ARTICLES

ARE THE EU MEMBER STATES STILL SOVEREIGN STATES UNDER INTERNATIONAL LAW?

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EU COORDINATION IN MULTILATERAL FORA AS A MEANS OF PROMOTING HUMAN RIGHTS LAWS ABROAD

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ABSTRACT: This *Article* presents two arguments and explores the relationship between them. First, the principles governing coordination between the EU and its Member States in multilateral fora (mainly, sincere cooperation and unity in the EU's representation) serve to increase the Member States' influence in international law-making. Thus, there is a trade-off between the autonomy of Member States to determine their own positions in multilateral fora, and their capacity to influence such fora: the lesser the former, the greater the latter. Second, such an influence can be used by the EU and its Member States to promote human rights laws abroad, "uploading" high standards into multilateral treaties, which are subsequently "downloaded" by third states through ratification and implementation. Therefore, there is a link between the mentioned EU external relations law principles (which are a "condition" for a successful promotion) and the obligation to promote values set in arts 3(5) and 21 TEU (which provides the "direction" of the promotion). Consequently, when Member States complain about excessive EU intrusion into their autonomy through common positions in multilateral fora, they should bear in mind that they are not only bound by the above-mentioned legal principles, but that their obligation to promote certain values abroad is also at stake. The case of the EU's influence on the Maritime Labour Convention and its impact on Chinese law and policy is used to illustrate the arguments.

KEYWORDS: European Union – China – international law – human rights – external relations – sincere cooperation.

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I. Introduction

"Unity makes strength". This *Article* argues that the European Union (EU) and its Member States have succeeded in cooperating in different international fora[1] to influence a number of multilateral instruments. Such level of influence has been possible thanks to some of the principles governing the EU's external action – mainly, sincere cooperation and unity in the international representation of the EU. Without them, it is highly unlikely that Member States would have had such a level of influence on their own. These principles therefore limit the autonomy of Member States to decide their own international positions, but at the same time boost the influence they exert on international law. Moreover, these principles are directly related to the EU's obligation to promote its values abroad set mainly in arts 3(5) and 21 TEU, since it is precisely the influence on multilateral treaties, which are subsequently applied to third countries, that is a means through which to carry out this obligation. The argument is illustrated through the case study of coordination between the EU and its Member States in the International Labour Organisation (ILO) to influence the Maritime Labour Convention (MLC), which was subsequently signed, ratified and implemented in China, leading to human rights law and policy reforms in the Asian country.

Under public international law, sovereignty refers in broad terms to the principle of supreme authority within a territory.[2] In the current Westphalian international system, such an authority is principally exercised by the state and entails a wide range of powers over a territory.[3] One of the most important powers is the capacity of the state to decide on its external affairs. This capacity has been referred to as external sovereignty (normally controlled by the executive), as opposed to internal sovereignty (mainly under the competence of the legislature).[4] As we know, there are 27 states in Europe that have conferred certain external sovereignty competences (in addition to many others related to internal sovereignty) to a very unique international organisation: the European Union.

In this context, EU law seems to challenge the traditional understanding of external sovereignty. The reason for this is that EU law establishes certain obligations to the Member States in their foreign affairs, therefore undermining their full capacity to follow their own agendas and to set their positions internationally. However, it is these same obligations that have allowed Member States to have greater influence in international affairs. In other words, some of the principles governing the EU's external relations, from which

[1] By international or multilateral fora, this *Article* refers to formal international organisations as well as international conferences and other semi-structured international platforms, networks and institutions.

[2] See, for example, R Rawlings, P Leyland and AL Young (eds), *Sovereignty and the Law: Domestic, European, and International Perspectives* (OUP 2013).

[3] For a critique of sovereignty in the Westphalian system, see A Osiander, 'Sovereignty, International Relations, and the Westphalian Myth' (2001) International Organization 251.

[4] S Besson, 'Sovereignty' in R Wolfrum (ed), *Max Planck Encyclopedia of Public International Law* (OUP 2011).

certain obligations arise, represent both a limitation on the external autonomy of the Member States and a boost to their international influence.[5]

The crucial consideration is then how to define sovereignty and which elements to value most. If the Member States' external sovereignty is understood merely as the *autonomy* to decide positions in international fora, it is clear that some of the principles underpinning EU external relations law have undermined this idea of sovereignty. However, if sovereignty is understood as the capacity to *influence* the international arena, then EU law has not only not undermined the sovereignty of its Member States but has actually strengthened it. If it were not for some of the principles of EU external relations law, the Member States would not have been able to influence so much those international treaties that undoubtedly bear the EU's imprint (*e.g.*, the Maritime Labour Convention or the Paris Agreement).[6] The key question in the broad debate of this special issue is therefore whether a state with less international influence but greater capacity to decide its own positions in multilateral fora is more sovereign – and this is something preferable – than a state with limited capacity to decide some positions but exponential international influence.

The principles of EU law that affect the external sovereignty of the Members States in multilateral fora are indeed linked to the EU's obligation to promote its values set mainly in arts 3(5) and 21 TEU. The principles of sincere cooperation and unity in the international representation aim to advance the interests and to promote the values of the EU. The principles entail certain obligations that create the conditions under which it is possible to influence international law.[7] Precisely in this regard, one of the ways used by the EU to promote its values and defend its interests is to influence multilateral treaties as a means to promote legal changes in third states. In other words, the EU *uploads* its interests and values to multilateral treaties, which are then *downloaded* by third countries through ratification and implementation.

To illustrate these arguments, the *Article* studies the case of the 2006 Maritime Labour Convention, which was influenced by the EU and its Member States and has triggered law and policy reforms in China on labour rights that would probably not have happened but for the ratification of such treaty. In other words, drawing the line from EU law to Chinese law through international law is an example of successful cooperation between the EU and its Member States in multilateral fora that has enabled the promotion of human rights in the Asian country.

[5] For a recent study on the relationship between the European Union and international law, see J Odermatt, *International Law and the European Union* (CUP 2021).

[6] For an account of the Lead Negotiator of the EU in the Paris Agreement, see P Betts, 'The EU's Role in the Paris Agreement' in H Jepsen, M Lundgren, K Monheim and others (eds), *Negotiating the Paris Agreement: The Insider Stories* (CUP 2021).

[7] While it is true that the existence of these principles is not necessary for Member States to cooperate in multilateral fora (*i.e.*, in theory they could also cooperate to the same degree if the principles did not exist), there is little doubt that the recognition of a legal obligation arising from them adds an additional commitment that reinforces such cooperation.

