

## Understanding the EU's Normative Power through Wittgenstein's Language Games

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**Abstract.** The EU has at its basis a set of specific norms, guiding its external actions and priorities in foreign policy. Considering the EU as a Normative Power requires to analyse its ontological foundations. As part of this analysis, the presence of a normative relativism has to be taken into account. Through Ludwig Wittgenstein's language games it is possible to assess this relativism. The paper exemplifies this by examining the role of the EEC/EU during the break-up of the Yugoslav federation. Through this analysis it clearly emerges how the understanding of the norms is subject to change over time. This occurs through language games in the form of social practice. Through it actors have the possibility to define a new intersubjectivity, bringing within the system they belong to a new value based framework. However, the newly created system can be contested, because of an axiological dichotomy between the newly established system and the old one can emerge. On this basis, the ontological foundations are determined by the outcome of the social practice, since all the norms and realities promoted and diffused by the EU are plural and contingent social constructions. These constructions are subject to change, proving their inner relativism.

**Keywords.** Norms; Normative Power; Relativism; Language Games.

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*Comments welcome*

### **The EU as a promoter of norms**

The question about what kind of power the European Union (EU) represents [Sjursen, 2006a] has produced a set of different answers, depending on to the scholars' ontological plan of the research, and determined by the historical period considered or during which the analysis has been made. The EU, among the different definitions on the kind of power it represents, has been defined and described as a civilian [Duchêne 1973, 19], or a soft power [Hill, 1990], and in 2002 as a "Normative Power" (NP or NPE), by Ian Manners.

Historical events, internal processes occurring among Member States (MS), changes in the balance of world politics, had and still have the effect to provide the EU with endogenous and external pressure to accept a paradigm shift regarding its role in the international arena. This paradigm shift has not a, however, a specific direction, since deviations might occur, as a combination of different elements such as historical events, changes in EU's institutions and MS, resulting in different forms and effectiveness of the EU's actorship and effectiveness. Nevertheless, at the basis of the – general - definition of the EU's international role there is the promotion of a specific set of norms and values, that can be identified as basic principles, to third parties, an element that has been recurrently reported in the EU Treaties, starting from the Single European Act's preamble of 1986, where it was stated that MS were "DETERMINED to work together to promote democracy on the basis of the fundamental rights recognized in the constitutions and laws of the Member States, in the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, notably freedom, equality and social justice" [Single European Act, 1987 O.J. L 169/1].

By defining the role of the EU as a promoter of norms in world politics, with an alleged universal claim, a modification occurs in the analysis of the kind of power the EU effectively is. The attention is not then placed on the distinction between civilian and military power, where some scholars have stressed out that the EU cannot play a major role in world politics because of the lack of specific capabilities. On the contrary, according to Manners, by considering the EU a NP, the object of the studies shifts on what the EU is, rather than what the EU does or says, hence addressing its ontological foundations [Whitman 2011, 1-2; Manners 2002, 252-253]. Such an approach aims to define the normative foundations of the power of the EU, through a “synthesis of historically dichotomised approaches of structural IR (interests and power) and normative IR (values and knowledge)” [Manners 2015, 300]. The aim of this paper is to investigate what defines the ontological foundations of the EU’s basic norms and principle and to demonstrate, by using Ludwig Wittgenstein’s language games, to what extent these norms are subject to a relativism effecting their universal status, with implications on the EU as a NP.

### **Change, ontological realities and Wittgenstein’s language games**

If the focus has to be placed on what the EU is, an evolution in time must be observed and assessed, since NP as discussed by Manners is an entity in which change is a core element [Diez and Manners 2007, 175]. Change is not a single, univocal and unilateral process, especially when considering a complex entity such as the EU. This means that change can occur at many levels – historical, institutional, cultural, social, and individual – without following a predefined path, and these levels are all interconnected since, by way of example, a historical event can produce effects on all the other levels. Hence, if as Manners has observed, NPE takes into account change [Diez and Manners 2007, 175], this means that the concept itself is a transformative one, to the extent that transformation can occur through changes determined by historical events, preferences and institutions of the MS, transformation of the role of the EU’s institutions, and interactions among MS and among them and EU institutions.

Such an outcome can only be reached when considering the plural ontological realities of the EU as a core element. These realities have been determined, in the first instance, by historical contingencies, specifically the two World Wars, that have highly contributed in the internalization process of specific universal norms; these norms constitutes the basis of the external actions of the EU, so that it is possible to trace a process of internalization and externalization, during which these norms have been provided with a European acceptance [Lucarelli and Manners 2006a, 202], directly affecting their ontology and, eventually, their alleged universal character. However, it needs to be verified if these norms are a priori universal [De Zutter 2010, 1107]. In addition to this, the plural ontology is also the product of the interactions occurring at the level of MS and among them and EU’s institutions, actively shaping the EU’s power, and its legitimacy in the international arena.

In Manners’ original conceptualization, NPE relies on ideational aspects, rejecting uncritical and unreflective analysis, aiming to enhance the understanding of the kind of principles the EU promotes, the way the EU acts, and its impact in world politics, in other words on how the conceptions of normal are effectively shaped [Manners 2008b, 45-46].

