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The Politics of Norm Reception: the dilemmas of Normative Power Europe

Tese de Doutorado

Thesis presented to the Programa de Pós-Graduação em Relações Internacionais of the Instituto de Relações Internacionais of PUC-Rio as partial fulfillment of the requirements for the degree of Doutor em Relações Internacionais

Advisor: Prof. Stefano Guzzini

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To my father, Pedro
(in memoriam)

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PhD: that was a long journey. Six years, across two continents.

It was a time of such intense experiences, challenges and rewards.

A time of intellectual introspection and personal reflection on what each of those words represent to me. A beautiful time, with all insecurities, fears and tears. With friends, routes and encounters that will last forever in my life.

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Abstract

Salgado, Carolina de Oliveira; Guzzini, Stefano (Advisor). **The Politics of Norm Reception: the dilemmas of Normative Power Europe**. Rio de Janeiro, 2018. 286p. Tese de Doutorado - Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

The present work looks across European Union's inside/outside by asking what power is there in a normative power narrative? And what does this narrative do to the EU? These questions are investigated by moving the focus of analysis to see *to what extent* and *in which ways* relationships set up with Others beyond Europe affect the EU political identity. Considering that NPE is the link between the EU's ontological security and its foreign policy, it cannot be thought independently of the Other. At first, the thesis offers a theorization of mechanisms of diffusion and subsequently operationalization in a dialogic perspective that endogeneize the Other from the onset. Norm reception is thus integral part of the diffusion analysis. At second, it recreates different processes of diffusion starting from NPE as foreign policy to observe the driving argument that, when the Others are endogeneized, two dilemmas of NPE arise, one political and another, more profound one, ontological. A first dilemma is political: If NPE faces resistance, it either overrules it thereby undermining its status of a 'different' type of foreign policy; or it does not, and then does not succeed in its aim of norm diffusion. But a more profound dilemma is connected to the fact that NPE is not just a foreign policy: it is also a central component of the EU's identity project. Even if norms are diffused and policies converge, NPE may not be recognized as the superior identity to which the international order should strive. This said, if the EU becomes aware of its non-recognition, it is put before either seeing this as an aberration that will be remedied over time, or as a potential threat to its ontological security. It is hence stuck and cannot change its approach. As a result, NPE as a foreign policy can, even if successful, undermine its identity project; and NPE as identity politics can undermine its foreign policy exactly when its tendency to see itself confirmed when meeting the Other undermines its external recognition. Empirically, the ontological dilemma is observed in a case of development cooperation, the Programme between the EU and

the Community of Latin American and Caribbean Countries (CELAC) on Drugs Policies (COPOLAD), which began in 2011 and was renewed in 2016. And the political dilemma is observed in a case of resistance, the quest of global access to medicines that provoked intense polarization and divergences between the EU and Brazil at the multilateral level in 2008-2009, with further developments until 2016. The thesis builds a theory and develops hypotheses connected to the NPE dilemma, seriously integrating the Other in a dialogic approach to the two paradigmatic cases. The approach explores the role of difference, contestation and power asymmetries in processual paths that end up in either of the two dilemma. Most studies that address the exercising of NPE as foreign policy tackle cases of Europeanization among EU Member States, candidates and neighboring countries. This scenario may lead to a consequent problem for both the stabilization of the EU political identity and success of foreign policy, since countries far from its borders are likely to challenge EU´s discourse of exceptionalism and distinctiveness. European Studies and the EU itself did not shed light on this problem until mid-2000s. By contrast, this thesis contributes to the research agenda of norms diffusion and EU external governance on two main fronts: 1) offering a theoretical framework to analyze NPE as foreign policy, I propose that our understanding is currently insufficient to grasp dilemmas that have to do with how NPE should work; 2) it operationalizes a dialogic approach to the case studies that reveal the 'politics of norm reception', considering the Others as part of a fruitful communication with the EU, and not as passive receivers of NPE. Politically, it is relevant for the EU to make the NPE as a strategy coincide with its discourse on norms and principles, reducing the creation of stereotypes like 'double standards'. In addition, to embody the Others in dialogues about the EU gives rise to the possibility of alleviating adversities encountered in the exercise of its foreign policy, as well as to strength its interregional instruments of governance.

Keywords

Normative Power Europe (NPE); dilemma; identity; foreign policy; diffusion; CELAC; Brazil; drugs policies; global access to medicines.

Resumo

Salgado, Carolina de Oliveira; Guzzini, Stefano (Orientador). **As Políticas de Recepção de Normas: os dilemas do Poder Normativo Europeu**. Rio de Janeiro, 2018. 286p. Tese de Doutorado - Instituto de Relações Internacionais, Pontifícia Universidade Católica do Rio de Janeiro.

O presente trabalho se desdobra *através* do dentro/ fora da União Europeia (UE) perguntando *que poder existe na narrativa de poder normativo*? E *o que essa narrativa faz com a UE?* Essas questões são investigadas movendo o foco de análise para perceber *em que extensão* e *de que maneiras* as relações com Outros afetam a identidade da UE. Considerando que o Poder Normativo Europeu (PNE) é o elo entre a segurança ontológica da UE e sua política externa, ele não pode ser pensado independentemente do Outro. A tese oferece uma teorização dos mecanismos de difusão e posterior operacionalização de uma perspectiva dialógica que 'endogeneiza' o Outro desde o início. Recepção de normas é, portanto, parte integrante da análise de difusão. Posteriormente, a tese recria diferentes processos de difusão a partir do PNE como política externa para observar o argumento condutor de que, quando os Outros são integralizados à análise, dois dilemas do PNE despontam, um político e outro, mais profundo, ontológico. Um primeiro dilema é político: se o PNE enfrenta resistência, ou ele a anula, minando assim seu status de um tipo 'distinto' de política externa; ou não, e então não alcança seu objetivo de difusão de normas. Mas um dilema mais profundo está ligado ao fato de que o PNE não é apenas uma política externa: é também um componente central do projeto de identidade da UE. Mesmo se as normas forem difundidas e as políticas convergirem, o PNE pode não ser reconhecido como a identidade superior na qual a ordem internacional deve se espelhar. Dito isto, se a UE tomar conhecimento do seu não reconhecimento, ela é posta diante de ver isto como uma aberração que será remediada ao longo do tempo, ou como uma potencial ameaça à sua segurança ontológica. Ela, portanto, paralisa e não consegue alterar sua abordagem. Como resultado, o PNE como política externa pode, mesmo que seja bem-sucedido, prejudicar seu projeto de identidade; e o PNE como projeto de identidade pode minar sua política externa exatamente quando sua tendência a ver-se confirmado ao encontrar o Outro prejudica seu reconhecimento externo. Empiricamente, o dilema

ontológico é observado em um caso de cooperação para o desenvolvimento, o Programa entre a UE e a Comunidade de Estados Latino-Americanos e Caribenhos (CELAC) sobre Políticas de Drogas (COPOLAD), iniciado em 2011 e renovado em 2016. O dilema político, por sua vez, é observado em um caso de resistência, a busca pelo acesso global a medicamentos que provocou intensa polarização e divergências entre a UE e o Brasil no âmbito multilateral em 2008-2009, com desenvolvimentos até 2016. A tese constrói uma teoria e desenvolve hipóteses conectadas aos dilemas do PNE, integrando seriamente o Outro em uma abordagem dialógica aos dois casos paradigmáticos. A abordagem explora a presença de diferenças, contestação e assimetrias de poder em trajetos processuais que resultam em um dos dois dilemas. A maioria dos estudos que abordam o exercício do poder normativo da UE como política externa lidam com casos de 'Europeização' entre os Estados membros da UE, candidatos e países vizinhos. Esse cenário pode conduzir a um problema tanto para a estabilização da identidade política da UE quanto para o sucesso de sua política externa, uma vez que países distantes das suas fronteiras provavelmente desafiam o discurso de excepcionalidade e caráter distinto da UE. Estudos Europeus e a própria UE, por sua vez, não lançaram luz sobre esse problema até meados dos anos 2000. Em contrapartida, esta tese contribui para a agenda de pesquisa sobre difusão de normas e governança externa da UE em duas frentes principais: 1) oferecendo um quadro teórico para analisar o PNE como política externa, proponho que nosso entendimento é atualmente insuficiente para compreender dilemas que têm a ver com a forma como o PNE deve funcionar; 2) operacionaliza uma abordagem dialógica dos estudos de caso que revelam a 'política de recepção de normas', considerando os Outros como parte de uma comunicação profícua com a UE, e não como receptores passivos do PNE. Politicamente, é relevante para a UE fazer com que o PNE como estratégia coincida com o seu discurso sobre normas e princípios, reduzindo a formação de estereótipos como 'padrões duplos'. Ademais, incorporar os Outros nos diálogos sobre a UE enseja a possibilidade de atenuar adversidades encontradas no exercício de sua política externa, bem como fortalecer seus instrumentos inter-regionais de governança.

Palavras-chave

Poder Normativo Europeu (PNE); dilemas; identidade; política externa; difusão; CELAC; Brasil; políticas de drogas; acesso global a medicamentos.