The structure of the *Article* is as follows. Section II examines the obligations arising from the principles of EU law that affect the external sovereignty of Member States in multilateral fora, arguing that such obligations enable the EU to have a strong influence in international law-making. Section III presents the Maritime Labour Convention as a case study, with three different sub-sections. The first sub-section presents the convention and the EU's role in its drafting. The second sub-section studies the motivations behind the EU's promotion of labour rights in the convention, applying a cost-benefit logic to defend that values outweighed interests in this case. The third sub-section analyses the reforms that the convention has generated in China. Finally, some thoughts are offered in the Conclusions.

II. The legal principles governing EU coordination in international law-making fora: a weakness or a strength of Member States' external sovereignty?

Principles in EU law are legal norms of primary law. Therefore, they *i)* create obligations and *ii)* constitute a basis for judicial review.[8] However, principles in the field of external relations law are more concerned with the processes and the relationship between the actors in those processes than with the substantive content of the EU's foreign policy.[9] A reason for this is the traditional division between high politics (*e.g.*, international security) and low politics (*e.g.*, economic affairs), which is reflected in the separate legal regimes of the Common Foreign and Security Policy (CFSP) and the rest of EU competences.[10] High politics has an eminently political character and, for this reason, it has traditionally been considered that it should be limited by the law to a lesser extent than low politics, which has a more technical character in which the law can play a more decisive role.[11]

Indeed, the CFSP is expressly excluded from judicial review,[12] except in two cases (issues of competence and decisions providing for restrictive measures against natural

[8] See, for example, RA Wessel and Y Kaspiarovich, 'The Role of Values in EU External Relations: A Legal Assessment of the EU as a Good Global Actor' in E Fahey and I Mancini (eds), *Understanding the EU as a Good Global Actor: Ambitions, Values and Metrics* (Edward Elgar Publishing 2022).

[9] M Cremona, 'Structural Principles and Their Role in EU External Relations Law' in M Cremona (ed), *Structural Principles in EU External Relations Law* (Hart Publishing 2018) 12.

[10] H Merket, 'The EU and the Security-Development Nexus: Bridging the Legal Divide' (2013) European Foreign Affairs Review 83; M Smith, 'Institutionalizing the "Comprehensive Approach" to EU Security' (2013) European Foreign Affairs Review 25.

[11] However, there have been calls for high politics to be treated by tribunals in the same way as low politics in different jurisdictions. In relation to the UK, see E Smith, 'Is Foreign Policy Special?' (2021) OJLS 1040. In relation to the US, see G Sitaraman and I Wuerth, 'The Normalization of Foreign Relations Law' (2015) HarvLRev 1897.

[12] See, generally, P Koutrakos, 'Judicial Review in the EU's Common Foreign and Security Policy' (2018) ICLQ 1.

or legal persons adopted by the Council).[13] Nonetheless, the Court of Justice of the European Union (CJEU) has declared that such limit to its jurisdiction over the CFSP has to be interpreted narrowly,[14] even though the Court has been very reticent to interfere with the EU's foreign policy agenda and has not been a relevant actor in shaping the field of EU external relations law, in contrast with other areas like, for example, Union citizenship.[15] However, even if some acts within the CFSP are not *per se* subject to judicial review (*e.g.*, instructions to diplomats during the negotiation of a treaty), that does not mean that certain results of the CFSP are excluded from judicial review (*e.g.*, the conclusion of an international treaty).[16] However, principles create certain legal obligations in both cases (*i.e.*, reviewable and non-reviewable acts underpinned by these principles), since general principles express core values and they have a fundamental character that underlies all EU acts.[17]

In this context, there are two key principles that establish legal obligations for the coordination between the EU and its Member States in multilateral fora and that allow for increased leverage in international law-making: *i)* unity in the international representation of the EU and *ii)* sincere cooperation between the EU and its Member States. These two principles are deeply intertwined and even the Treaties do not clearly differentiate their functions, as they are scattered in different articles (sometimes even mixed in the same article) and too vague and sometimes inconsistent vocabulary is used, with different words apparently referring to the same obligation. The following considerations are an attempt to help to better understand the differences and relationships between them in EU external relations law, although in reality it is the joint content of these principles that is important. Indeed, categorising these principles and dividing their content into one or the other has in fact very limited practical implications, as they are often cited together, although doing so may help to understand their normative content.

The first key principle is the representation of the EU in international fora. The EU as an international organisation has to establish and maintain relations with other international organisations.[18] From an institutional perspective, it is the High Representative who represents the Union in matters relating to the common foreign and security policy and who expresses the Union's position in international organisations,[19] assisted by the

[13] Art. 275 TFEU.

[14] Case C-658/11 *European Parliament v Council of the European Union (EU - Mauritius Agreement)* ECLI:EU:C:2014:2025.

[15] M Cremona, 'Structural Principles and Their Role in EU External Relations Law' cit. 3.

[16] In addition to judicial review, it is relevant to note that the external action of the EU is also constrained by administrative law. See M Cremona and P Leino, 'Is There an Accountability Gap in EU External Relations? Some Initial Conclusions' (2017) European Papers www.europeanpapers.eu 699.

[17] T Tridimas, *The General Principles of EU Law* (2nd edn OUP 2007) 1.

[18] Art. 220(1) TFEU.

[19] See, generally, B Van Vooren, 'A Legal-Institutional Perspective on the European External Action Service' (2011) CMLRev 475.

European External Action Service (EEAS).[20] In this regard, the EU is represented at international fora by delegations, which are under the authority of the High Representative and enjoy all the privileges and immunities of international law.[21] Such delegations have to work in cooperation with the diplomatic services of Member States,[22] since the common foreign and security policy has to be put into effect by both the High Representative and the Member States.[23]

At the substantive level, the principle of unity in the international representation of the EU imposes the obligation to coordinate the Member States' stances in order to uphold the Union's position. This coordination has to be organised by the High Representative,[24] although it is not a straightforward task due to the institutional design of the Union and, especially, the complex sharing of powers between the EU and the Member States.[25] The aim of this principle is to coordinate the defence of a common position previously agreed between the Member States. In international fora, therefore, this will be translated into which Member State carries a proposal, how the other Member States will support it, how they will take turns defending it, and so on. It is a goal-oriented principle.

