguments/reasons are used in the interaction?

- How should preferences be forwarded to be successful in the negotiations?
  What do you regard as important to get your country's views through (what are 'good tools'/good strategies when forwarding positions)

- Is there any difference between different issues – does the discussion change when discussing sensitive issues?

- Are the reasons given for a position at the EU-meetings the same as the ones given internally/nationally?

- Do you have troubles understanding the other delegates (what they mean, why they forward different proposals etc.)

Results (EU-positions – not global)

- Have you changed positions on some issues during the process?
  On what and why?
  Are these less sensitive issues to your country?
  Has there been any shift in your countries positions on particular issues during the process, examples, and why the positions were changed.

- In general - are things solved/coordination reached during the EU meetings? Are they 'successful'? Examples? Why?

- What would you say determines the outcome of a discussion/a common EU position or not a common position?

- Could you give an example where agreement has been reached? Why was agreement reached in this case?

- Could you give an example where agreement has not been reached? Why is it still disagreement?

- Is it true that it has been decided that the convention will be the basis of EU-law.
  What are your reactions to this/your view on this?
  Does this affect your country's positions in the coordination meetings?
  Does this change the status of the convention?

- What would you say characterises the outcome of EU discussions?

- Are you pleased with the results (so far)? Why/why not

The role of international law

- Why do we need a convention?
  What is the role of the convention?
  What is the goal of the convention?

- Who are the targets of the convention? Who will it affect?

- Is it important that the convention is ratified and implemented? Why?

- How to make sure that it is lived by/implemented?

- Should the EU play a particular role in international processes like this? What role? Why?

- The EU has already (before the content of the convention is clear) decided that this will be a part of the Erika III package. Why is this?
  Does this change the importance of the convention?
  Has this affected any of the national positions?

Annex 2. Interview guide Maritime Labour Convention. Commission-officials.

Background

- Do you think the member states regard the EU meetings as important? Why/why not?

- Do you think that there are some areas where the member states have strong interests, where they won't change positions 'no matter what'? Examples - and why

- Do you think there are some clear dividing lines in the EU group?

- What is the role of the EU in the ILO?

The process:

- Do you experience that there are 'groupings' inside the EU-group, if yes - who are part of these and who are not? Are some having extra meetings where others are left outside? Who and why? Is this normal? Are alliances sought before EU-meetings/towards the other EU-members?

- How do you see the Commission's role in the process?
  What is its role? For what purpose? With what effects?

- Is the Commission influential? Does it influence the outcomes? Why and how?

- Would you say there are factors that limit the possibility to act according to national positions in the ILO-process?

- What would you say is needed to be influential in the EU discussions? How to get positions through?
  Does it matter if you are from a small or big member state?

- Are some member states (or other actors) more influential in the EU-meetings others? If so, why do you think this is so?

- Are there some areas in the convention that are more difficult than others (in terms of finding a common EU position)? Why? What does the Commission do to solve this?

- What is the Commission's strategy to reach agreement on a common EU position?

- What are the Commission's 'tools'? and how are these used?

What is said:

- What characterises the discussions in the EU-meetings?

- Why are some listened to and others not – what makes others 'listen'?

- How should preferences be forwarded to be successful in the EU negotiations?

- Is there any difference between different issues – does the discussion change when discussing sensitive issues?

Outcome:

- In general - Are things solved/coordination reached during the EU-meetings? Are they 'successful'? Examples? Why?

- What would you say determines the outcome of a discussion – whether a common Eu-position is reached or not?

- Can you give an example where agreement has been reached? Why/how agreement?

- Can you give an example where agreement has not been reached? Why is it still disagreement?

- Is it true that it has been decided that the convention will be the basis of EU-law. Why? What is your view on this? Does this change the status of the convention

Ad international law:

- Why do we need a convention?
  What is the role of the convention?
  What is the goal of the convention?

- Who are the targets of the convention? Who will it affect?

- Is it important that the convention is ratified and implemented? Why?

- How to make sure that it is lived by/implemented?

- Will it be implemented in the EU? Why/why not?

- The EU has already (before the content of the convention is clear) decided that this will be a part of the Erika III package. Why is this? Does this change the importance of the convention? Has this affected any of the national positions?

- Should the EU play a particular role in international processes like this? What role? Why?

Annex 3. Interview guide Atalanta

1. In your opinion, why did the EU decide to launch Atalanta?

2. In your opinion, why not instead strengthen the NATO operation (or CTF-forces) already operating in the area?

3. In your opinion, why was Atalanta launched in December 2008? The EU's engagement in Somalia was strong also earlier, in terms of aid, cooperation with Amisom and the UN, support to TFG etc. So why a military operation from 2008?

4. In your opinion, is Atalanta in any way different from the NATO operation Ocean Shield or the CTF 151 forces operation in the area? If yes, how and why? Is there any difference regarding the treatment of pirates?

5. Was the EU explicitly asked by the UN to launch a separate operation?

6. Does NAVFOR in any way report to the UN on its activities?

7. Is the EU the only actor that protects WFP ships?

8. How do you decide where to deploy forces?

9. In particular, how do you decide whether to protect WFP shipments? Or UN vessels that carry logistical support to Amisom? Do you do this at the request of the UN?

10. Do you know if the EU has turned down any requests from the UN?

11. Earlier, the EU argued that WFP ships were prioritised. Recently, however, fewer WFP ships are protected and many argue that NAVFOR now mainly focuses on anti-piracy efforts. Is this so?

12. Why monitor fishing-activities? Are any other actors monitoring fishing activities?

13. Does the EU report to the UN on Atalanta?

14. What do you do with suspected pirates?

15. Have you detained and prosecuted many pirates?

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