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List of Abbreviations

EU   European Union

NPE   Normative Power Europe

COPOLAD   Cooperation Programme between the EU and the Community of Latin American and Caribbean Countries on Drugs Policies (CPI/ CPII)

CELAC   Community of Latin American and Caribbean Countries

EC   European Commission

US   United States

CFSP   Common Foreign and Security Policy

MERCOSUR Common Market of the South

ASEAN   Association of Southeast Asian Nations

IMF   International Monetary Fund

DG   Directorate General (EC)

CDA   Critical Discourse Analysis

ENP   European Neighborhood Policy

EEA   European Economic Area

EFTA   European Free Trade Association

CICAD   Inter-American Drug Abuse Control Commission

OAS   Organization of American States

EMCDDA   European Monitoring Centre for Drugs and Drug Addiction

UNODC   United Nations Office on Drugs and Crime

NGO   Non-governmental Organization

WTO   World Trade Organization

TRIPS   Agreement on Trade-related Aspects of Intellectual Property Rights

ALBA	the Bolivarian Alliance for the Americas
ACN	Andean Community of Nations
CARICOM	The Caribbean Community
UNASUR	Union of South American Nations
UNGASS	United Nations General Assembly Special Session on Drugs
FTA	Free Trade Agreement
LAC	Latin American and Caribbean
NDO	National Drug Observatory
FARC	Revolutionary Armed Forces of Colombia
EWS	Early Warning System
DDR	Drug Demand Reduction
DSR	Drug Supply Reduction
CCM	Coordination and Cooperation Mechanism
CND	The Commission on Narcotic Drugs
AD	Alternative Development
EEC	European Economic Community
SP	Strategic Partnership
UNHRC	United Nations Human Rights Council
IGWG	Intergovernmental Working Group
WHO	World Health Organization
SDG	Sustainable Development Goals
IPR	Intellectual Property Rights
MSF	Doctor Without Borders (in English)
OHCHR	Office of the United Nations High Commissioner for Human Rights
UNGA	United Nations General Assembly

HAI   Health Action International

R&D   Research & Development

ACTA   Anti-Counterfeit Trade Agreement

REBRIP   Brazilian Network for the Integration of Peoples

DS   Dispute Settlement

GATT   General Agreement on Tariffs and Trade

GTPI   Working Group on Intellectual Property

PPT   Permanent Peoples Tribunal

ABIA   Brazilian Interdisciplinary Aids Association

DELBRASGEN   Brazil's Permanent Mission in Geneva

EPA   Economic Partnership Agreements

EU HR/VP   High Representative of the Union for Foreign Affairs and Security
Policy

TCA   Theory of Communicative Action

Introduction

> "(…) it is necessary to make ourselves the guardians of *an idea of Europe*, of a difference of Europe, *but* of a Europe that consists precisely in not closing itself off in its own identity and advancing itself in an exemplary way toward what it is not, toward the other heading or the heading of the other, indeed, toward the other *of* the heading (…)" (DERRIDA 1992:29).

It was March of 2006 when I came for the first time to Europe and, in a Bachelor class of European Studies at the University of Coimbra, I heard: "for those of you that are Erasmus, you are the living proof of the New Europe". With twenty-two years old, as a Brazilian, I felt myself privileged not simply to be an Erasmus in Portugal, but to live in an era when Europe is a Union and, what is more, ready to promote encounters among others from different parts of the world inside its cultural borders, such as the centenary walls of that University. For two months I could travel from North to South in this continent, alone, experiencing all kinds of taste, landscape, history and language that colored my road map. As a Brazilian, I felt a rare feeling of harmony and balance amid so much different places, and a connection with *this* place in which, after all, I was the living proof of a 'rebranding'.

Back to Portugal, I felt myself *not* a European, because of missing ties with the origins of habits, traditions, meals, fashion style and religion of those places, if not because of the level of my voice, which was often reprimanded when I was North of France. But particularly because I was not European, my experience and impressions became somehow part of what my European colleagues from the University were curious to listen. Yes, they should be glad of this feeling of harmony and balance, a sort of 'everything makes sense' that I was reporting, echoed by several other youth travelers from near and abroad. Yes, the beauty of history embedded in a safe atmosphere of the present times – that mixed a sensation of being somewhere ahead in the future in relation to my own country, but at the same time digging into Medieval, Imperial, Middle Age of my History books – was something unique to this place. Definitely, Europe had an impact in our youth minds and hearts.

The New Europe my professor talked about was translated in my mind through all forms of exceptionalism I saw and brought home one year later. Above all, I looked up to how military features were left to museums, expositions and postcards in black and white. The New Europe my Portuguese professor talked about was blue, and people in my University in Brazil did not know for sure what such rebranding meant for the world. The first enigmas came in attempts to open this topic with Brazilian professors: I was a student of Contemporary History and we had class with one great scholar of Holocaust. He said that 'they', referring to everybody I met in Europe without proper distinctions, "could manage to bring such feelings into your soul because they are up to this moment struggling to be recognized as something away from what they are by nature: nationalists, imperialists, egocentric and, time to time, extremists".

Struggling to be recognized? I have never thought of what was going on under the regular outlook of the *European Union* in which life appeared to be so organized and institutionalized – that appeal has guided my perspective so far. "If we Brazilians are still deeply stamped by racism, exploitation and discrimination of black people, whose origin dates back to centuries ago, European 'pasts to forget' are much more recent and perhaps more entrenched in generations close to yours than you may see", told me a professor of Peace and Conflicts.

Years later, already after the Eurozone crisis, in my first contact as a researcher with the Brazilian Agency of Cooperation in Brasilia, experts and diplomats presented me the EU as a vulnerable idea that could be reduced at any time, "do not overestimate your research object by studying cooperation, in general they sell a model hard for them to uphold". All these and other notes related to 'the New Europe' I got in touch in 2006, the European Union "as a label" I was confronted with when back to Brazil, as well as the hybrid continent, but still sense-making for me, that I kept flirting with through other travels, peoples, books and movies over time were stored in my personal archives for six years. Until 2012, when I decided to definitely delve into connectors that could exist across EU's inside/outside.

The driving questions of this work came from tensions I confronted throughout the reading of my archives and contacts with people dealing with the EU and with Europeans, in a formal or informal way, uncovering micro processes and mechanics on

the ground that enable one to grasp how the EU, either as an entity or an idea or a place, is mapped by third countries and non-state actors' mindsets. Later on, already living in Germany, the daily observation of practices – cultural, religious and ethnical clashes along the borders; deep cultural and economical differences between Northern and Southern Europe; elections and the refugee crisis in 2016 – brought me again into the matter of what the EU is when seen from outsiders' eyes, and how such an image would loop back to the EU nowadays. There must be a connection, as the assemblage of Others is historically constitutive of this space that today comprises Schengen Area (which includes non-EU countries but also does not include some EU member states), Eurozone (which does not include all EU members) and, ultimately, the EU.

Overall, my feeling was that people split between those who admire and have the EU as the civilizing standard that Brazil would need more years to achieve, and those that truly held a belief of the EU as an utopia based on differentiation, discrimination and securitizing acts. Between 2007-2010, under the second mandate of President Lula da Silva, Brazil established itself as a "rising power" reporting economic growth of 6% year-on-year, rapidly recovering from the financial crisis, reducing the extremely poverty from 21 millions to 9 millions of peoples between 2003-2008[1] and with an active international presence, as written by the then Brazilian Ministry of External Relations Celso Amorim:

> "The way Brazil is seen – both abroad and within her borders – has dramatically changed in the last few years. The return to democracy, monetary stability, economic growth, poverty reduction, improvement in social indicators, internationalisation of Brazilian companies, the change of status from debtor to creditor, all add up to redefine Brazil's image in the world."[2]

I believe that this positive scenario inside the country has contributed to skeptical views of the EU as a 'model partner' in cooperation, the area I was focused on during a term of fieldwork in Brasilia, however not dismissing keen interest to see

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[1] "Ações e Progrmas do Governo Federal", Ano 2010. Available in http://www2.planalto.gov.br/acompanhe-o-planalto/caderno-destaques/edicoes-anteriores-lista-de-pdf/2010/caderno-destaques-edicao-de-dezembro-de-2010-portugues-colorido

[2] AMORIM, C., "Brazilian Foreign Policy under President Lula (2003-2010): an overview", RBPI 53, Special Edition, 2010:216.

what would happen with the launching of the Strategic Partnership (2007). In parallel, I found comparative advantage and preferences favoring the EU particularly with regard to education, science, technology, research and tourism among academic colleagues from Rio de Janeiro and Brasilia. Would those perceptions be the same in other countries from the developing world, or at least in South America? And, finally, my great motivation: how those insights I gathered through informal talks, short fieldwork, internships and academic interaction could help me to better understand *the EU*?

Normative Power Europe (NPE)

Truth to be told, the starting point of "in which terms I think the EU" was odd. I could not easily replace my state centric background to a supranational framework, a pool of sovereignty as it was represented in the Treaty establishing the European Union in 1992. And still a transnational space, in the sense that a philosophical rejection of borders remained tough to operationalize *vis-à-vis* the role of the European Council, comprised by the Heads of State of the current twenty-eight EU Member States, to set the EU's policy agenda. The EU engine is qualified both as a postmodern polity by some[3], ever challenged upon the construction of a collective identity, and as an intergovernmental actor by others, concerning its institutional structure and operations particularly regards the Common Foreign and Security Policy (CFSP)[4] under the enlarged Lisbon Treaty that came into force in 2009.

In sum, considered a "polycentric, hybrid polity in which state, supranational and transnational politics coexist and compete", the political formation of the EU,

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[3] Mostly, this is the view of poststructuralists like John Ruggie, who articulated the term in the early 1990s in *Territoriality and Beyond: Problematizing Modernity in International Relations* (1993), and Thomas Diez that, among several publications discussing EU borders and related issues, co-authored the late article *Postmodern EU? Integration between Alternative Horizons and Territorial Angst* (2016) with Stefan Borg.