There is a particular element within this obligation. In those fora where not all EU Member States are participants, those participating have the obligation to defend positions that are not only in the interest of the mentioned participant but also in the interest of the rest of EU Member States and of the EU itself. In short, Member States with exclusive participation in certain multilateral fora are obliged to uphold the Union's common positions,[26] while respecting (in what sometimes could become a difficult relationship) the responsibilities and commitments of the own participant. Moreover, in the very particular case of the United Nations Security Council, the Member States that are part of it have to "defend the positions and the interests of the Union"[27] and even request that the High Representative be invited to present the Union's position if the EU has defined a position on a subject on the agenda of the Security Council.

The second key principle that allows the Member States and the EU to strengthen their influence on international law-making is sincere cooperation. This principle operates as a means-oriented principle in the service of the previous goal-oriented principle. Put another way, the obligations arising from the principle of sincere cooperation are

[20] Art. 27 TEU.

[21] Art. 221(2) TFEU.

[22] Arts 27(3) and 35(1) TEU.

[23] Arts 24(1)(2) TEU.

[24] Art. 34(1) TEU.

[25] S Gstöhl, '"Patchwork Power" Europe: The EU's Representation in International Institutions' (2009) European Foreign Affairs Review 385.

[26] Art. 34(1)(2) TEU.

[27] Art. 34(2)(2) TEU.

intended to reinforce the unity of the EU's international representation, thus strengthening its "effectiveness as a cohesive force in international relations".[28] In addition to its nature, this principle differs from the previous one in the time frame in which it operates. While the principle of unity requires the *coordination*, organised by the High Representative, of the different Member States after a common position has been achieved, the principle of sincere *cooperation* would operate at two different points in time: as a positive obligation prior to the establishment of such a common position, and as a negative obligation once the position is established.

In relation to the positive part of the obligation, Member States shall work towards the achievement of the objectives of the treaties and therefore cooperate with the EU and other Member States in establishing, within the area of competence of the EU, common positions that uphold the interests and values of the EU. These efforts can be made in a number of ways. One of them, which is explicitly mentioned in art. 34 TEU, is the information obligation. There is a generic obligation for a participating Member State to inform the others and the High Representative about common issues under discussion in a particular forum to which they are not party. It could be argued that this obligation to inform would extend even to those fora to which all Member States and the EU itself are party, so that common positions can be taken in a more informed manner. In addition, the founding treaties refer to the particular case of those Member States that are party to the Security Council, which are required to keep the other Member States and the High Representative fully informed.[29]

In relation to the negative part of the obligation, the Member States have to "support the Union's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity" and "comply with the Union's action in this area".[30] This obligation operates as a constrain to the autonomy of the Member States in the international arena once a common position of the EU has been defined, as they have to "facilitate the achievement of the EU's tasks and to abstain from any measure that could jeopardize attainment of Treaty objectives".[31] This negative part of the obligation stemming from the principle of sincere cooperation is probably the most problematic in the subject matter of this special issue, as it directly challenges the concept of external sovereignty. The obligation requires Member States to limit their full autonomy in determining their international positions, even on issues that do not fall within the EU's exclusive competences. As the CJEU has underlined on several occasions, the "duty of genuine cooperation is of general application and does not depend either on whether the Community competence is exclusive, or on any right of the Member State to enter into obligations towards non-

[28] Art. 24(3) TEU.
[29] Art. 34(2)(2) TEU.
[30] Art. 24(3) TEU.
[31] P Craig and G de Búrca, *EU Law: Text, Cases, and Materials* (7th edn OUP 2020) 425.

member countries".[32] Even if Member States do not agree with a common EU position, they have the duty to remain silent to a certain extent.[33]

These principles clearly limit the ability of Member States to establish autonomous international positions. However, it is these very principles that at the same time strengthen the EU's unity in the international sphere and thus the effectiveness of its influence on international law-making.[34] The EU's obsession with presenting a coherent image is clearly linked to the effectiveness of its foreign policy and, in the particular case of the Maritime Labour Convention studied in this *Article*, in shaping multilateral treaties.[35] As *The EU's Comprehensive Approach to External Conflict and Crises* affirms, "[t]he EU is stronger, more coherent, more visible and more effective in its external relations when all EU institutions and the Member States work together on the basis of a common strategic analysis and vision".[36]

In conclusion, the question of whether or not the existence of the EU has undermined the external sovereignty of its Member States is, in reality, a question of trade-off between *i)* the capacity of autonomy to set international positions, and *ii)* increased capacity for international influence. Moreover, such a limitation of autonomy in order to have a greater capacity for international influence is a condition that favours the realisation of the EU's obligation to promote certain values abroad established in arts 3(5) and 21 TEU. These are the two lessons that can be observed from the following case study, where the above doctrinal considerations are empirically tested.

III. The case of the Maritime Labour Convention: the journey of human rights from the EU to China via international law

III.1. The Convention and the EU's role in its elaboration

The International Labour Organization (ILO) is an agency of the United Nations (UN) devoted to promoting social justice and human and labour rights. It has a very unique nature since it is the only UN agency with a tripartite structure in which employers, workers and

[32] See, for example, case C-266/03 *Commision of the European Communities v Grand Duchy of Luxembourg (Inland Waterway Agreement)* ECLI:EU:C:2005:341; case C-433/03 *Commission of the European Communities v Federal Republic of Germany (Inland Waterway)* ECLI:EU:C:2005:462; case C-246/07 *European Commission v Kingdom of Sweden (Stockholm Convention on Persistent Organic Pollutants)* ECLI:EU:C:2010:203.

[33] For further information on this duty, see A Delgado Casteleiro and JE Larik, 'The Duty to Remain Silent: Limitless Loyalty in EU External Relations?' (2011) ELR 524.

[34] See generally SJ Nuttall, 'Coherence and Consistency' in C Hill, M Smith and S Vanhoonacker (eds), *International Relations and the European Union* (OUP 2005).

[35] M Estrada Cañamares, '"Building Coherent EU Responses": Coherence as a Structural Principle in EU External Relations' in M Cremona (ed), *Structural Principles in EU External Relations Law* (Hart Publishing 2018).