In an attempt to enhance this understanding, this analysis adopt an account of language games and linguistic activities occurred among the different actors, where meanings, and their formulation, are sustained across a wide network of customary practices, based on late Ludwig Wittgenstein’s work [Lawn 2003, 281], since in its work it is possible to locate many insights enabling to envisage how an allegiance to specific values is created through a plurality of language-games rather than through rational argumentation [Mouffe 2000, 11]. The aim is to demonstrate how through the implementation of language games in politics, MS and EU institutions have produced a shared intersubjectivity, where specific meanings have been provided to the basic norms, hence defining their ontology.

Politics, according to Wittgenstein, is one of the possible form of life among many others [Robinson 2009, 5], where life can be understood, or conceived, as a fact, meaning a “structure of things and their mutual relations”; moreover, as a form, life can be understood as a “totality of possibilities” [Kishik 2008, 11-12]. By combining these two definitions, a form of life can be better described as the combination of the structure of things and the different possibilities arising from the relations occurring within the structure. Thus, a form of life encompasses several components - sociological, linguistic, historical, and behavioral - defining the matrix, or the structure, within which a language has a meaning, determining the different possibilities and outcomes as a result of the relations [Kishik, 2008].

This notion is relevant when analysing NPE since, given the hybrid nature of the EU, it is necessary to understand how these interactions occurs, and on what basis. In other words, each one of these actors, from MS to EU institutions, has a different sociological, linguistic, historical and behavioral matrix and, through these specific components, language assumes its meaning. Hence, through interactions, it is possible to create agreements or shared views, identifiable with a shared intersubjectivity, among the different players [Stickney 2008, 621]. In this way change becomes a core component in the definition of the power of the EU, since it is through it - the creation of a shared meaning around a norm - that it has been possible to empower - but also to eventually reduce its power - the EU as an actor, providing it with a set of capabilities in the field of foreign policy. However, lacking the word change of a positive or negative connotation, the creation of a shared meaning is only one of the totally available possibilities, so that defections can occur, eventually redefining the actual power of the EU. Taking these features into account, different language games codify a variety of perspectives on the reality where interactions among players occur, and consequently arising different possibilities. This evidences the relativity of the language, where speakers - or players - prefer to see the world according to some specific categories, shared by the community they belong to or, to put it differently, according to the specific matrix they bring within the context where relations take place [Arsith 2011, 14].

A further element to be taken into account is represented by the context, since language games depend and relate to it, and playing language games can create contextual change, influencing the direction of the social interactions [Kopytko 2007, 796]. In Wittgenstein’s philosophy, social components are core elements, since actors taking part in language games adopt the rules intrinsic in social practice and make an effective use of them according to the identified needs; as outlined by Roman Kopytko [2007, 797] “social practice is a source of certainty in social action...hence competent players should reflect and reproduce the social practice”.

Hence, playing a language game signifies and typifies a form of interaction among players that can occur on different grounds, and with different effects and intentions, where words have some specific characteristics. In this regard, Wittgenstein outlines that not all the words are or functions as names; secondly, that words’ functions are different and vary; in addition to this, the meaning of a word is not the object the word stands for, and ostensible teaching and definition do not define the origin and the foundation of the language [Perissinotto 2014, 49]. These four characteristics of words can be helpful to overcome the identified problem of the ontology of the EU’s basic norms (or *grundnormen* using Hans Kelsen’s philosophy of norms), since it would allow to critically analyse how interactions - language games - occurring among a variety of actors - EU’s MS and institutions in the first instance - have influenced the internalization and externalization of the basic principles, defining what being normative means, that is the capability to change norms, standards and prescriptions [Lucarelli and Manners 2006a, 202; Whitman 2013, 176; Manners 2008a, 45]. However, this capability has to be proved internally before being effective at external level.

According to Wittgenstein, actors might have completely different systems of values and beliefs, based on the specific matrix they refer and belong to, hence values can be plural, because of the lack of a common vocabulary or of a substantiated social practice [Moore 2010, 1115]. From this perspective, political cooperation can then become difficult to

achieve, since the different actors might not be willing to endorse the same norms and institutions. Language games can here intervene to create a common understanding around norms and values through the relations taking place among the actors, because through language, and its games, differences in understanding and applying values can be revealed, requiring their redefinition, committing the different players to conclusions that were previously unforeseen or even undesired among the totally available possibilities [Moore 2004, 666].

Norms can then be understood by three specific features: according to the specific situation, or context within which relations take place, by the actions undertaken by the actors, and by the intentions, or outcomes, also (un)expected ones. Based on this account, being a NP in a context of plural ontologies determines not only a normative relativism where elements of situation, action and intention define a specific path undertaken by the actors in a specific historical period, but also a flexibility degree of the norms and values, where the understanding around them can be substantially modified overtime. From this perspective, any universal claim around a norm can be questioned, while it is possible to frame a normative relativism over time, helping to identify change as one of the core elements of NPE. This change can be better addressed by analysing a specific context, represented by the break-up of Yugoslavia, and the actions undertaken at EU - and prior to that at European Economic Community (EEC) – level. This case study allows to verify how norms are subject to change over time, in terms of their understanding, and how they can be contested by the actors that have contributed in defining them, because axiological issues may arise within a system, since value based systems might be competing. This creates a normative struggle having the effect, from one side, to limit the empowerment of the norms at internal level and, on the other, to prevent the effective implementation of actions at external level, thus limiting the role of the EU as a promoter of norms.