[4] See THYM, D., "The intergovernmental constitution of the EU's Foreign, Security, and Defense Executive", *European Constitutional Law Review* 7, 2011.

[5] Richard Whitman, Ian Manners, Jeffrey Checkel and Christopher Hill were among the scholars that coined NPE as an analytical category, pioneering the reflection upon the Union beyond its power in trade that characterized the EU as 'civilian power'.

[6] To an overview of the policy areas, see https://eeas.europa.eu/headquarters/headquarters-homepage/area/foreign-affairs_en

based on "relationships between the structures of the international society, the structures of the international society of the EU, the structures of states and the agencies of interest groups, parties, local-regional authorities, member states and the EU" (MANNERS in WHITMAN 2011:241), is told to give it a kind of "power by example" to shape a new international order constrained by a higher ranking law. However, what would be the scope of this power? Do the rules, laws and norms of the EU prioritize the individuals above states, as it is expected from a normative power? Otherwise, NPE "could be true to its own norms, yet be perceived as acting in the same way as 'historical empires'" (SJURSEN in BYNANDER & GUZZINI 2013:127).

Notably because I was most interested *to the extent* and *in which ways* relations set up with outsiders affected the EU, I always conceived the EU *beyond* debates of its internal circumstances. To think across EU's inside/outside brought my attention upon the first question *what power is there in a normative power narrative?* NPE as an analytical category emerged in late-1990s[5], midway through the deepening in the integration process and, simultaneously, the victory of liberal capitalism with its ensuing consequences surrounding Europe.

As observed through the previous concepts aiming to identify the EU, such as military, soft, ethical, civilian, NPE brought up once again the quest of "what makes the EU different", i.e. *which power* through *which means* with *which purposes*. Nonetheless, the novelty of NPE is its essence of projection embedded in the strategy of diffusion that is carried out in all policy areas of the European External Action Service (EEAS)[6]. Rather than just applying its resources to directly affect the cost-benefit payoff of other actors, the EU would spread its norms and values for affecting their choices already before, so to speak. A policy of preference formation meets here a constructivist point, as expressed by Friedrich Kratochwil:

> "(...) rules and norms constitute a practice within which certain actors or utterances 'count' as something. (...) I maintain that one of the most important functions of rules and norms in such a world is the reduction in the complexity of the choice-situations in which the actors find themselves. Rules and norms are therefore guidance devices which are designed to simplify choices and impart

'rationality' to situations by delineating the factors that a decision-maker has to take into account" (KRATOCHWIL 1989:7/10).

In this light, the diffusion strategy is to make the EU a sort of guidance device in global affairs, what turns to be an identity project too through which the EU would "count as something", i.e. acquire the necessary legitimacy to act towards its purposes and to strengthen its existence. The essence of global projection as a normative guidance device is clearly seen, for instance, in a speech by Federica Mogherini, HR/VP of the European Commission at the High Level Conference "Defence and Security Conference Prague: European Vision, European responsibility", held in June 2017:

> "If we are heading towards a European Union of Security and Defence (…). And third, because we can do it and we need to do it the European way. (…) *We have as European Union a unique mix of tools that no other actor on the global scene has and we have the unique experience of having built regional integration through cooperation.* We have our history on our side; we have decided to create the European Union when we realised that making business together was much more convenient than making war. And this is a very powerful basis to work with our partners in the world on the basis of cooperation and partnership to build security and guarantee that there is an integrated approach to security. And we understand perfectly well in the European Union that climate change is also part of security, that humanitarian aid is also part of security, that development is also part of security. *So we need to work on security also because there is a specific European way, a European added-value that the world needs today, not only the European citizens.* (…) We have it, we are bringing change, for our European Union and for *our world that – let me tell you – desperately needs a reliable, strong, credible, cooperative, effective, smart, global player as the European Union is.*"[7]

Perhaps not by chance, climate change, humanitarian aid and development cooperation are policy areas where the EU is mostly proud of the "European way". It

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[7]   https://eeas.europa.eu/headquarters/headquarters-homepage/27913/speech-federica-mogherini-high-representativevice-president-european-commission-high-level_en

is the world's largest aid donor, is "leading by example" in climate change[8], and it is the world leader in terms of official development assistance volume, as "most probably, this [development cooperation] is the most important instrument developing the EU's soft power and shaping a positive image of Europe in developing countries."[9]

The "specific European way" is also seen when the EU puts its own norms ahead of international ones (FORSBERG 2011:1193-1194) by means of mechanisms of NPE. The precise working of these mechanisms of norm diffusion, let alone their number and identification, is a topic far from having found consensus within the scholar literature. The seminal article of Ian Manners (2002) points out to six mechanisms that were extensively discussed by other scholars, to whom I will return later. For instance, Tuomas Forsberg reduces them into four different mechanisms of normative power that the EU is supposed to draw on:

> "The first is persuasion that occurs through the dissemination of information. The second is the invocation of norms to which third parties have already committed themselves. Third, as Manners argues, shaping the discourse can also be seen as a form of normative power. This is, however, a different mechanism than persuasion that takes place directly between the actors as 'shaping the discourse' influences indirectly through structure (Barnett and Duvall 2005). Finally, Manners' idea of showing by example can also be seen as a distinct type of normative power. (…) the EU often deploys all of them together (…)" (FORSBERG 2011:1196).

As we can see by this quote, no reference is made to the Others – how they interact with the EU through such mechanisms, which are their responses, what might go wrong and, lastly, how this overall relation affects NPE as an identity project. What is more, most of the studies about EU mechanisms of normative power, i.e. NPE as a foreign policy strategy of diffusion tackle cases of Europeanization (diffusion of norms among EU Member States), candidates and surroundings countries. Equally, until mid-

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[8] For the occasion of COP23 held in Bonn (Germany) in November 2017, we find in the website of the Commission: "At the same time as the international climate conference takes place in Bonn, the Commission is showing that **the EU is leading by example.** Commission President Jean-Claude Juncker outlined in the State of the European Union speech in September: *"I want Europe to be the leader when it comes to the fight against climate change. Last year, we set the global rules of the game with the Paris Agreement ratified here, in this very House. Set against the collapse of ambition in the United States, Europe must ensure we make our planet great again. It is the shared heritage of all of humanity."* Available at: https://ec.europa.eu/clima/news/energy-union-commission-takes-action-reinforce-eus-global-leadership-clean-vehicles_en

[9] https://orangeprojects.lt/en/goals/eu-development-cooperation-policy

2000s the EU mostly draw on surveys using attitudinal indicators, data collection, questionnaire and statistical abstracts to gather information about its popularity, efficiency and legitimacy, concentrating on EU Member States and candidate countries[10]. These instruments could overestimate a positive perception regarding the NPE that other countries abroad could not entirely follow.

This may come to haunt EU's political identity, as countries abroad like Brazil that have long-standing relations with the EU likely raise alternative interpretations regarding NPE, conditioned by their own background knowledge about the EU, the intensity and kind of relations with the EU, and by their systems of meanings. Therefore, I found myself before a double hiatus: **i)** few studies have tracked intended and unintended effects of NPE as foreign policy over countries out of the EU direct geographic influence, and **ii)** the link between NPE as an identity project and as foreign policy was not yet satisfactorily spelled out, perhaps because of the lack of systematically including the "view from elsewhere" necessary for a relational understanding of identity.

European Studies have shed only occasional light on these gaps. In analyzing the mechanisms of norm diffusion, for example, studies tended to choose cases that underline positive impacts and effective outcomes of NPE over its neighbours. Still only few cases of resistance and contestation are explored, as well as of post-colonial and hegemonic representations expressed by the Others. By contrast, this thesis contributes to the improvement of EU external governance on two main fronts. First, drawing on an assessment of the norm diffusion literature, I develop a theoretical framework of diffusion to analyze NPE as foreign policy in a way to remedy flaws in our understanding of the way NPE is supposed to work. Second, I operationalize a dialogical approach to the case studies that unfolds what I call the "politics of norm reception", taking the Others as part of meaningful communication with the EU, and not as mere passive receivers of NPE.

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[10] Standard Eurobarometer surveys to spotlight the European public opinion towards EU in general and core EU policies; European think tanks like Notre Europe Institut Jacques Delors founded in 1996 (http://institutdelors.eu/who-are-we/?lang=en) and European Policy Center founded in 1996 and established as an international not-for-profit organization in 2003 (http://www.epc.eu/about_governance.php), which are dedicated to foster European integration with products targeting EU decision-makers as well as the engagement of partners, stakeholders and citizens in EU policy-making.

Why would the Politics of Norm Reception be of relevance for the EU?

Turning back to my initial concern of *the extent* and *in which ways* relations set up with outsiders affect the EU, I started the research observing why NPE matters to EU identity politics. Assembling the EU self-definition presented in official documents and speeches with scholars' analyses, I faced a twofold deadlock: *internally*, NPE represented the success of integration, reconciliation and resolution of the European security dilemma, thus, a model to be exported elsewhere by pushing the creation of regional cooperation and common institutions (LAÏDI 2008:37). However, such potential of the EU to make an international order based on rules has been challenged over the past decade.

Scholars point out to forms of "exclusionary practices in which the EU engages at its own borders" suggesting that "the European integration process has shown itself to be inherently ambiguous. Integration by definition disrupts national territorial spaces, yet it also creates new boundaries. As a political project, it can hardly be different (…)" (BORG & DIEZ 2016:137). In addition, "the EU must avoid the utopian normativity through demands for absolute principles of substantive justice, regardless of context" recognizing that "Europeans might not share 'the same worldview and the same ideas about the shape of foreign policy' and this constant interplay between European internal social composition and relations with the rest [mentioning Aggestam & Hill 2008:114] would determine the future of support of these norms" (WHITMAN 2013:185).