[36] Joint Communication JOIN/2013/030 final to the European Parliament and the Council of 11 December 2013, Joint Communication to the European Parliament and the Council: The EU's Comprehensive Approach to External Conflic and Crises.

governments work together in the different governing organs to set labour standards, develop policies and formulate programmes promoting decent work. It has 187 member states, including all major countries.[37] This organisation adopted the Maritime Labour Convention (MLC) at the 94th (Maritime) Session of the International Labour Conference in February 2006. The convention represents the *fourth pillar* of international maritime law[38] and constitutes a single, coherent instrument embodying "all up-to-date standards of existing international maritime labour Conventions and Recommendations, as well as the fundamental principles to be found in other international labour Conventions".[39] For this reason, it has been called the Seafarers' Bill of Rights. From the point of view of legal technique, it is a very sophisticated and modern treaty, as it consists of three different (but related) parts: the articles, the Regulations and the Code. While the first two set out the fundamental rights and principles and the obligations of member states, the last part contains details for the implementation of the Regulations and includes a Part A (mandatory Standards) and a Part B (non-mandatory Guidelines). The convention covers five different areas, which are organized under five Titles in the Regulations and the Code: minimum requirements for seafarers to work on a ship (Title 1); conditions of employment (Title 2); accommodation, recreational facilities, food and catering (Title 3); health protection, medical care, welfare and social security protection (Title 4); and compliance and enforcement (Title 5).[40]

The MLC, which brought significant changes to the field,[41] was a response to a series of developments in the maritime industry in the last decades of the twentieth century. The 2001 ILO's report titled *The Impact on Seafarers' Living and Working Conditions of Changes in the Structure of the Shipping Industry*[42] pointed out the principal structural changes in the industry, such as changes in ownership, changes in the origin of labour supply, the growth of multinational and multicultural crews, or the evolution of vessel turnaround time together with the reduction of crewing levels. All these developments had a profound impact

[37] International Labour Organization, 'Mission and Impact of the ILO: Promoting Jobs, Protecting People' www.ilo.org.

[38] The other three pillars are the International Convention for the Safety of Life at Sea (SOLAS), the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) and the International Convention for the Prevention of Pollution from Ships (MARPOL).

[39] International Labour Organization, Maritime Labour Convention 2006. Adopted in February 2006, entry into force in August 2013, last amendment in 2022.

[40] See, generally, M McConnell, D Devlin and C Doumbia-Henry, *The Maritime Labour Convention, 2006: A Legal Primer to an Emerging International Regime* (Martinus Nijhoff Publishers 2011).

[41] A particular significant element of the MLC, if not the most relevant content, was that the responsibilities of states that supply seafarers, flag states, and port states were clearly identified and delimited, and a number of enforcement and compliance mechanisms were put in place. See, generally, J Lavella (ed), *The Maritime Labour Convention 2006: International Labour Law Redefined* (Informa Law from Routledge 2014).

[42] International Labour Organization, 'The Impact of Seafarers' Living and Working Conditions of Changes in the Structure of the Shipping Industry: Report for discussion at the 29th Session of the Joint Maritime Commission, JMC/29/2001/3' (2001).

on the conditions of seafarers which, in addition to the emergence of a global labour market during the last quarter of the twentieth century, "transformed the shipping industry into the world's first genuinely global industry".[43] In this context, it was very difficult to provide seafarers with strong protection of their rights in an industry with a history of poor working conditions.[44] In particular, an acute problem was that seafarers often work on ships flying flags other than those of their own countries, and some of these countries do not guarantee decent conditions – these are so-called "flags of convenience". Consequently, the ILO initiated in 2001 a process of updating and consolidating all existing conventions and recommendations adopted for the maritime sector since 1920, resulting in the Maritime Labour Convention 2006, which entered into force on 20 August 2013.

It is a well-documented and accepted fact in the academic literature that the European Union played a key role in shaping the Maritime Labour Convention. Marianne Riddervold argues that the EU was "the main advocate of a Convention of high minimum-standards and strict control-measures".[45] With privileged access to official and unofficial documents, formal interviews and informal talks, and in-person attendance at ILO sessions and closed-door EU coordination meetings during the MLC process, her work represents one of the most thorough effort to date to demonstrate the EU's influence on the MLC. Other authors have supported this causal link between EU influence and the final outcome of the treaty.[46] For example, Tortell and others declare that "a cursory analysis of the way in which the convention was adopted and is now being ratified shows that the EU has taken a key position in this process",[47] although other authors have cast more doubt.[48] After a careful examination of the preparatory reports between 2001 and 2006, it is clear to me that the convention would not have had such high minimum standards if it were not for the EU.[49]

[43] M McConnell, D Devlin and C Doumbia-Henry, 'The Story of the Maritime Labour Convention, 2006' in M McConnell, D Devlin and C Doumbia-Henry, *The Maritime Labour Convention, 2006* cit. 41.

[44] See, generally, B Wu, 'Globalisation and Marginalisation of Chinese Oversear Contract Workers' in HX Zhang, B Wu and R Sanders (eds), *Marginalisation in China: Perspectives on Transition and Globalisation* (Routledge 2016); A Mah, *Port Cities and Global Legacies: Urban Identity, Waterfront Work, and Radicalism* (Palgrave Macmillan 2014); DN Dimitrova, *Seafarers' Rights in the Globalized Maritime Industry* (Kluwer Law International 2010).

[45] M Riddervold, 'Interests or Principles: EU Foreign Policy in the ILO' (ARENA Working Paper 13-2008) 1; see also M Riddervold, '"A Matter of Principle"? EU Foreign Policy in the International Labour Organization' (2010) Journal of European Pubic Policy 581.

[46] See, for example, B Saenen, *The Causal Relation between the European Union's Coherence and Effectiveness in International Institutions* (University of Gent 2014).

[47] L Tortell, R Delarue and J Kenner, 'The EU and the ILO Maritime Labour Convention: "In Our Common Interest and in the Interest of the World"' in J Orbie and L Tortell (eds), *The European Union and the Social Dimension of Globalization: How the EU Influences the World* (Routledge 2011) 125.

[48] See, for example, R Kissack, '"Man Overboard!" Was EU Influence on the Maritime Labour Convention Lost at Sea?' (2015) Journal of European Public Policy 1295.

[49] International Labour Organization, *Preparatory Reports - Maritime Labour Convention, 2006* www.ilo.org.