### **The recognition of Croatia and Slovenia**

On the 15<sup>th</sup> of January 1992 the Socialist Federal Republic of Yugoslavia (SFRY) ceased to exist, since the independence of Croatia and Slovenia had been recognized by the MS of the EEC and its institutions, and diplomatic relations between the different countries begun to be formally established. The crisis and consequent wars occurred within the collapsing Yugoslav federation had a major impact on the EEC's institutions and its MS, since they had to face actual wars on the European ground for the first time since the end of World War II.

The collapse of Yugoslavia took place within a context where internal conflicts could have not been easily smoothed-out because of broad differences existing among the members of the multicultural federation, and because of the lack of agreements among them on how to reform it [Williams and Kofman 1989, 4; Fink Hafner 1995, 341]. Tensions between the members of the federation, and within them, begun to occur soon after Tito's death, and between 1988 and 1990 extremisms in the form of nationalism arose within each country. Nonetheless, EEC's MS and institutions seemed to be unaware of the seriousness of these problems and of their dramatic turn [Radeljic 2010, 118; Touval 2002, 15].

The hostilities in the Yugoslav federation begun when the republics of Slovenia and Croatia declared their independence on the 25<sup>th</sup> of June 1991. From the beginning there was a general consensus among the different players of the international community that the responsibility for finding a solution was strictly European, thus directly requiring the EEC to play a key role in solving the crisis. The initial position of the foreign ministers of the EEC's MS was to deny recognition to the two republics, while the United States administration, under the presidency of George Bush, asserted a secession war would have not been supported, so that the two republics had to be treated as elements of the Yugoslav federation. The governments of France and Britain also expressed a preference for a united Yugoslavia, eventually under a reformed federation [Glaurdic 2011, 174-175]. What can be defined as a political myopia of the EEC and its MS can be explained by the creation of a shared view about the Yugoslav federation and its stability over time, developed through the relations occurred between the

parties in the previous decades where, despite several claims about the chance of disintegration of the federation after Tito's death in 1980, nothing really happened until the beginning of the 1990s, when internal tensions exacerbated. This caused an illusionary vision about the stability of the federation, with an evident dichotomy between the alleged knowledge about the situation in Yugoslavia and the reality. Nevertheless, the possibility to make mistakes, such as having a non-realistic view, of has to be considered as one of the many possible outcomes of the act of knowing.

On the 28<sup>th</sup> and 29<sup>th</sup> of June 1991, a European Council meeting took place in Luxembourg, and it was agreed to send the foreign ministers of Italy, Luxembourg and The Netherlands, the so-called Troika, to a mediating mission to Yugoslavia. The mission succeeded in negotiating ceasefire arrangements, based on suspension of hostilities and on a three months moratorium on the republics' declaration of independence, obtained on the 7<sup>th</sup> of July as part of the Brioni Agreement. In the words of the Italian Foreign Minister Gianni De Michelis, the outcome was positive for the future of the political union, since the Community was able to act as a political entity [Steinberg 1992, 12]. This was seen as the first test for the actorness of the EEC, soon to become EU, in the domain of foreign policy, also on the basis of the provisions about the Common Foreign and Security Policy (CFSP) as established under the Maastricht Treaty, that was still to be signed and to enter into force.

It is questionable, however, if the CFSP could have been really effective before its entry into force, despite some actors saw this as its first actual test. This is due to several factors: in the first instance, it was not clear what kind of actorness the EEC had in this field and also what kind of capabilities had been conferred to the EEC. Moreover, the existing discrepancies, in terms of shared views and beliefs about the world, among the different actors involved in the establishment of the CFSP influenced the path of action. In other words, the institutionalization, still to be effective, of the CFSP did not automatically lead to the creation of a new actor, specifically a political entity, in the international arena, since a common intersubjectivity among the actors was lacking.

This intersubjectivity is achieved through a process aiming at redefining the conceptions of norms among the different actors, hence their ontological foundations, constituting the basis for common actions. In absence of this, the intersubjectivity itself is absent because there is no correspondence between the ontological foundations of the norms and the possibility to undertake common actions, because of the lack of common understanding. From this point of view, the institutionalization of the CFSP can be seen as the creation of an arena where all the different subjects could have been able to establish and strengthen the actorness of the EEC in the foreign policy domain. This can occur by structuring the intersubjectivity through the implementation of language games as a meaningful social practice - since it is through practice that the meaning, also around norms, is established and agreed among the parties.

The position to preserve the unity of the Yugoslav federation was challenged by Germany when, at the beginning of July 1991, during a meeting at The Hague, it suggested that the EEC should have collectively recognized the independence of the two republics, a vision opposed to the one supported by Britain and France [Lucarelli 1997, 70]. What is evident here is that the new of German's position challenged the specific intersubjectivity constructed over the years, eventually contributing in its reshaping. Germany often cited the possibility for an unilateral recognition of the independence, and in September 1991 the German Chancellor, Helmut Kohl, declared that in absence of the possibility to dialogue, recognition becomes possible "in line with our understanding of the right of self-determination", although this unilateral move did not take place until December 1991, within a different context [Lucarelli 1997, 70-71; Weller 1992, 586]. Germany's claim is fundamental when assessing the possibility to challenge not the validity of a norm but its understanding, or interpretation, consequently determining new implications regarding its applicability. This statement opened not only the scenario for the reformulation of the intersubjectivity towards the Yugoslav federation from one side, but also to reformulate the understanding and application of a norm, specifically the right of self-determination, as agreed and shared among the members of the

international community, thus providing the basis for changing its application, and consequently shaping a new conception of the normal [Manners 2002, 239].