Externally, NPE represented more a language for Europeans to recognize themselves in shared norms, principles, beliefs and values than a resource of power based on global diffusion. Precisely, NPE overstretches itself in the very moment that it claims a universal profile – "how can its narrative of projection be reconciled with the postcolonial character of the EU project?" (NICOLAÏDIS in LINDBERG 2005: 101). I formulate that it is so rather because of internal tensions between NPE as identity and as foreign policy, than because of the proper content of the exported norms.

This way, I contend that the well known critique about EU double-standards has also to do with the mode it copes with contestation: as an *intrinsic feature* of its process to reach consensus over norms and preferences among the diversity of twenty-eight worldviews, and as a *constraint* for effectively exercising its foreign policy beyond Europe, when not even reduced to miscommunication that would be resolved over time. I believe that contestation is an explanatory variable that highly contributes to observe NPE as foreign policy in a dialogic approach. Contestation is thus a central factor to the thesis' framework of politics of norm reception.

Therefore, given that the legitimacy of NPE as the current expression of EU political identity is one central pillar of its existence – the internal stabilization and external action for which diffusion is a main strategy – I conceive of the perceptions by Others as a constitutive part of such strategy since the outset. I depart from the premise that NPE is always both a foreign policy and an identity project/politics, i.e. NPE is the link between the EU's ontological security and its foreign policy. This means also that the two feed into each other, and then I have three underlying ideas:

1. A successful NPE as foreign policy which is simply read out of a convergence of norms and behaviour is in itself no proof that this convergence is due to NPE as a foreign policy, nor that it involves the recognition of NPE as a specific identity project, then;

2. A resisted NPE as identity project produces an ontological dilemma in that the EU either questions its own project when that very identity was to provide an anchor, or reads the resistance as yet another proof of its exceptionalism, if not superiority, a move that would engender a vicious circle of further resistance and non-recognition. Lastly,

3. A resisted NPE as foreign policy produces a political dilemma in that the EU is either not normatively effective and needs other means (which would be a self-contradiction of the policy), or it keeps faithful to its distinctiveness, but then testifies to its powerlessness.

As a result, **the driving argument of the thesis** is that NPE as a foreign policy can, even if successful, undermine its identity project; and NPE as identity politics can undermine its foreign policy exactly when its tendency to see itself confirmed when meeting the Other undermines its recognition by the Other. The EU falls in two

'dilemma', out of which a restless oscillation of politics ensues that can never resolve it:

When NPE as foreign policy is resisted (political dilemma), the EU can either change style but hence undermine the very nature of NPE as a distinct foreign policy; or it can continue 'more of the same' thereby admitting its inefficiency. In other words, if NPE as a foreign policy overrules the Others' resistance, it contradicts its own distinct strategy; if it does not, it testifies to its powerlessness.

The need to react to this policy contradiction leads to a more profund, ontological dilemma: NPE as an identity project will tend to see both the policies' efficiency or lack of as a confirmation of its superior and extraordinary nature which can easily feed into more resistance and non-recognition. NPE as identity project cannot be questioned by itself, however. Yet, not doing so, undermines the very attractiveness and effect of NPE as foreign policy – and the resistance and missing recognition will inevitably affect its identity politics in the long run.

As long as we do not know the reception of the mechanism, we cannot even know whether the diffusion was due to NPE as a foreign policy or feeds back into the recognition of NPE as an identity project. Indeed, the **main objective** of this work is to understand NPE dilemma through the reception side, contributing to an enlargement of the EU external governance research agenda.

Each of the abovementioned aspects is of great concern, as I explain in what follows: by **politics of norm reception** I mean the crucial role of Others in the ongoing stabilization of NPE as an identity project. Such stabilization happens through the internal process of Europeanization, for which Eurocentrism is an important device, and the external strategy of diffusion, for which Others' recognition is a constitutive albeit often overlooked component. I claim to endogenize the Others in the process of diffusion for the very observation of success and failures of EU mechanisms and instruments of foreign policy.

The **EU ontological security** requires that it acts in conformity with its self-understanding. The entanglement with NPE leads the Others to turn the attention to EU internal practices and discourses during the course of relations with the EU, what in several cases generates images that flaws the EU's legitimacy. Those images loop back

to EU ontological security, affecting both internal process of adjusting political identity, and external recognition of its self-understanding.

Such problems have to do with how NPE is supposed to work. When it is resisted, effective outcomes in terms of diffusion depends on overcoming resistance, what undermines the very logic of NPE as a "normative guidance device" in global affairs. Yet, not overcoming it means that it will not diffuse (political dilemma). On the other hand, when the EU sees effective outcomes of its policies, a narrow understanding of diffusion covers problems that persist in terms of the external recognition of NPE as identity project. In general, those problems are linked to the relation in itself rather than to the kind of outcome, becoming invisible and misconceptualized among studies of EU foreign policy.

Hence, **the first hypothesis** derives from the above driving argument and main objective, configuring a research puzzle: **NPE ontological statement** – the exceptional character of the EU identity that supposedly legitimizes its distinct role as a global norm-setter – **is making the EU difficult to find a way out of the dilemma it knows.** It is a general indicator of my thesis of a vicious circle: although external recognition is a central factor to ensure the appeal and success of NPE as foreign policy, NPE as an identity project tends to either deny non-recognition or to read it as an anomaly that will be remedied over time. It hence reinforces its self-perception of superiority and exceptionalism, turning to a more hostile vision of the Other that just generates more non-recognition.

The politics of norm reception is developed throughout the theoretical-methodological part of the thesis that comprises three chapters. Due to the dilemma start from NPE as foreign policy, I set **the second hypothesis**: **our understanding of norm diffusion is actually insufficient to explain policy's shortcomings** that, in the case of NPE, relate to identity issues. Similarly, how diffusion as understood by the EU particularly towards Southern countries is theoretically restricted and empirically inefficient. I develop a framework to analyze NPE as foreign policy that advances the literature of norm diffusion, and then a operationalization of mechanisms in a dialogic approach, articulating contestation and difference in the process of diffusion – from both sides. Hence:

1. There is a theoretical contribution to the scholarships of norm diffusion and EU external governance: I develop a better understanding of norm diffusion mechanisms in that they integrate the Other from the onset through dialogue about differences and contestation. Such mechanisms need to be relational;

2. There is an empirical contribution in showing the dilemmas coming out of the interrelationship between the ontological and foreign policy project of NPE.

I deal with two paradigmatic cases for theory building and hypotheses developing that show the dilemma and hence why the EU has troubles getting its policies right (puzzle). They are cases in which I had reasons to believe that non-recognition of NPE as identity project happened (equifinality). Therefore, I had to choose one case in which NPE as foreign policy was resisted, and another, perhaps more important one, where it was not. The chosen case of diffusion is the Cooperation Programme between the EU and the Community of Latin American and Caribbean Countries on Drugs Policies (COPOLAD) started in 2011, and of resistance is the quest of global access to medicines that raised intense polarization and divergences between the EU and Brazil[11] at multilateral forum in 2008-2009, with further developments until 2016.

The research on the mechanics of EU relations with Latin America conducted in the thesis is another input, as those countries do not have, in principle, any adversities with regard to NPE as identity project. Finally, I add up theoretical propositions to the politics of norm reception that enrich reflections already ongoing within the EU external governance and public diplomacy research agendas on how to improve EU actorness and legitimacy internationally, opening new avenues for empirical analysis. The overarching endeavor is organized as following.

Structure of the thesis

In Chapter 1, **The dilemma of NPE between ontological security and foreign policy**, I develop the central argument of the thesis, as well as the first hypothesis. I

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[11] It is important to mention that India has a prominent role in the case too but I deliberately focus on Brazil for the sake of entrenching the analysis.

start with the reflection on the EU ontological security and the role of NPE in EU identity politics. Drawing on three main axes of the literature – normative turns in IR, critical approaches to NPE, and external perceptions of the EU – I focus on the internal tensions of NPE as being both an identity project and a foreign policy, while bringing the role of Others in. Scrolling the first axe, normative turns in IR, I conceive Eurocentrism as a core feature of NPE deeply needed for the EU identity project, which has been able to support the security community in Europe despite nationalisms and clashes of culture. The EU understands itself as a better version of Europe, exploring the longstanding traditions of economic liberalism, democracy and rule of law.

Looked from inside, NPE binds Europeans together through a supranational projection that makes citizens to believe in the indisputable character of what is being projected, having history by their sides. Looked from outside, however, the picture changes dramatically. NPE often appears as a post-modern equivalent to versions of Eurocentrism particularly in the third wave of colonization (XIX century), with a thin sense of communication and exchange with the world "out there". Therefore, the second axe of the literature helps me to ascertain four problems of NPE as foreign policy that are connected to identity issues.

NPE which was meant internally to stabilize the EU, is universalizing in its external reach and hence prompts a behavior that will necessarily face possible contestation and resistance. Resistance and recognition are therefore practices of the interactions Self-Other in and by means of foreign policy, which approaches have different takes on what effects turn back for the Self. Lastly, I explain de argument – NPE dilemma in its two ways – as well as the first hypothesis. By raising Others' voices (third axe), I give an overview of how policy is received and interpreted through the course of interaction with the EU in distinct places, suggesting three leading points to the dilemma that will be explored after the empirical analysis. Thereby, selected case studies are brought up for purposes of theory development and plausibility probes.