A crystal-clear example is Guideline B2.5.2(1), which can be found in Regulation 2.5 on repatriation. Although this is a non-mandatory guideline, it nevertheless has an important value since it develops the particularities of the seafarers' right to repatriation. Specifically, para. 1 of Guideline B2.5.2 established in the last consolidated version of the convention that "[e]very possible practical assistance should be given to seafarers stranded in foreign ports pending their repatriation and in the event of delay in the repatriation of seafarers, the competent authority in the foreign port should ensure that the consular or local representative of the flag State is informed immediately".[50] However, at the Committee of the Whole of the 94th Maritime Session of the International Labour Conference in February 2006, where the Maritime Labour Convention was eventually adopted, the UK introduced amendment D.96 after coordinating positions with the rest of EU Member States, which sponsored the initiative.[51] Following a verbal subamendment suggested by Cyprus, para. 1 of Guideline B2.5.2 was finally adopted by all the actors in its current wording, which includes not only the right of seafarers stranded in foreign ports to have the port authorities inform the local or consular representatives of the flag State, but also the representatives of the "seafarer's State of nationality or State of residence, as appropriate".[52] This expansion of the right to repatriation of seafarers would not have been included in the Maritime Labour Convention if it were not for the coordination between EU Member States.

There were a number of conditions that enabled the EU to exert a high level of influence in setting high minimum standards in relation to seafarers' right to work.[53] On some of these, EU law has little say, such as circumstantial conditions (*e.g.*, the international perception that current standards had become outdated given the changes in the maritime sector in recent decades), institutional conditions (*e.g.*, the tripartite structure of the ILO ensured workers' participation in the treaty-making process), or strategic conditions

[50] International Labour Organization, 'Proposed Consolidated Maritime Labour Convention: Report I(1B)' (2005) www.ilo.org.

[51] International Labour Organization, 'Report of the Committee of the Whole' (2006) www.ilo.org see paras 503 to 511.

[52] The reason given by the United Kingdom for the inclusion of such an amendment was that it would be "prudent" for the competent port authorities to liaise with the consular services of the seafarer's State of nationality. Subsequently, Cyprus raised the issue of a seafarer who may be residing in a country other than that of his or her nationality, and therefore proposed an oral subamendment to also add the state of residence to the guideline.

[53] For general considerations on conditions that allow the diffusion of EU rules via international organizations, see M Rousselin, 'The EU as a Multilateral Rule Exporter: The Global Transfer of European Rules via International Organizations' (KFG Working Paper Series 48-2012) 1.

(there were no major conflicts between values and interests of the majority of EU Member States).[54] However, other conditions for success did derive from, or were at least influenced by, the principles of sincere cooperation and unity in the EU's international representation. In particular, success in defending common positions was made possible by good coordination between the Member States and the EU.[55]

This coordination is in fact a prerequisite for the EU's influence in the ILO, since the Commission has observatory status (only states can be members)[56] and therefore has to act through its Member States.[57] After the Lisbon Treaty, where the legal personality of the EU was expressly recognised,[58] the EU Delegation assumed the coordination role between Member States that was previously performed by the Member State holding the Presidency of the Council. The Commission is regularly invited to meetings of the International Labour Conference and of the Governing Body, according to the 2001 EU-ILO exchange of letters, where it can participate in the discussions but without voting.[59] Thus, it is the Member States that are responsible for tabling amendments on behalf of the EU, voting and other actions reserved exclusively for formal ILO members.[60] A clear example is the amendment to the Maritime Labour Convention proposed by all EU members at the Fourth Meeting of the Special Tripartite Committee in May 2022, concerning the establishment of a maximum time that seafarers can spend at sea (11 months). At the time, France held the presidency of the Council and, according to the minutes of the meetings, spoke "on behalf of the Member States of the EU".[61] Although this amendment was not accepted, it represents a clear example of coordination between Member States and the EU in order to try to obtain a strong position in an international forum from which to influence the law-making process.

[54] M Cremona, 'Extending the Reach of EU Law: The EU as an International Legal Actor' in M Cremona and J Scott (eds), *EU Law Beyond EU Borders: The Extraterritorial Reach of EU Law* (OUP 2019) 68–74.

[55] For an study on the process of coordination between Member States and the EU in the ILO, see M Ferri, 'Coordination Between the European Union and Its Member States' in C Kaddous (ed), *The European Union in International Organisations and Global Governance* (Hart Publishing 2015).

[56] Art. 1(2) ILO Constitution.

[57] Case C-45/07 *Commission of the European Communities v Hellenic Republic* ECLI:EU:C:2009:81 para. 31; Opinion 2/91 *Convention Nº 170 of the International Labour Organization concerning safety in the use of chemicals at work* (1993) ECLI:EU:C:1993:106 para. 5.

[58] Art. 47 TEU.

[59] Exchange of letters between the Commission of the European Communities and the International Labour Organization 2001.

[60] See G Pons-Deladrière, 'European Union Participation and Cooperation in ILO Institutions and Activities: An ILO Perspective' in C Kaddous (ed), *The European Union in International Organisations and Global Governance* (Hart Publishing 2015).

[61] See all the documents in International Labour Organization, Fourth Meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006 (MLC, 2006) - Part II (5 to 13 May 2022) www.ilo.org.

III.2. The EU's rationale for uploading human rights standards into international law: a rights-oriented approach

The EU has been described as a normative power.[62] This characterisation conceives of the EU as an organisation with a distinct identity in relation to other actors in the international system, as it is based and driven by a value-oriented legal order. This fundamentally different character of the EU as an international actor "predisposes it to act in a normative way in world politics",[63] promoting global rules respectful of values such as human rights.[64] For this reason, the EU has been described as "responsible",[65] "ethical",[66] or "good"[67] power that uses the law to shape the international environment.[68] However, this is not to say that the EU does not promote its own interests by sometimes mixing them with the promotion of values, as some scholars have pointed out.[69] In this context, the section applies a cost-benefit approach to the EU's role in shaping the Maritime Labour Convention to support the claim that the EU has broadly a genuine vision of the promotion of human rights abroad, while not rejecting the fact that it may sometimes pursue its own political agenda under the umbrella of such promotion.

The framework that this chapter applies to the role of the EU in the elaboration of the Maritime Labour Convention is a cost-benefit approach. This logic has two main premises. First, the result of the trade-off between benefits and costs is only certain of genuineness in one direction: when the costs exceed the benefits, the promotion of human rights can be assumed to be genuine, but when the benefits exceed the costs, the opposite assumption (*i.e.*, non-genuineness) cannot be made. This logic assumes that an

[62] The still most cited article on the matter is that of Ian Manners in which he popularises the concept of the EU as a "normative power". See I Manners, 'Normative Power Europe: A Contradiction in Terms?' (2002) JComMarSt 235. See also S Lucarelli and I Manners, *Values and Principles in European Union Foreign Policy* (Routledge 2006).

[63] I Manners, 'Normative Power Europe: A Contradiction in Terms?' cit. 252.