In this way the EEC and its MS got actively involved in a process redefining their internal intersubjectivity, also involving the actorness of the EEC in foreign policy, since in this way it would have been possible to create new shared views and visions, affecting the capabilities of the EEC in the international arena, by basing it on a new understanding of norms. This process can occur through social practice, where the act of knowing and learning becomes fundamental, constituting the foundation of the redefinition of the norms, in which a precise European acceptance is given to them [Lucarelli and Manners 2006a, 202]. On this basis, the ontology of the norms can be defined through the act of reshaping the previously constituted intersubjectivity. This takes place through the implementation of language games in the form of social practice among the different players, where each actor is involved in a process of knowing and learning, resulting in norms that are understood differently when compared to the previously constituted intersubjectivity, leading to the implementation of different and new actions. This process cannot be implemented in a foreseeable period of time, eventually creating a gap between the actual need, as in this case to come with a timely solution to the Yugoslav crisis, and the whole development of the process. The creation of a consensus among the EEC and its MS regarding the independence of the two republics exemplifies this, since the actual level of support for their recognition within the EEC was uncertain, because of the existing disparities in terms of understanding and applications of norms among the different actors. Within this context, Germany begun to threaten the other MS for unilateral recognition, facing opposition from Britain and France [Crawford 1996, 495]. At the European Political Cooperation (EPC) meeting that took place on the 16<sup>th</sup> of December 1991, the MS agreed on a compromise, by deciding that recognition would have been formalized on the 15<sup>th</sup> of January 1992, if Slovenia and Croatia met some specific conditions on human rights and respect of the minorities, by granting them autonomy.

However, on the 23<sup>rd</sup> of December 1991, Germany recognized the independence of the two new states by sending official letter to the governments of the two republics, although postponing the formal recognition until the 15<sup>th</sup> of January, so to align it with the other Members of the EEC. This event occurred two weeks after the Council meeting that took place in Maastricht on the 9<sup>th</sup> and 10<sup>th</sup> of December, where the final version of the Treaty on European Union was drafted before being signed by the parties in February 1992. German's move was motivated by the fear that Croatia could have not met those requirements, as it actually happened, since the Badinter Commission stated that the Croatian constitution was not in line with them. However, instead of not granting recognition, a further compromise was reached. Croatia was asked to modify the constitution in order to meet the requirements, requesting Croatian president personal assurance about it. Finally, on the 15<sup>th</sup> of January 1992 Croatia and Slovenia were officially recognized by the international community [Crawford 1996, 495; Lucarelli 1997, 74].

Several aspects emerge from this account: in the first instance, the act of reaching a compromise or creating a shared view, which is one of the possible outcomes of a language game, can result from a forceful pressure undertaken by one or more actors towards the others. This means that the overall process is not necessarily linked to peaceful means, but also to threats among partners within the same supranational organization. In this case, the weakly institutionalized EPC contributed in defining an arena in which the threat and the eventual implementation of unilateral actions are more incentivized, since no actual mechanism is set to prevent this behaviour. On the other hand, a forceful pressure can contribute in speeding up the process of creating shared views, an intersubjectivity that is substantiated in this case by the requirements that the MS defined to recognize the republics. These requirements had a specific normative basis, since the attention was posed on respect of human rights and of the minorities. From this perspective, the common position reached by the different actors can be seen as the result of a social practice leading to the definition of a normative foundation, constituting the basis for shaping an internal intersubjectivity at EEC

level from one side and, on the other side, towards Slovenia and Croatia. This intersubjectivity relies on specific *grundnormen*, such as respect of human rights and of minorities in the case analysed, influencing the actions of the MS and of the EEC. Those basic norms could have been later transferred to the EU's institutions within an institutionalized context as the CFSP, in order to create that foundation defining the EU as a normative power. Moreover, this activity also defined a normative conditionality characterizing the new intersubjectivity, within the EEC and towards Croatia and Slovenia. As evidenced by Sonia Lucarelli [1997, 88-91], the role of the EEC can be defined as a facilitator in making the different positions "more transparent and predictable", and it provided a framework within which players could have exercised their influence, although within a weakly institutionalized framework. These factors can be seen as a part of a complex language game providing the ground for the creation of a normative framework determining the actions of the actors, but where a precise actorness of the EEC had not yet been developed yet, thus having a limited role.

Taking this into account, the normative conditionality is a requisite that can be met ex-ante, as in the case of Slovenia, or ex-post, as in the case of Croatia, since the recognition was granted on the basis of specific assurances about the modification of the constitution, also to secure the enforcement of the normative requirements. In this perspective, the unilateral recognition by Germany, although not formal, can be seen not only as a way to take the lead over the other MS in the matter of Croatian recognition, by betting that the other parties would have preferred to keep the unity of the Community, saving the coordination among them rather than keeping different position [Lucarelli 1997, 87], but also as a way to guarantee the respect of that normative conditionality, within an international context where defections can be subject to sanctions by the international community.