In Chapter 2, **Diffusion framework to analyze NPE as foreign policy,** I conduct a careful inquiry on the literature of norm diffusion identifying inaccuracies that impair an adequate appraisal of NPE as foreign policy. I derive a framework of conditions, context, outcomes and mechanisms that specifies the components needed

to break down the likely contradiction enacted in the dilemma: the way the EU understands diffusion – guided by an appearance of convergence rather than a sort of changes in Others' preferences – is contradicting its identity insofar that such understanding makes diffusion an insufficient condition to recognition of NPE as a specific identity project. Whereas the way the EU handles with resistance, as a confirmation of its superior and extraordinary nature, reinforces a more enduring non-recognition by the Others.

Hence, supposing that both diffusion and resistance with regard to NPE as foreign policy lead to non-recognition of NPE as identity project, the problem seems to lie rather on the EU understanding of the phenomenon of diffusion than on the instruments and mechanisms themselves. Moreover, such framework zooms in the cultural dimension of diffusion, highlighting the importance to look at interactions rather than solely at outcomes, and placing contestation as a contributing factor to enhance encounters among different sociocultural contexts.

Chapter 3, **Empirical conceptualization of dialogical processes,** helps me ascertain the existence and functioning of the two dilemma, what is the closest to methodology. I operationalize the idea of dialogical processes through examining *difference* and *recognition* as how they are articulated in EU self-understanding and representations of power through norms. Then, based on the literatures and discussions conducted so far, I conceptualize social mechanisms and categories to study dialogical processes. They are all organized in a typology of dialogical processes to explain NPE dilemma.

The empirical conceptualization draws on the theoretical framework of diffusion previously developed, encompassing the problems of NPE as foreign policy and the proposed leading points to the NPE dilemma (or causes), to be observed in the empirical part. Moreover, in this chapter I explain and justify the selection of cases, as well as the methods of critical discourse and content analysis employed upon the sources. I give a brief overview of my fieldworks, the features of resources and how I collected them.

I apply those theoretical and methodological tools in two chapters of the empirical part that, I have reasons to expect, entail equifinality ("the concept of

multiple paths to a common end state", SAGE Research Methods, 2012). Whereas a behaviouralist analysis would simply assume that an outcome corresponding to the EU's objectives shows the latter's effective policy, I write that a successful diffusion is the effect both of an efficient NPE as foreign policy and also of Others recognition of NPE as identity project. Hence, I control the same effect (external non-recognition) through different pathways.

Chapter 4, **Inquiry of NPE by CELAC in the field of development cooperation,** is a case where NPE as foreign policy is not resisted, so I set within the type "diffusion". It focuses on what lies under the surface of "effective outcomes" looking at the way instruments and mechanisms of NPE as foreign policy are put into practice in the eyes of CELAC participants. Through an inductive case analysis by means of the categories specified in the typology, I show that external non-recognition of NPE as identity project depends on how diffusion works, as understood by the EU.

Policy convergence is proven to be not a sufficient condition for external recognition, neither a sign that convergence was due to NPE as foreign policy. CELAC actors play a key role in attributing validity to what is exported by the EU, as well as to condition the effectiveness of COPOLAD's products in their national contexts. Hence, in this case, it all seems to work but I found out that it did for other reasons than NPE and that, as a result, NPE as identity project is not helped by successful policy convergence. COPOLAD proves the requirement of thinking beyond organizational practices, digging into the level of cultural validation, implementation and local actors.

Chapter 5, **Inquiry of NPE by Brazil in the field of human rights**, is a case where NPE as foreign policy is resisted, so I set within the type "resistance". It is driven by the observation of the political dilemma: how the EU deals with mechanisms of subsidiarity and persuasion resorted by Brazil towards the global access to medicines. Brazilian subsidiarity and persuasion built on NPE identity discourses to point out the inconsistency of EU normative standpoints with regard to the public health dimension of international treaties. The analysis also performs a case of "diffusion from below", as it shows a specific side-story where contestation and persuasion affected EU mindset and hence the status of policies.

Drawing on the last category of the typology (EU modes of interaction), I also indicate leading points to the NPE dilemma that I relate to it, substantiating with empirical information from the cases. Likewise, I do not assume that changes undertook by the EU were caused solely by Brazilian subsidiarity and persuasion. Instead, I observe the process through the mechanisms in order to understand how they contribute to some sort of change in the organizational, implementation and cultural levels of EU institutions.

In the **Conclusion** I undertake the cross-case comparison based on empirical information from the cases filled up in the typology, ending up at the research puzzle that is a general indicator of my thesis: the EU is unable to remedy the dilemma it knows, even if it wants. Therefore, I discuss theoretical propositions that enrich my framework of the politics of norm reception, openig new venues of empirical research in the EU external governance agenda.

Overall, the thesis is an endeavour of theory development in that I wish to better understand NPE in its two facets and their interaction. For this, I posit the possible existence of dilemmas between ontological security and foreign policy. I base this on the insufficient theorization of the relational character of these two facets: the Other's recognition is not only result, but condition for norm diffusion to work. For analyzing them, I develop a framework that displays mechanisms of norm diffusion in a dialogical way, providing the background for how they may look like.

Hence, the cases are chosen as paradigmatic cases where to develop empirically the precise outlook of those mechanisms. They are paradigmatic since they include a case where norm diffusion did happen but not for NPE; and one where it was resisted. Therefore, the thesis unfolds in an empirical point (the dilemmas), a theoretical point (the specification of dialogical mechanisms) and a policy point (how to deal with the policy dilemma).

1
The dilemma of NPE between ontological security and foreign policy

The end of the historical context of classical power politics marked by the bipolar competition, arms race and indirect conflicts like the Korean War (1951-1953) and the Vietnam War (1959-1975) gave an impetus to the EU to believe that 'now its heydays have come', as the political power discourse lost its base and hence could no longer diffuse, or so it claimed. The EU (and some member states like Germany) thought that the way the Cold War came to an end was just important as the fact that it did. It was a peaceful change in that certain norms were accepted on the Eastern side (Helsinki process). Hence, NPE as an identity project and related discourse finally saw its chance to diffuse.

Being an ontological statement, NPE has boosted the reflection over time about coherence between how EU norms are negotiated inside and how they are exported, i.e. the process of internal coordination and the modes of norm diffusion. Such reflection contributed to a period of internal insecurities and anxieties that characterized the so-called 'Euroscepticism'[12], after which, foremost, the EU found itself before the responsibility to set consistency among internal ambitions and external behavior, revisiting fundamentals of NPE heydays.

A key effort of the thesis is thus to develop a more precise understanding of identity-foreign policy nexus, while bringing the role of Others to the fore. The driving argument consists in a dilemma of NPE that shows in two ways, one political and another one, ontological: the inefficiency of policies to uphold its identity; and, where policies are not resisted, the tendency of NPE as identity project to see itself confirmed when meeting the Other, in effect, undermines its recognition by the Other. NPE as an ontological security statement weakens, when not erode NPE as a foreign policy strategy when the Others' recognition is taken seriously. The first hypothesis is a general indicator that makes the argument plausible: the EU is aware of the problems

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[12] For an analysis of the identity and economic rationales driving Euroscepticism and European integration, see BOOMGAARDEN et.al. 2011, 2013; HOOGHE, MARKS 2004.

NPE as foreign policy faces in some parts of the world but is unable to find a remedy, even if it wants.

In order to explain the dilemma, this chapter starts with a broad reflection of the EU's identity including what is NPE and what role NPE plays in EU identity politics. Subsequently, I assess the problems that the literature has faced with regards to NPE as a foreign policy strategy, as well as the implications for some parts of the world. I provide an overview of how critical approaches to NPE have established the policy's inefficiency focusing on those that are connected to identity issues, given that comprises the theoretical starting point of the thesis.

Lastly, I show that initial concerns regarding the hypothesis come from empirical findings within the recent sub-field in European Studies that could be dubbed 'Others perceptions of the EU', which also encompasses studies requested by the European Commission[13]. Such findings indicate that the EU might shift mechanisms and ways of exercising instruments while interacting with Others especially beyond Europe, yet missing to specify *how* the EU could manage such shift that would increase its "level" of external legitimacy, with positive consequences for the internal stabilization of its political identity.

The chapter has three sections that focus on the internal tension of NPE as being both an identity project and a foreign policy. Each section is guided primarily by one type of literature: normative turns in IR, critical approaches to NPE, and external perceptions of the EU. The first section, *NPE and identity politics,* starts with an assessment of NPE as an analytical category, and then reflects upon why NPE matters to EU identity politics. I introduce the current debate over what NPE is, and unveil tensions that emerge from its aim to spread out globally.

Analyses repeatedly revolve around the binomials power/ interests and norms/ legitimacy that, I argue, must be overcome to capture the essence of *any* EU identity project, be it normative, liberal or "normal" (PARDO 2012). There is no ontological contradiction, as if norms were "good" while interests are "bad" (SJURSEN in JORGENSEN et.al. 2015:206): when interests belong to all, norms reflect mutually

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[13] To give an example, we have the most recent project requested by the EC's Service for Foreign Policy Instruments *"Analysis of the perception of the EU and EU's policies abroad"* implemented in 2015 by three partner organizations (PPMI, NCRE, NFG).

acceptable conditions to pursue them. Norms also provide the possibility to discuss the legitimacy of both interests and standards of behavior with regard to a given identity, what happens within the foreign policy space.