[64] Some argue that the EU promotes a European conception of human rights, although I believe it only promotes the *lowest common denominator* of human rights (*i.e.*, not an expansive vision of human rights with idiosyncratic European particularities). For a critique of the EU's role in shaping international human rights law, see, for example, M Koskenniemi, 'International Law in Europe: Between Tradition and Renewal' (2005) EJIL113; M Koskenniemi, *The Politics of International Law* (Hart 2011).

[65] H Mayer, 'Is It Still Called "Chinese Whispers"? The EU's Rethoric and Action as a Responsible Global Institution' (2008) International Affairs 62.

[66] L Aggestam, 'Introduction: Ethical Power Europe?' (2008) International Affairs 1.

[67] E Fahey and I Mancini (eds), *Understanding the EU as a Good Global Actor: Ambitions, Values and Metrics* (Edward Elgar 2022).

[68] For the use of the law as a means through which the EU extends its regulatory power, see, for example, M Leonard, Why Europe Will Run the 21st Century (Fourth Estate 2005); A Bradford, The Brussels Effect: How the European Union Rules the World (OUP 2020); M Cremona, 'Extending the Reach of EU Law' cit.

[69] H Zimmermann, 'Realist Power Europe? The EU in the Negotiations about China's and Russia's WTO Accession' (2007) JComMarSt 813; A Hyde-Price, '"Normative" Power Europe: A Realist Critique' (2006) Journal of European Public Policy 217.

actor has a genuine intention behind the promotion of human rights when costs outweigh benefits. In other words, the promotion of values would explain the main driver of foreign policy of an actor when upholding those values come at a cost for such promoting actor. If there are no direct benefits from the promotion, then the main reason must be a commitment towards the universality of human rights. However, in the opposite direction, when benefits outweigh costs, it cannot be concluded that there is a genuine belief in advancing human rights abroad or, in other words, that values represent the core element of the international attitude of an actor. Nonetheless, neither can it be said that the intention is necessarily self-interested – it could be that there is a sincere intention to promote human rights and that, *in addition*, there is a benefit to be gained from it. It simply cannot be said with certainty that there is a genuine motivation behind the promotion of human rights, but that does not mean that there is not – it may or may not be a possibility, but it cannot be proved under this cost-benefit approach. The second premise is that costs and benefits need not necessarily be economic. There are many other kinds of benefits (*e.g.*, enhanced international reputation) and costs (*e.g.*, worsening diplomatic relations) that may be at stake.

Following this approach, it can be argued that the European Union had a genuine intention behind the promotion of high minimum labour standards related to the seafarers' right to work in the Maritime Labour Convention. The main suspicion that may be on readers' minds is the EU's interest in raising the costs of shipowners flying the flags of countries with lower labour standards than those of the EU in order to protect the competitiveness of European shipping companies. This would be a reasonable suspicion, especially in the current context where there have been calls to redouble efforts to level the economic playing field for European companies in relation to other countries, such as China.[70] However, some EU Member States like Greece, Malta or Cyprus had a low level of regulation in the area, so a high minimum standards convention would increase the costs for their maritime industries and for their administrations. As Marianne Riddervold explains,

> "Greece and Cyprus even opposed coordinating EU-policies in the ILO during an ILO government-group meeting as late as in 2004, precisely due to the expected costs following from coordinated policies. As a reaction, they had to explain their behaviour in a closed Council-meeting. Hence, the known costs of the EU's policies to some of the EU-members were evidently very high, but still the EU's policy has been to actively advance a Convention of high minimum-standards".[71]

[70] See, for example, the statement of the largest political party at the European Parliament in this regard. European People's Party, 'EU-China Relations - Towards a Fair and Reciprocal Partnership' (2021) www.eppgroup.eu.

[71] M Riddervold, 'Interests or Principles: EU Foreign Policy in the ILO' cit. 12

There was indeed an economic interest in the EU's motives for influencing the drafting of this convention. The motivation was to optimise the competitiveness of global industry by removing administrative barriers. In other words, the EU's economic incentive was to reduce the costs of changing national administrative systems. However, this incentive would not only benefit European shipping companies, but all companies and states in the world.[72] Therefore, the benefits that EU Member States could derive from this convention do not in themselves fully explain the EU's coordinated position. Increasing the costs of other states and companies associated with high minimum standards also harmed some EU states, and homogenising administrative standards as a way to reduce costs benefited not only EU actors but actors around the world. So why did the EU go to such great lengths to influence this treaty? The answer must necessarily incorporate considerations related to a genuine belief in seafarers' labour rights.

A clue to the value that the EU attaches to the promotion of human rights in its foreign policy can be found in the language of its founding treaties. Art. J(1)(2) of the Treaty of Maastricht of 1992[73] (in force when the Maritime Labour Conventions was approved) established the goals of the common foreign and security policy of the EU, highlighting the promotion of international cooperation, democracy, the rule of law, and human rights, among others. Arts 3(5) and 21 TEU, considered the heirs of art. J(1)(2), increased the number of values that the EU is obliged to promote. Within all these values, human rights can be considered the core of the system, being the rest of values conditions for the effective realisation of them.[74] This legal language is representative of the value that the EU places on human rights in its foreign policy, although such objectives have been criticised by part of the scholarship. In this regard, as Larik explains, it has been argued that these kind of constitutionalised goals raise "unrealistic expectations that will be virtually impossible to satisfy in view of the immense challenges that global governance faces".[75] In this line, codified foreign policy goals only serve to bring up "political utopias"[76] that represent no more than "a dustbin of sentiment"[77] and that, at worse, could

[72] See interviews with EU delegates conducted by M Riddervold, 'Interests or Principles: EU Foreign Policy in the ILO' cit. 11, 12.

[73] Treaty on European Union (Maastricht Treaty) [1992] C 191/1.

[74] NA Neuwahl and A Rosas (eds), *The European Union and Human Rights* (Brill 1995).

[75] JE Larik, 'Entrenching Global Governance: The EU's Constitutional Objectives Caught between a Sanguine World View and a Daunting Reality' in B Van Vooren, S Blockmans and J Wouters (eds), *The EU's Role in Global Governance: The Legal Dimension* (OUP 2013) 17.

[76] Expression used in the context of German constitutionalism. See J Isensee, 'Staatsaufgaben' in J Isensee and P Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland* (CF Müller 2010) 144.