### **The outbreak of war in Bosnia**

In late February 1992 a referendum was held in Bosnia, finding a majority of Muslim Bosnians and Croats in favor of the independence, while the Serbian minority boycotted it. The referendum, that took place in response to the opinion of the Badinter Commission of January 1992, stating that recognition could have been granted only if a referendum on the independence was organized so to demonstrate the willing of the citizens [Ragazzi 1992, 1492], turned to be a plebiscite in favor of the independence, although only the 63,4% of the population took part in it. The independence was formally recognized by the EEC and its MS on the 6<sup>th</sup> of April 1992, with the United States following one day later, on the 7<sup>th</sup> of April, but in the meantime violence and war begun to spread in the country. By acting in this way, the EEC and its MS had abandoned any plan regarding the possibility to preserve the Yugoslav federation and, at the same time, the central government of Slobodan Milosevic had lost any international support [Schwabe 2004, 27].

As a matter of fact the EEC and the MS, while showed no opposition in recognizing the new independent state once the requirement set out by the Badinter Commission was fulfilled, once again demonstrated to have little capability in dealing with an actual war scenario. In addition to this, the MS had different stances regarding the actions to undertake to face this additional international challenges as evidenced by the visit made in Serbia in June 1992 by the French President François Mitterand, without consulting or informing the other MS, nor the EEC institutions; the visit also highlighted France's opposition for any direct military intervention of European troops in the war, hence leaving only economic and diplomatic measures as means to solve the conflict [Schwabe 2004, 27]. These means actualized with a series of negotiations, where the three national parties, the Party of Democratic Action (SDA), the Serbian Democratic Party (SDS), and the Croatian Democratic Union (HDZ), initially proposed a plan in which the country had to be divided into seven regions, three under the control of Serbs, and two each for Muslim and Croats, while all the seven regions were part of the newly reformed state; the negotiations resumed between February and March 1992, when the EEC proposed a revised version of the previous partition programme. The so called Carrington-Cutileiro plan, endorsed by the EEC, defined the territory of Bosnia-

Herzegovina as made of “three constituents units, based on [ethno]national principles and taking into account economic, geographic and other criteria” [Hayden 2013, 55-56].

The proposed plan codified a peculiar view of the reality, hence of the situation in Bosnia-Herzegovina, based on the interactions occurred among the parties, in an attempt to find a solution to the escalation of the crisis and associated violence. What the Cutileiro plan offered was a reconfiguration of the reality based on a de facto ethnic division of the territory of Bosnia. When assessing the plan, three key elements have to be taken into account: the first element is represented by the context, or situation, in which interactions took place. This context is definable by a matrix made of different and contrasting elements: in the first instance it has to be taken into account the overall scenario, that is the general process of disintegration of Yugoslavia. A further element is given by the process leading to the recognition of Slovenia and Croatia, that served as an element to create a new intersubjectivity among the players involved in the context. The third element is provided by the actual means the EEC had at the beginning of the 1990s in the field of foreign policy, an element that directly relates to its actorness, to the capability to act as an independent international player, and to the interactions among MS and EEC’s institutions, each one with its own preferences and view of the world, bringing within the context its value-based system.

The recognition - and its associated process - of Slovenia and Croatia actually created a contextual change, since new meanings and preferences were established, along with a common understanding of the principle of self-determination at EEC level, with direct implications for the external actions undertaken. The Cutileiro plan has then to be assessed against this contextual change because it determined not only the conditions, for Slovenia and Croatia, to see their quest for independence recognized, but it created a framework within which it would have been possible to apply the same rules and understanding to other scenarios, such as the Bosnian one.

Actions and intentions of the actors have to be analysed against this framework. In this case, the action is the proposed plan, founding its basis in the ethnic division of the territories, where the intention was not only to find a solution to the crisis, but also to appease the Bosnian Serbs, in an attempt to lower the tensions between Bosnia and Serbia, that was ready to militarily intervene in the conflict. However, one of the core elements in crisis solution, when an external entity intervenes as a mediator, is given by the capability to recognize the right moment to promote, also through means of imposition, a political answer to the crisis itself, although this element is highly dependent on the means and resources the mediator has available [Goodby 1996, 503]. Hence, the availability of means relies, in the first instance, on the actorness of the mediator, and here actorness relates to the concept of power; moreover, the actions undertaken by the mediator have to be recognized by the recipient, that will start acting according to the prescriptions, also in terms of norms, proposed or imposed by the mediator. When analysing the EEC, and also the EU, the process of empowerment derives from two sources: the first one is given by the creation of a shared intersubjectivity among all the actors, in this case substantiated by the creation of the conditions for the EEC to act as a legitimate, recognized and empowered actor in the field of foreign policy. This process can be defined as internal empowerment of the EU. The second source is given by the external recognisability, meaning that third parties, in this specific case the three political parties in Bosnia, must recognize the authority, and the legitimacy, of the EEC as a foreign policy actor, to accept it as a mediator in solving the conflict.