The second section, *The problems of NPE as a foreign policy strategy,* discusses how critical approaches like post-structuralism, post-colonialism and hegemony have established adversities met by NPE during the course of diffusion, which have to do with policy inefficiency. Since the 2000s[14], NPE has faced the challenge of redefining its spatial and substantial range: the spatial range because it is becoming visible that the geopolitical framework of NPE is currently bounded. And the substantial range because of the serious implications that its original purpose to be universal holds upon countries outside of such borders. I review European modes of differentiation inscribed in Self/Other relations, Eurocentrism and incongruences between what NPE policies do to the EU and what the EU does as a NPE identity project.

The third section, *The identity-foreign policy dilemma of NPE,* develops the first hypothesis and explains the dilemma. Based on the previous discussion of problems of NPE as a foreign policy strategy and its origins, EU documents and research findings clearly indicate that the EU is aware that policies have met with adversities in some cases. The research conducted in the sub-field of European Studies "Others perceptions of the EU" presents a number of those findings, according to how action is received and interpreted through the course of interactions with the EU. However, the EU seems not to be able to redress it, even if it wants. Why?

I preliminary indicate leading points to the dilemma that are uncovered once I assume such dilemma as a framework for understanding NPE. I scrutinize those leading points (that I also call *causes* of NPE dilemma) after the empirical analysis, with the forthcoming theoretical-methodological toolkit. Selected case studies are hence brought up for purposes of theory development and plausibility probes. Those leading points are related to the problems of NPE as foreign policy connected to identity issues discussed in this chapter, also supported by the latest developments of studies about

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[14] I refer to the Referenda, when French and Dutch people rejected the European Constitutional Treaty. See CERUTTI 2005.

Others perceptions of the EU and the EU external governance. In the conclusion, I summarize the chapter and then open up to the next ones.

1.1.
NPE and identity politics

Disentangling NPE, we can say that the *normative* implies a given behavior of the member states inside the EU, according to the *acquis communitaire*, while the *power* refers to an aspiration to spread "universal" norms and values as well as "the appropriate behavior" in order to pursue interests and goals, and subsequently to be recognized as a model. The *normative* demands a wider acceptance of its substance, which *ought to be diffused* on behalf of a common welfare. The EU integration, in this sense, is normative due to the representation of norms as what bind the plurality of nations together, providing "unity in diversity" (McDONALD 1996).

Norms carry a sense of correctness that implies the civilian example that the EU claims to be. At the same time, norms can be turned into a source of power through "civilizing devices". Being internally legitimated, a politics of norms seeks to affect others without much questioning the correctness of its "oughts" or the diversities out there. Yet, this is the very moment when NPE loses the ground of mutual acceptability, and its legitimacy comes into question.

"The relationship of the European to this entity [Europe] is a form of identification that works simultaneously as a strategy of self-representation and a device of power" (BORNEMAN & FOWLER 1997:489). Hence, I argue, it is of less importance to look at which norms constitute NPE than to how NPE is constituting the EU, internally through mechanisms of Europeanization, and externally, through its instruments of foreign policy, external governance and public diplomacy. My focus is on the external aspect, as the main argument refers to a dilemma between identity and foreign policy in terms of NPE.

1.1.1.
NPE as an analytical category

In this section I drawn on Laïdi (2008) and other authors that turn the attention to the EU *norms over power* and quests of legitimacy that they entail as the starting point to understand the NPE's role in the making of a EU identity. Norms need a rational assessment in order to gain relevance and recognition, as the fact that they exist somewhere does not assure validity neither their internalization within domestic and institutional structures. Hence, I reflect upon how NPE is constituting the EU externally understood as "a relationship with an audience, rather than being a possession of the organization" (SUCHMAN 1995:594 quoted by GULMEZ & GULMEZ in BOENING et.al. 2013:113). Accordingly, NPE requires capacity to conduct negotiation, justification and communication about its norms to confirm the EU identity legitimacy, and hence, to diffuse.

Börzel and Risse describe diffusion processes as inherently conflictive and mitigated by historical, social and cultural factors inside and outside the EU (2009:5/8) showing that, whereas internally, diffusion of norms has a certain level of success *given* common interests among all involved (security, stability, prosperity, environmental protection), externally this condition is not to be taken for granted. It is a fact that mechanisms and instruments of imposition – like bargaining power, conditionality, membership, competition, coercion and sanctions – are efficient to enforce norms, as testified by the EU policies towards candidate countries and the neighborhood (GIUMELLI 2013; SAUER 2007; SEDELMEIER & SCHIMMELFENNIG 2004; GRABBE 2001; SMITH 1998). However, these mechanisms add little to the specific mode of NPE that would inform the EU identity internationally.

The neo-normative turn in IR represents NPE as a means to civilize world politics, taming the power of force and violence. "A common trait of this literature is to consider the EU as an engine of global transformations" (SJURSEN in JORGENSEN et.al. 2015:204), giving not so much attention to the agency of Others as well as the productive presence of cultural clashes. One of the pioneers of NPE, Ian Manners says that given unique conditions ("historical context, hybrid polity and

political-legal constitution", 2002:240) the EU can aspire to an universal appeal, what does not imply that this appeal is reciprocated yet that not everyone can have that appeal.

Hence, in Manners' reading, the EU is still unique in the sense of distinctive although we cannot deduce the recognition and legitimacy of its normative catalogue for Others worldwide. His arguments in defense of the EU uniqueness do not consider that, in essence, normative power is based on dialogical relations because it demands cultural validity to be successful. Hence, the difference between Manners' readings and my account is that he sees the two things as distinct and in a sequence: the EU has normative power – it may or may not be recognized. And I write that the second is a condition of the first: only if there is recognition can we speak of normative power, i.e. even the potentially "universal appeal" cannot exist without recognition somewhere.

Manners could answer that the EU has been recognized here and there for exactly this distinct project. But that is an empirical point. The theoretical point is that we cannot simply take this for granted, but need to push recognition into the analysis from the start. In sum, I claim that we need to endogenise recognition into the analysis for the very assessment of NPE. That is, in order to call the EU a normative power, one might look at cases of norms dispute, resistance and contestation, instead of cases that the EU resorts to transference of norms by financial rewards, economic sanctions and conditionality (MANNERS 2002:245).

Since the seminal article of Finnemore and Sikkink (1998) that defines norms as expression of agreement, standard, appropriate behavior and good effect on world politics (also LAÏDI 2008:42), normative political theory has enlarging the debate towards "normalizing" contestation in research and practice of norms (DEITELHOFF & ZIMMERMANN 2013; SCHILLINGER & NIEMANN 2016). It is argued that contestation is not an anomaly, but an essential feature to explain how norms come to matter and to be part of a community's practices. The authors mention socialization by persuasion as the dominant mechanism of norm cascade (FINNEMORE & SIKKINK 1998:902), explaining the role of recognition and legitimacy to the diffusion of international norms.

In this reasoning, NPE would fail to be recognized at the very moment that it attributes stable and fixed meanings, disregarding the importance of Others in co-constituting its norms (WIENER 2008:38). Two insisting questions remain so far: does NPE as identity have such universable profile as Europe had in the past, or does it need to be provincialized in order to adjust to the current scale of its policies' normative impact? And why the modes of compliance and promotion of certain norms appear to be different among member states and towards third partners? Meanwhile, it seems a common ground that the normative representation regarding the EU is not widely dominant abroad: "To be sure, some Asian interviewees do suggest that the norms and philosophies promoted by the EU, and the way in which they are pursued (such as political conditionality) are Eurocentric, and that they therefore potentially clash with values and philosophies of other parts of the world (especially in Asia)" (CHABAN, ELGSTRÖM, HOLLAND 2006:261).

In this sub-section I propose that, as an analytical category, NPE cannot be taken as a given. Its entanglement with norms pushes for an observation of how those norms are exported and received, feeding back to the constitution of a EU identity. I illustrate my theoretical point through the difference in relation to Manners' reading: while he sees normative power more as a possession and then recognition as an empirical assessment, I claim to endogenize recognition since the outset of analysis for the sake of assessing NPE itself. Therefore, contestation becomes a feature to explain recognition and a source in the process of legitimising the EU actorness, instead of an anomaly that hampers diffusion.

1.1.2.
Why does NPE matter to EU identity politics?

On the one hand, for the EU identity project, NPE represents more a victory of internal consensus than a label of external action. Its comparative exceptionalism lies "in its capacity to manage enduring differences between nations. (…) A byword for the European project may be empowerment, mutual empowerment by all actors in the system" (NICOLAÏDIS in LINDBERG 2004:103), whereas in its external action still

remain perceptions of dominance. On the other hand, for the EU foreign policy, NPE "would mean granting significant voice in our own affairs to those most affected by our actions, thereby implementing a philosophy of reciprocal intervention and mutual inclusiveness with our partners around the world" (op.cit.:104). The idea I underline by these quotes is that NPE *per se* implies an observation to how mechanisms of foreign policy are employed, rather than just to the norms targeted to diffuse.

The idea has thus two steps: at first, I have a wide definition of imposition applied to the mechanisms – even a consensual persuasive or whatever mechanism of NPE as foreign policy can be considered "violent" if it does not take the Other into account from the start. In this very wide sense, the idea that all is in the how carry much of my argument. Hence, the problem of inconsistency between identity and foreign policy in terms of NPE does not rest on the norms that the EU promotes neither on if other actors are emulating or supporting them, but on how the projection of a specific identity project through norms diffusion has been conducted, especially beyond Europe. Later, the "how" will be further specified.