[77] Quote of Tiruvellore Thattai Krishnamachari on the context of Indian constitutionalism, cited in J Usman, 'Non-Justiciable Directive Principles: A Constitutional Design Effect' (2007) Michigan State International Law Review 643, 651.

led to contest the very "effectiveness of constitutional law".[78] In the particular case of EU law, the catalogue of values has been defined as a "Christmas tree"[79] or a "hodge-podge",[80] and the effort to promote them as a "wish list for a better world"[81] that smells to "motherhood and apple pie".[82]

While it is true that the obligation set out in arts 3(5) and 21 TEU is very vague, so that greater legal certainty would be desirable, that does not mean that the EU's obligation to promote values abroad lacks normativity. In this sense, although this chapter does not focus on doctrinal considerations of the legal obligations that might arise from such articles, it does argue that one of the mechanisms that the EU uses to promote human rights is precisely the influence on international law. There is thus a link between the principles of EU external relations law affecting coordination between the EU and its Member States in multilateral fora and the obligation to promote values such as human rights arising from arts 3(5) and 21 TEU. While the former are a necessary (but not sufficient) *condition* for the EU to succeed in promotion, the latter constitutes the *direction* of that promotion. In this sense, before raising objections to the EU's common positions in multilateral fora, Member States should consider that they are also bound by an obligation to promote values, which can be materialised precisely through influence in international law-making (which is made possible by such common positions).

III.3. The impact of the Maritime Labour Convention in China

Half of the story that this *Article* seeks to tell is how the EU, thanks in part to obligations imposed by some of the legal principles governing the EU's external relations, influences some multilateral treaties, *uploading* human rights to them. The other half of the story is how a third country ratifies and implements such treaties in its domestic legal system, *downloading* the EU-influenced human rights standards. Once the chapter has analysed the first part, the next two sub-sections analyse the impact of the MLC on Chinese law and China's reasons for implementing it and, more broadly, accepting international human rights law, since the will of the third state to comply with international law is necessary for this indirect human rights promotion mechanism of the EU to work.

[78] Expression used in the context of German constitutionalism. See P Badura, 'Arten Der Verfassungsrechtssätze' in J Isensee and P Kirchhof (eds), *Handbuch des Staatsrechts der Bundesrepublik Deutschland VIII* (CF Müller 1992) 41.

[79] Image attributed to the UK during the 2002-2003 Convention on the Future of Europe. See F Xavier Priollaud and D Siritzky, *Le Traité de Lisbonne: Texte et Commentaire Article Par Article Des Nouveaux Traités Européens* (DOC Française 2008) 35–36.

[80] Term used in the context of the Treaty establishing a Constitution for Europe. See A von Bogdandy, 'The European Constitution and European Identity: Text and Subtext of the Treaty Establishing a Constitution for Europe' (2005) ICON 295, 315.

[81] W Drescher, 'Ziele Und Zuständigkeiten' in A Marchetti and C Demesmay (eds), *Der Vertrag von Lissabon: Analyse und Bewertung* (Nomos 2010) 68.

[82] A Dashwood and D Wyatt, *Wyatt and Dashwood's European Union Law* (Hart 2011, 6th edn) 903.

First of all, it should be pointed out that the implementation of international human rights law in China is controversial. The 1982 Constitution does not have any mention to the status of international law domestically, probably due to historical reasons related to China's distrust of international law on the one hand, and the constitutional influence of Soviet international legal theory and practice on the other.[83] This means that there are different ways of incorporating international law into the Chinese legal system, ranging from automatic incorporation typical of monist systems (less frequent method) to the transposition of treaties by means of a legislative act typical of dualist systems (more frequent method).[84] In the particular case of human rights, the vast majority of scholars, as well as what is observed in practice, indicate that an ad hoc legislative transformation is needed.[85] However, rights in China are developed in countless regulations of different departments. This predominantly administrative character makes the protection of human rights very dispersed among numerous instruments and therefore very complex to track. Moreover, the enforcement by the administration and interpretation by the courts adds another layer of complexity which, needless to say, is beyond the scope of this study.[86]

The Maritime Labour Convention has produced many human rights reforms both in law and policy in China.[87] Although China did not ratify the Maritime Labour Convention until 2015, it has been reforming its legal and policy framework since 2006 to prepare for the landing of this international treaty. Of particular relevance are the Regulations of the People's Republic of China on Seafarers, which were adopted by the State Council on 28 March 2007.[88] As Pengfei Zhang and Minghua Zhao explain, this was the first time in Chinese history that "seafarers' rights were substantially laid down in law", even though the regulations focused mainly "on the administration of seafarers, rather than on seafarers' rights and protection".[89] However, many of the minimum standards contained in the Maritime Labour Convention, some of which were decisively influenced by the EU, were absorbed into the regulation, in particular in Chapter 4. This chapter, under the name Oc-

[83] T Wang, *International Law in China: Historical and Contemporary Perspectives* (Brill 1991).

[84] H Xue and Q Jin, 'International Treaties in the Chinese Domestic Legal System' (2009) Chinese Journal of International Law 299.

[85] A Björn, 'Exploring Ways of Implementing International Human Rights Treaties in China' (2010) NQHR 361, 365–367.

[86] For studies on China's legal system, see generally PB Potter, *China's Legal System* (Polity Press 2013); C Wang and NH Madson, *Inside China's Legal System* (Chandos 2013).

[87] See, for example, P Zhang and M Zhao, 'Maritime Health of Chinese Seafarers' (2017) Marine Policy 259; P Zhang, *Seafarers Rights in China: Restructuring in Legislation and Practice under the Maritime Labour Convention 2006* (Springer 2016); P Zhang and M Zhao, 'Maritime Labour Policy in China: Restructuring under the ILO's Maritime Labour Convention 2006' (2014) Marine Policy 111.

[88] People's Republic of China, Regulations of the People's Republic of China on Seafarers of 9 January 2007, Order No. 494 of the State Council pkulaw.com (CLI.2.90756(EN)).