### **The ratification of the Maastricht Treaty and the its normative impact**

Within this context it is necessary to analyse the ratification process of the Maastricht Treaty. The signing ceremony of the Treaty was held on the 7<sup>th</sup> of February 1992. Some MS subordinated the ratification to the outcome of a referendum to be held in their countries. The first MS to hold a referendum was Denmark, on the 2<sup>nd</sup> of June 1992, and the Treaty was rejected by a difference of only 47,000 votes. This created a shock within the Community,



and an emergency Council meeting was held, where the MS stated the impossibility to renegotiate in any way the Treaty [Duff 1994, 53-55]. One of the key elements of the controversy regarding the ratification process, specifically in Denmark, France, and Britain, was represented by the establishment within the Treaty, of the EU citizenship, that was seen as an infringement of the national sovereignty [Koslowski 1999, 169]. The concerns of the Danish government were taken into consideration at the Edinburgh Summit, where the MS agreed on specific opt-outs for Denmark, regarding the monetary union and common defence policy, along with the recognition of a “Unilateral Declaration on Citizenship of the Union” by Denmark, and a second, positive, referendum was then held in Denmark in May 1993 [Koslowski 1999, 170].

A referendum on the Treaty was held also in France, on the 20<sup>th</sup> of September 1992, and only 51.05% of the voters proved to be in favor of it; during the campaign for the referendum, the French center-right and right-wing parties opposed the provisions of the EU citizenship regarding the extension of voting rights to permanent resident aliens, as a direct threat to French sovereignty and identity [Koslowski 1999, 170]. The ratification process in Germany was obstructed by a legal challenge brought before the Constitutional Court at Karlsruhe aiming to prevent the President of the Republic from ratifying the Treaty because it infringed the German Basic Law, although the constitution had been previously amended on the basis of the provision of the Treaty, and only in October 1993 a judgement rejecting the claims against the treaty was delivered. [Duff 1994, 59-61].

What happened in Denmark, France, and Germany underlines the existence of different values based systems among the actors; these systems found their legitimacy on the pre-eminence of the internal norms, in contrast with the empowerment of the EU resulting from the Maastricht Treaty. Within the context of politics, language games occurs among different players, where the ultimate goal is the formation of a common intersubjectivity, consequently shaping the reality. Since the outcome of language games are not given, one of the key elements is represented by the ability of the players to react to unexpected events, in this case the problems emerged during the ratification process where, to some extent, rules had to be changed in order to guarantee the completion of the ratification process, an essential condition for the Maastricht Treaty to enter into force.

The uncertainty about the ratification process of the Maastricht Treaty had the direct effect to undermine the construction and definition of the actorness of the EU. From this perspective, the act of codifying a specific set of norms about the establishment of the CFSP was to some extent antithetical to the path of action undertaken by some MS, such as Denmark. Hence, the institutionalization of the CFSP in the Treaty was not a sufficient element to determine an actorness in the field of foreign policy for the EEC/EU, and consequently to legitimize it at internal and external level because its actual entry into force had not been yet determined and a high degree of uncertainty persisted, preventing it to act as a promoter of norms. This overview characterized the low level of impact the EEC had as a mediator since the beginning of the crisis in Yugoslavia and, consequently, in the war in Bosnia. In absence of a strong and clear internal legitimation of the EEC/EU as a foreign policy actor, also the external legitimation proves to be weak, despite the some actions might be undertaken.

Hence, the problem arising from the ratification process should not be understated for two reasons. The first is because the overall ratification process slowed down the entry into force of the Treaty, determining a challenge to the establishment of the international actorness of the EU. The second reason is a normative one, since the Maastricht Treaty directly challenged the constitutions of some MS, like Denmark, France, Germany, where the normative provisions of the Treaty were seen as a threat to their sovereignty.

This evidences how the act of creating a common intersubjectivity among all the MS is a process in which the different values based systems of each MS have to be taken into consideration, since they intervene in framing the context within which language games occurs, and these games are dependent on it, while also create contextual change [Kopytko

2007, 796]. When analysing the ratification process, the context is then given by the different values based systems in which the different actors play their language games, with the intention to create a contextual change, provided by the establishment of the EU. It is then possible to verify how norms can be contested at different levels, including the national one. This identifies the problem of the dual ontology of the EU basic norms, affecting the actorness of the Union, and its role as a normative power, *de facto* limiting it. In the case of Bosnia, this limitation was given by the lack of a precise and defined intersubjectivity among the actors based on the internal acceptance of the norms at the basis of the Treaty, that would have eventually enabled the EEC to play a more distinctive role.

### **The Vance-Own peace proposal and normative challenges**

The International Conference on the Former Yugoslavia (ICFY) was established in London in August 1992, and it was jointly led by the UN and the EEC. The role of the ICFY, co-chaired by Cyrus Vance and Lord David Owen, was to reconcile the divergent opinions on the settlement of the war and on the future of Bosnia [King 1993, 360-361].

The violations and crimes taking place in Bosnia created a normative challenge at international level, especially within the EEC areas, not only because of its geographical proximity, but also because the Maastricht Treaty included explicit recalls to the role of the EU in promoting peace, rule of law, respect for human rights, democracy, and liberty, in Europe and at international level. Although the Treaty was not yet into force, the basic norms can be however treated as a separate element of the analysis, because of their alleged universal value. From this, the problem of the dual ontology of the EU norms generates, when considering also the plurality of value based systems each actor belongs to and brings within the context. The question about what defines the ontology of the EU's norms can be assessed from an internal perspective, meaning as a result of the synthesis of the different value based systems of the actors, but also from an external one, regarding the claims of universality of the norms, and their acceptance outside the boundaries of the EU. From these two levels of analysis it has then to be evaluated the actorness of the EU as a NP, along with the effectiveness of the actions undertaken.