NPE as foreign policy strategy relies on the interest of achieving recognition for the exceptional character of its identity and, therefore, legitimacy on the basis of such distinct way of acting globally. Laïdi defines an ideal type of normative power actor as "a power that has its identity and strategy grounded on a preference for overarching rules of behavior (…) [with] three essential characteristics: to have been negotiated and not imposed; to have been legitimated equally by representative international bodies; and to be enforceable on all actors of the international system notwithstanding their rank within in" (LAÏDI 2008:43).

The victory of internal consensus mentioned in the very beginning of this sub-section refers to the NPE's ability to weaken conflictual aspects of multiple state sovereignty by means of negotiation, institutions and a sense of belonging (op.cit.:48). The problem of inconsistency, in turn, refers to a supposed inability to exert its practices externally by the same means: "while determining whether the EU has a normative authority in the global arena, it is crucial to look at not only the outcome, but also at the process through which the EU 'exports norms'" (GULMEZ & GULMEZ in BOENING et.al. 2013:119).

At this point, it is also important to observe scholars' definitions and critiques of NPE in light of the EU self-definition, in order precisely see where the tension identity-foreign policy lies in EU discourses, and to further contrast to its partners' perceptions. Among several documents, statements and reports that can be found in the EU web site[15], I take as an example the recent publication launched in April 2017 by the European Commission entitled *"60 good reasons for the EU. Why we need the European Union"* [16], that has twelve parts grouping the reasons. Although the publication is directed to reinforce the imperative of the EU to Europeans, the content explicitly presents the words "inspires" and "promotes" related to "in/ of the world" in three different reasons, in addition to "world leader" in one reason, and another entire part devoted to inform what is the EU role in the world stage. This already displays the relevance of NPE as a foreign policy strategy based on diffusion to its ontological statements, as well as of explaining such interplay to Europeans.

Below I quote only the five most significant phrases of the publication with regard to the EU self-definition of NPE (my emphasis), to be analyzed hereafter with pertinent scholars' debate:

> "Part 1: What Europe can be proud of. **Reason 5: European values are in our genes:** *the EU inspires others in the world.* (…) *With its values and way of life Europe is a global model for change and democratic evolution.* (…) *There is no doubt that the EU continues to serve as a model for many regions of the world.* No other continent has developed such forms of cooperation. (…) *"Today's world needs a power which has peace and conflict prevention in its DNA"*, says Federica Mogherini, EU High Representative (p.9);
> Part 6: The EU is committed to ensuring healthy food and clean environment. **Reason 31: The EU ensures cleaner air and is a world leader in environmental protection:** (…) The EU therefore exerts pressures world wide with regard to environmental protection and has set ambitious targets for reducing CO2 (…). *"We Europeans are world leaders on climate change (...) It was Europe that built the coalition of ambition that made agreement in Paris possible"*, says European Commission President Jean-Claude Juncker (p.35);

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[15] https://europa.eu/european-union/documents-publications_en
[16]   https://publications.europa.eu/en/publication-detail/-/publication/f1e5e635-2659-11e7-ab65-01aa75ed71a1/language-
en?WT.mc_id=Selectedpublications&WT.ria_c=677&WT.ria_f=1032&WT.ria_ev=search

Part 10: The EU plays its part on the world stage. **Reason 49: The EU is the world's leading development aid donor:** *The EU plays an active role in fighting poverty worldwide* (…). *Over half of all development aid comes from Europe.* (…) faced with the refugee crisis, Member States were still able to increase their assistance. (…) The most important goal of the EU's development policy is, according to the EU Treaty, *'the reduction and, in the long term, the eradication of poverty'.* (…) As the developing countries' biggest trading partner, the EU grants them duty-free access to the European market. *Such incentive should encourage their national governments to embrace international standards based on the European model*, such as fundamental rights or workers' rights (p.53);
Reason 51: The EU supports its neighbours: Through the European neighborhood policy, *the EU upholds and continues to promote universal values*, seeking more effective ways to advance democracy, fundamental freedoms and the rule of law. (…) EU High Representative Federica Mogherini observes: *"countries at all corners of the world ask us to support their peace processes"*(p.55);
Reason 52: The EU is the world's largest donor of humanitarian aid: (…) the EU provides assistance in the major crisis and disasters around the globe. *It is an example to the world.* (…) Europeans relief workers are often the first on the ground" (p.56).

As perceived by Laïdi (2008:52), I agree that NPE works internally in order to obtain recognition for the EU legacy that, in turn, shapes the discourse of exceptionalism that it aims to export – the EU as a promoter of universal values, an example to the world, a model, a world leader on global issues and, lastly, a power with peace in its DNA, as we see in the Commission's publication. Nonetheless, in research within the fields of EU external governance and public diplomacy, we find continuous resistance by EU partners to hegemonic aspirations embedded in NPE exercising, informed by such identity discourse. In the politics of norm reception, partners attribute recognition to NPE as identity project not through the content of norms as such, but through the process of interaction with the EU.

It means that, in foreign policy, partners do see the distinction of NPE in comparison to other normative power actors, and even the lack of collective military resources is not seen as a problem but as an option. In this sense, much of the NPE substance has been emulated elsewhere (BÖRZEL & RISSE 2009, 2012; LENZ 2013).

However, considering that the ultimate interest of the EU is to achieve recognition to its identity project as a global norm-setter[17] by means of policies, mechanisms and instruments clearly summarized in the Commission's publication, the proper content that is emulated does not say much in itself about conditions and parameters that drive interactions from the Others' side.

In this regard, Börzel and Risse raise three crucial questions: "How does the EU respond to resistance and contestation to its attempts at diffusing ideas? To what extent are these ideas truly European and not general 'Western' principles that are also promoted by non-European countries? Finally, how do the attempts at exporting European ideas compare to historical forms of external diffusion, such as colonialism?" (2009:13). The first question will be explored further on after the empirical analysis, keeping the reasoning presented by Antje Wiener on norm contestation in mind, but also embracing some interpretations about it, such as what follows.

Schillinger and Niemann disentangle Wiener's argument of dual quality of norms, reading that "norms structure encounters but are not (re)structured by these encounters. Thus, contestation understood as divergences in cultural validation results from presuming stable and fixed meaning at the level of domestic culture" (SCHILLINGER & NIEMANN 2016:41). I agree with their interpretation to the extent that assuming the presence of contestation as an anomaly and cause of divergence in diffusion processes overshadows its potential to yield interests and identity changes. Moreover, contestation does not necessarily represent "failed diffusion", but an opportunity for actors to truly engage in deliberative interaction towards the norm meaning. These considerations are largely absent in NPE studies so far.

The second question of Börzel and Risse draws back to the point that the pure content of NPE no longer supports the EU supposed universal appeal, since other Western normative powers like the US and Brazil (or so they claim) also spread democracy, human rights, liberty, peace, rule of law and sustainable development, for example. How they do so, however, cannot be fully compared, considering that the EU

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[17] To illustrate my assumption about the ultimate interest of the EU, and the integration of third parties outside Europe in its normative practices, I quote Manners and Whitman as an example of analysis of "the future of EU public diplomacy": "there is the need to strengthen the sharing of collective EU norms, identities, and values beyond the confines of diplomatic interaction. There is the pressing need to ensure that meaningful sharing of EU norms and values with those that should be reached – the wider publics and civil society of third countries" (2013:187).

is not a state. To claim for a higher level of institutionalization and accountability in addition to a lower level of military sources as evidences that the EU is and "has more" normative power, compared to the US and Brazil, is a trap. The EU has, equally, mechanisms of norm enforcement and punishment, besides the bargaining power of trade that are far from a supposed soft nature.

For the last question, it will be observed in next sections that the weight of EU's colonial past and the (in)consistency between discourse and practice within the networks built with Southern countries suggest that, for these countries, NPE is mostly a concept invented by Europeans to celebrate their own diversity, rather than a truly possible project of identity. That would be fine due to the successful story of the EU in terms of peaceful coexistence that, undoubtedly, has much to influence other regions. However, when NPE policies do not praise diversity outside Europe, a colonial feeling takes place within interactions, downplaying all EU efforts to communicate itself towards recognition. For instance, these ideas are demonstrated in the recommendation of the AGORA Forum on EU public diplomacy:

> "Disagreements and contradictions are part of the EU's narrative and nature, and should therefore be acknowledged and recognizable parts of its identity. A common position is sometimes unnecessary, as debate also shows the EU's diversity as a positive value. (…) Much of the EU strategy on this area [public diplomacy] remains focused on information and not on dialogue. (…) A comprehensive communication strategy should support the EU's real policy and engage with the EU's external partners, while simultaneously acknowledging its public diplomacy's internal dimension geared towards transforming diversity and disagreements into virtues" (*The EU external action in times of crisis and change. Public diplomacy and discourse.* AGORA Forum, Brussels 2013:3).

In this section I explored the role of NPE to EU identity politics, presenting the origins of the EU current understanding about diffusion. I contend that the reasons for the selective engagement with partners and for obstacles to reach meaningful conversation are entrenched in an asymmetric logic of interacting that is internalized in European states. The projection of a specific identity project through norms diffusion has been conducted therefore under such logic that drives EU's understanding of how to employ mechanisms and instruments of foreign policy. In order to explore such logic,

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I have a wide definition of imposition that focuses on the process of diffusion itself, rather than on its content. So far, NPE seems to envision the emergence of norm-takers and not diffusion, what is the bedrock of problems of NPE as a foreign policy strategy, as will be seen thereafter.