[89] P Zhang and M Zhao, 'Maritime Labour Policy in China' cit. 114.

cupational Security of Seafarers, was in fact drafted by the Chinese Seamen and Construction Workers' Union and inserted into the final draft of the regulation, which did not initially provide for any chapter on seafarers' rights.[90] To implement the seafarers' regulation and gradually comply with the requirements of the Maritime Labour Convention, the Ministry of Transport has adopted numerous policies (at least 36 between 2007 and 2012).[91] For example, the Administration Rules of Seafarers' Registration and the Provisions of Seafarers' Service Management were adopted in 2008, the Provisions of Seafarers Despatch Management in 2011 or the Provisions of Seafarers' Occupational Security in 2013.[92] In addition, the Maritime Safety Agency, an agency under the Ministry of Transport, has also adopted several Notices, in which the "spirit of decent work promoted by the ILO is clearly felt".[93] More recently, the Maritime Traffic Safety Law was revised in 2021 and included for the first time a reference to seafarers' labour rights and interests in art. 6: "[t]he State shall, according to law, ensure the labor safety and occupational health of the crew members and safeguard their lawful rights and interests".[94]

Coming back to our specific example, Standard A2.5 and its corresponding Guideline B2.5 of the MLC were implemented in art. 34 of the Regulations of the People's Republic of China on Seafarers:

> "Where the right of repatriation of seafarers is infringed, the civil affairs department or the consulate of the People's Republic of China of the place where the seafarers are located shall provide assistance to the seafarers and may, if necessary, directly arrange for their repatriation. Where the civil affairs department or the consulate of the People's Republic of China has paid the cost of repatriation of seafarers, the employer of seafarers shall reimburse the cost in a timely manner".[95]

Although the first paragraph of guideline B2.5.2 – the one amended by EU Member States – has not been directly reflected in any legislative or policy document, it is nevertheless applied in practice. People working in the sector in China have confirmed to the author that it is a practice that is followed, even though it is not recognised in any document, since as a guideline it is not mandatory to transpose it into the black letter of the law.[96] The author contacted China's Maritime Safety Agency several times to contrast this information but no response was ever received.

[90] *Ibid*.

[91] *Ibid*.

[92] Official translations of some of the maritime regulations can be found at en.msa.gov.c.

[93] P Zhang and M Zhao, 'Maritime Labour Policy in China' cit. 114.

[94] People's Republic of China, Maritime Traffic Safety Law of the People's Republic of China of 9 February 1983 as amended on 29 April 2021 by Order No. 79 of the President pkulaw.com (CLI.1.5012456(EN)).

[95] Art. 34 of the Regulations of the People's Republic of China on Seafarers.

[96] Interview with a Chinese lawyer working for a shipping company in Shanghai.

All of these reforms have had a major impact on practice. For example, the seafarers' trade union (Chinese Seamen and Construction Workers' Union) and the shipowners' association (China Shipowners' Association) agreed on a Seafarers' Collective Bargain Agreement in 2009, which has been updated on several occasions since then.[97] In a different area, empirical research has shown that the access of Chinese seafarers to shore-based welfare services after the ratification of the MLC has improved, even though there is still a long way to go.[98] Overall, as Pengfei Zhang argues, "[t]he restructuring of seafarers' rights in China seems to be in progress with the potential to benefit the hundreds and thousands of seafarers in the country".[99]

However, all these standards have increased costs for shipowners and burdened the Chinese state, as Chinese representatives complained on numerous occasions during the drafting of the convention.[100] So what were the main reasons for ratifying a convention that entailed such costs and which China did not actively shape? Pengfei Zhang and Minghua Zhao argue that there were at least three main reasons.[101] First, the new port state control sanctioning mechanism of the MLC uses the principle of "no more favourable treatment" (art. V(7) MLC). Therefore, Chinese-flagged vessels were subject to stricter inspections than vessels flying the flag of countries that had ratified the international treaty, which was in addition detrimental to China's international image, as its flag enjoys a good reputation in the industry. Second, by refraining from ratifying the treaty for several years and remaining outside the regulatory regime, its ports ran the risk of being a destination for substandard ships to avoid risk of detention, leading to safety and marine pollution problems. Third, ratifying the MLC and implementing its high minimum standards helped to attract and retain seafarers, who are key to the maritime industry of the Asian country (according to the *BIMCO ICS Seafarer Workforce Report 2021*,[102] China is the fourth global supplier of seafarers, only after the Philippines, Russia and Indonesia), in a context where a shortage of young seafarers has been identified.[103]

IV. Conclusion

This *Article* has defended two arguments and explored the relationship between them. First, some of the principles governing EU external relations law, mainly unity in the international

[97] The Collective Bargaining Agreement for Chinese Crew 2009. The updated version can be found at www.csoa.cn.

[98] L Zhao, P Zhang, M Zhao and others, 'From Marx to Market: A Legal and Empirical Analysis of the Maritime Labour Convention in China' (2023) Asia Pacific Law Review 329.

[99] P Zhang, Seafarers Rights in China cit. 23.

[100] International Labour Organization, 'Report of the Committee of the Whole' cit. para 62.

[101] P Zhang and M Zhao, 'Maritime Labour Policy in China' cit. 114–115.

[102] Baltic and International Maritime Conference & International Chamber of Shipping, 'Seafarer Workforce Report' (2021).

[103] B Wu, G Gu and CJ Carter, 'The Bond and Retention of Chinese Seafarers for International Shipping Companies: A Survery Report' (2021) Journal of Shipping and Trade 1.

representation of the EU (goal-oriented principle) and sincere cooperation (means-oriented principle), set the conditions under which greater influence of the EU and its Member States in treaty-making in multilateral fora is possible. The second argument is that such influence is precisely one of the mechanisms through which the EU and its Member States can carry out the obligation to promote values abroad – such as human rights – set out in arts 3(5) and 21 TEU. This mechanism consists of the process by which human rights standards are *uploaded* into multilateral treaties, which are subsequently *downloaded* when a third states signs, ratifies and implements such EU-influenced treaties. In conclusion, there is a link between those principles of EU external relations law (which are a necessary -but not sufficient- *condition* for a successful promotion) and the obligation to promote values (which provides the *direction* of the promotion).

Therefore, when Member States object to the upholding of EU common positions in human rights treaty-making, they should bear in mind that, beyond the direct principles of EU external relations law applicable to the particular situation, they also have an obligation to promote human rights abroad and such common positions are a means to its fulfilment. Consequently, if a Member State challenges such common positions (even taking it to the CJEU in an extreme case), the EU institutions can use this argument as an additional layer in their defence.

Finally, the question of the external sovereignty of EU Member States in multilateral fora is in fact a question of what to value more in a trade-off between *autonomy* to decide one's own positions or greater capacity to *influence* in international law-making. Greater autonomy would imply less commitment to EU common positions, presumably leading to less international influence in multilateral fora. Conversely, less autonomy implies more commitment to EU common positions, leading to more international influence in multilateral fora. This is the question for Member States to answer.