Two specific features of NPE have to be highlighted: the first is the ontological reality, the second the critical ontology, where both norms and realities promoted and diffused by the EU are plural and contingent social constructions [Parker and Rosamond 2013, 231]. Then, when considering the overall context, it is possible to state that EU norms are constructions made by the different social actors involved in language games, aiming at synthesizing the different values based systems they belong to and that they bring within the context where interaction occurs. Through this, a common vision of the reality is built; within this context, the norms define and characterize this new intersubjectivity, constituting the basis for its eventual replicability in other contexts where the EU is engaged. In this regard, EU norms can be defined as prescriptive propositions, since the normative language has a prescriptive function to the extent it provides with commands, advice, recommendations, and warnings, with the ultimate goal of influencing and changing the recipient's behaviour [Bobbio 1958, 74].

Hence, when considering the foundation of the universal claims of the EU norms, the attention has not to be placed on the mere recognition of the norms by the actors, in this case the MS, but on the recognition of the applicability of the norms within the actors' systems, because of their axiological hierarchy. This constituted a first limit for the EEC to play a decisive role in the context of the Bosnian War, being the normative system establishing a new intersubjectivity challenged at internal level, thus limiting its applicability within the system, and consequently limiting the role of the EEC/EU in the war scenario. A normative system that is challenged by the actors defining it, cannot become applicable in other contexts, since its universal claims are internally questioned. From this perspective, the universality of a norm is strictly related to its applicability and replicability in different contexts. Therefore a norm, within a plurality of value based systems, assumes universal

status only when it becomes applicable to the context, because it is recognized as such, or because of its enforcement, within a system.

On this basis, it is not the meaning that defines the ontology of the norm, but the result of the language games, or social interaction, leading to the definition of a common vision, substantiating the norms, making them applicable and recognized within the system, having an axiological preeminence. This last element creates an additional issue, since the different normative systems, in this case the national ones and the Maastricht Treaty, can be competing, thus limiting the development of the actorness, and the possibility to enforce the norms. This verifies the presence of an axiological dichotomy of hierarchy [Guastini 2013, 57-70] between two systems, one represented by the value based system each actor belongs to and brings within the context, while the other is the newly created normative system, defining a new intersubjectivity.

It is within this framework of analysis that the Vance-Owen peace plan has to be assessed and contextualized. The plan proposed the creation of a confederation made of ten provinces, that should have been administered by political bodies, proportionally representing the different ethnic groups living in each area [Schwabe 2004, 26]. The three conflicting parties in Bosnia signed the plan in Athens in early May 1993; however, the plan did not succeed in providing a solution to the crisis for two reasons: the first one is related to its enforceability, and the United States administration criticized the plan because it was militarily not enforceable. The second reason is given by the rejection in May 1993 of the plan by the parliament of the Bosnian Serb republic [Sharp 2004, 125; Schwabe 2004, 26].

### **The Owen-Stoltenberg plan, the establishment of the Contact Group and the no role of the EU**

The failure of the Vance-Owen plan determined the need to revise the proposed solutions to the conflicting parties. Within this context, David Owen and Thorvald Stoltenberg, a Norwegian diplomat that replaced Vance in April 1993, went back to the idea of ethnic partition, as also proposed in the Carrington-Cutileiro Plan of March 1992 [Sharp 2004, 128]. The proposed plan, presented in August 1993 at the Geneva Permanent International conference, divided Bosnia-Herzegovina into Serb, Croat and Bosniac sub-republics, organized within a “Union of Republics of Bosnia and Herzegovina”, but at the end of August the plan was rejected by the Bosniac side [Schwabe 2004, 26].

As a matter of fact, it was clear that there was not a specific authority to make pressure on the warring parties, while a general consensus was developing about the need to get actively engaged the US and Russia along with France, Great Britain, and Germany; on this basis a new contact group made by the five states was established in April 1994, sidelining the EU. [Sharp 2004, 130; Schwabe 2004, 26]. From that moment the EU ceased to play any active role in the conflict, sanctioning a transfer of competencies to the state-level, although mediation efforts promoted by the Contact Group stalled shortly after its establishment, when the proposed peace plan was rejected by the Bosnian Serbs, and only through the unilateral commitment of the United States the conflict ended [Leigh-Phippard 1998, 306]. Meanwhile, the Maastricht Treaty entered into force on the 1<sup>st</sup> of November 1993, and the EU formally established.

If from one side the limits of the EEC as a foreign policy actor were evident, the entry into force of the Maastricht Treaty should have created the conditions for a more decisive role of the EU within the was scenario. Instead, a precise dichotomy arises here, represented by the establishment of the EU, and consequently of the CFSP, and the creation of the Contact Group in which three EU’s MS were part of it. Through this dichotomy it is possible to question the EU as a legitimate actor in the international arena, despite the entry into force of the Treaty, since France, Germany, and Great Britain actually departed from the efforts promoted by the EEC/EU, *de facto* discrediting the EU itself as an international actor in the field of foreign policy. From this perspective, it is possible to assess that the institutionalization of specific mechanisms at EU level in the field of foreign policy, as the

CFSP, only defines an arena where all the different actors can be involved in creating and strengthening the actorness of the EU, while it does not constitute the actorness itself, since this is established through the social practice, leading to the creation of a new intersubjectivity among the actors.

Moreover, the institutionalization of an arena where to exercise the social practice, does not automatically lead to its effective use, since the social practice is definable not only as a condition for the formation of the intersubjectivity, but also as an option the actors have, to the extent that they might be willing or not to get involved in it, so that outcomes can differ. From this perspective, the actorness of the EU derives from the implementation of language games, in the form of social practice, among the different actors, aiming at creating an intersubjectivity. This intersubjectivity is, nonetheless, subject to changes over time, due to the different levels of intensity of the social practice, or because the outcome of the language games depotenize it. As a consequence, also the means attributed to the EU to act as a legitimate actor in the field of foreign policy can vary, along with the effectiveness of the actions undertaken, because the social practice might have the effect to limit the actorness of the EU.

### **Conclusions**

The analysis of the involvement, actions, and processes undertaken at EEC and EU level during the break-up of the Yugoslav federation typifies several elements useful to understand the actual impact of the EU as a NP, specifically regarding the relativism of the EU's basic norms, and their ontology. The first problem at normative level can be framed with the understanding of the norms. As evidenced while analysing the recognition of Slovenia and Croatia, the principle of self-determination was challenged by German, on the basis of the country's understanding of the norm. This evidences how the ontology of the norms can be defined through the act of re-shaping a previously constituted intersubjectivity. Through language games, in the form of social practice among the different players, where each actor is involved in a process of knowing and learning, actors can develop a different understanding of the norms, leading to the implementation of new and different actions. However, this is only a possibility the actors have, since defections might occur, and the intersubjectivity might not be established,

The second normative issue is represented by the applicability of the norms at internal level and external level. As evidenced through the analysis of the ratification process of the Maastricht Treaty there - within which explicit recalls to the role of the EU in promoting its *grundnormen*, such as peace, rule of law, respect for human rights, democracy, and liberty, in Europe and at international level were made - the applicability of the basic norms in outer contexts, outside the boundaries of the EU, is highly and directly dependent on the means provided to enforce the norms at EU level. In the absence of these means, the norm loses its prescriptive proposition feature. The attribution of the means, or of specific features, can create an axiological problem, hence limiting the development of the actorness, and the possibility to enforce the norms. What happened in Denmark, France, and Germany underlines the existence of different values based systems among the actors; these systems found their legitimacy on the pre-eminence of the internal norms, in contrast with the need to empower the EU. The obstacles to the ratification process highlighted the lack of a well-established intersubjectivity, also at normative level, among the players, resulting in the ineffective actions undertaken towards the warring parties in Bosnia.

From this analysis two elements have to be taken into account. The first is given by the process leading or not to the establishment of a common intersubjectivity, since its establishment is only one of the available options. Nonetheless, if the new intersubjectivity is successfully established, this is the result of language games, in the form of social practice, implemented among the actors, so that different value based systems can come together, in a process leading to their synthesis. Hence, the second elements is given by the acceptance by the actors of the axiological pre-eminence of the newly created system, on the basis of the

recognition of its applicability at internal level. The ratification process of the Maastricht Treaty evidences this process since, by questioning and challenging the validity and the actorness of the system, France, Denmark, and Germany created the conditions to prevent the Treaty to enter into force, so that the EU could not act as a decisive player in the Bosnian war scenario. The legitimacy of the EU was then undermined because of this, posing a problem within the EU, and a challenge at external level, since the actions undertaken proved to be ineffective, despite of the establishment of the CFSP, providing the MS with an institutionalized arena where they could have shaped a form of cooperation within the EU framework. This means that the CFSP could have acted as a facilitator for the implementation of the language games, hence of the social practice.

Hence, the social practice is central in the definition, in the first instance, of the internal actorness of the EU and, from this definition, the external actorness of the EU is shaped. Nevertheless, it is only after that the internal actorness, or recognition of the new intersubjectivity, has been established within the different value based systems the MS belongs to, that it is possible to develop an external actorness. From this perspective, the act of shaping “conceptions of the normal” [Manners 2002, 240], understood as the ability to set specific parameters in some aspects of the international life, but also in defining ‘Europeanness’, in other words what it means or takes in being European(s) [Haukkala 2011, 49], has to occur within the system – the EU - in the first instance, and only at a later stage outside of it, because the actors, represented by the MS, have recognized the new intersubjectivity as normal, and axiological preminent. Only after that it is possible to set parameters, or values, within the international arena, based on the definition of Europeanness, which is typified by the new intersubjectivity, externally shaping those conceptions of the normal.

The normative feature of the power of the EU is then a condition that has to be previously verified within the system, on the basis of an axiological hierarchy, providing the EU with a proper actorness in the international arena, consequently substantiating the two features of NPE, as an ontological reality and a critical ontology, where both norms and realities promoted and diffused by the EU are plural and contingent social constructions and, as all the social constructions, they are subject to change, proving their relativism.

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