1.2.
The problems of NPE as a foreign policy

NPE is actually used in three different levels that need to be set apart: it is a scholarly term observing the EU where it refers both to an ontological statement of its nature and an explanation of its behavior. And then, it is a term designating a foreign policy strategy. The scholarly usage is meant to explain the foreign policy strategy of the EU. They are hence connected, but not the same. In fact, to explain NPE as a foreign policy strategy, one can also use other literatures than NPE itself. Indeed, I am mainly interested in the second and will use other literatures to elucidate it.

Following the argument of EU policy's inefficiency to forward an external representation of global inclusiveness through norms, and the EU awareness that policy has met with problems in some parts of the world but it is unable to alter (hypothesis), I identify those main problems of NPE as a foreign policy strategy that are connected to identity issues in different schools of thought. Altogether, the two sections give the problems, reasons and origins of the theoretical argument that guides the thesis.

1.2.1.
Problem 1: European modes of differentiation inscribed in Self/Other relations

The literature on identity formation holds a basic logic: all sameness presupposes a prior difference. Historically, Europe is a great example. John Hobson (2004) underscores the role played by the East in European identity construction, pointing out that, between the XII-XIV centuries, these civilizations (especially

Chinese and Muslims) were more evolved in terms of economy, communication, institutions, technologies and knowledge that, later on, would have been assimilated by the West. Yet, it was precisely in the XVII century, with the consolidation of "the myth of the pristine West", that Eastern contributions were forgotten in Europe. In their place, a new discourse of past/ memory was raised: the West as its own pioneer.

This is the winning story that has supported also the construction of the EU as something unique, distinct from the old Westphalian system of modern states, in a teleological progress toward post-modernity. The general agreement among member states is that the evolution of Europe, understood through the integration process, depends on overcoming the losses of the "overnationalist" period (Self) and to build up a future based on peaceful coexistence with difference, inside and outside (Self/ Others)[18].

NPE does not aim to cover-up the intrinsic diversity of the EU. Instead, it brings a distinct level for the practice of the communitarian imaginary. In re-conceptualizing pluralism, modern sovereignties remain recognized at the same time that they empower norms to reduce their capacity to impose spatial bounds: "the successful history of the EU may have confirmed Europeans in their belief that the *domestication of state power* demands a *mutual* limitation of sovereignty, on the global as well as the national-state level" (HABERMAS & DERRIDA 2003:293-296, my emphasis). Nonetheless, much has been contested so far about the real potential of the EU to differentiate itself from other forms of power and modern exclusionary practices, as observed by Thomas Diez that "the reduced importance of borders within has given rise to the increased importance of the outer borders of the EU" (2006:235).

Whereas inside it seems that the Self/ Other mode of differentiation employed by the EU has successfully convinced states towards the imperative of reaching consensus and a sense of we-feeling, it does so by erecting higher walls from those Others that challenge its norms-based singularity or cannot be part of it. This practice is called 'Othering'[19] by scholars such as Diez, Morozov and Rumelili, that explain:

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[18] See *Document on European Identity*, Copenhagen, 1973. Also WAEVER 1996:122.
[19] Othering is an expression that indicates encounters characterized by forms of violence and imposition, embedded in a sense of superiority and domination. Hence, the EU Self/ Other differentiation is supposed to have two images: inclusive, consensual and open to negotiate the quest of liminality alongside its borders; imperialist, hierarchical and not receptive to outsiders' contestation.

"Values and identity necessary for normative power to operate are constructed through processes of Othering that represent the EU as a force for the good, and others as deviant from this normative standard and therefore to be changed" (DIEZ 2006:244) and "thus, while the war-torn past is an important referent, Europe, as any other identity, remains dependent on external Others, such as Russia and Turkey, and practices of spatial Othering" (MOROZOV & RUMELILI 2012:31).

The EU has a vertical character that detaches itself from non-members and member states through its supranational attributes that supersedes the nation, at the same time that promotes an intrinsic superiority of its multinational collective identity that pools nations together. Therefore, the Other is both near and abroad. While near, the EU avoids any sameness with the State form due to "the more different they are, the less chance that they will be activated at the same time, and the less chance of a clash between them" (NEUMANN 2006:9). In order to prevent an "ontological clash", NPE works to make the EU to be perceived as a harmonized sociocultural context, willing to reconcile as many Others accept its mode of political action. Abroad, the kind of relation that the EU seeks to establish with Others downplays its own hybrid character in order to present itself as a successful/ superior example of integration.

Relational and exclusivist are two sides of the same discourse of NPE as an identity, as "the problems that dominate Europe's relationship with the Other are not confined to the realm of external relations, but are, as always before, intricately linked up with the question of what it is to be European, and which cultural requirements are necessary to attain that status" (NEUMANN & WELSH 1991:347). Accordingly, Neumann's asserts that "the integration of a human collective necessarily involves the exclusion of nonmembers" (1998:399), prompting that the mode of Self/Other differentiation inscribed in NPE is mostly oriented by discovering its requirements and then excluding who does not meet them.

At first, despite all cosmopolitan emphasis in its discourse – to spread *global* values, *universal* principles and a set of norms *world wide* –, the EU seeks to convert *its* communitarian values, principles and norms into an universal reference of good, right and superior. At the same time that the EU is prompt to enlarge and handle its exclusions, the means to do so is out of negotiation. NPE is not receptive to outsiders'

agency upon its collective preferences, as concluded by Neumann that "(…) Europeans did not negotiate their identity as such with their US other [for example], but among themselves, ostensibly in isolation from the other" (op.cit.).

1.2.2.
Problem 2: Eurocentrism or "what binds Europeans together": inside/outside dimensions

Speaking Eurocentrism is frequently found in critical literatures to NPE. In Hobson's historical sociology[20], it means the taken-for-granted or implicit reference to itself when seeing the world and acting in it. By implication, this usually means that no other source of knowledge or action is considered on a par, what is a tradition in the European case. Also, Eurocentrism means what was already depicted in previous quotes, that norms, principles and standards that the EU seeks to spread out of its geographic borders through external action and identity discourse reflect merely its own interests and preferences built on the European legacy.

The difficulty of the EU to embrace other forms of organization, normative meanings and culture within its understanding of "universal" is rooted on the successful regional integration that emerged out of a conflictive historical formation, the self-perception as a model of behavior and the conception on what is "the good" in world politics. Consequently, Others' claims for legitimacy, autonomy, democracy and justice are often articulated within their critiques upon such superior image and feeling of uniqueness that are self-portrait by the EU in its foreign policy.

Can principles and norms of the EU be considered universal and widely accepted not only by its Western partners, and not only as a subjective definition of "the good", based on collective representations of its members? Thomas Diez (2005) argues that there is a limited chance to convince Others, from different cultural contexts and intersubjectivities, of a superiority of an outweighing normative standard and,

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[20] HOBSON, J., "The Eurocentric Conception of World Politics: Western International Theory, 1760–2010", Cambridge University Press, 2012.

under this view, the NPE with its ambition to 'shape conceptions of what is normal', is culturally imperialist and EU-centric. Lisbeth Aggestam summarizes such a view:

> "the problem with this ambition to shape the world in Europe's image is that it is based on an assumption that European values and ways of doing things are intrinsically superior. (…) *The notion of projecting European values and ideals in foreign policy suggests a view of others as in need of change*. (…) There clearly is a tension in the discourse on the EU's role in the world between universalist aspirations ant the impulse to draw on a distinct European experience to shape the world in its own image" (AGGESTAM 2008:7).

NPE assembles local sensibilities under an indisputable set of norms resorted on the idea that "unity is a basic European necessity to ensure the survival of the civilization which they have in common" (Document on European Identity, Copenhagen 1973). We see in statements of the first High Representative for CFSP, Mr. Javier Solana (1999-2009), that NPE acquires the potential to upgrade the EU from an integration project based on a common market to a self-confident actor whose vocation is to normalize global politics in its self-perceived superior image: "In the last twenty years the Union has done a fantastic job of spreading peace, prosperity and democracy throughout our continent. (...) The principal challenge for the coming twenty years will be to extend this zone of peace, by promoting security beyond our borders and constructing an international order based on rules[21]."

Münevver Cebeci claims that there is no significant alteration over time, from Westphalia to the EU, concerning the *modus operandi* of Eurocentrism, since "in the EU's case, the rhetoric of post-sovereignty functions in the same way as the rhetoric of sovereignty functions for the state. (…) this time to mark what can be assimilated to Europeans norms and practices, and what can be named as external and dangerous. This surely empowers the EU's post-sovereign presence" (CEBECI 2012:568-569). The self-proclaimed superiority of the normative rhetoric as part of the EU's political identity turns Eurocentrism a problem for NPE as foreign policy.

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[21] SOLANA, Javier, "The future of the European Union as an international actor", article published by *Young Europeans for Security*, 2005:1.

The EU as a subject in defense of peace, democracy and human rights *different* from those who are violators, acts *in a better way* among those who share the same concerns, huddling a justification for its role of norm-setter in a global scale that is however not endorsed in all parts of the world. Thus, poststructuralist scholars mentioned here aim to deconstruct privileged and dominant scripts from within, emphasizing inconsistencies between identity and foreign policy that contradict the idea of NPE as a model project.

1.2.3.
Problem 3: Post-colonial echoes in demonstrations of power

The post-colonial school is primarily concerned with "how to enhance the institutional setting of international/ global politics so that arguing towards a consensus prevailed over demonstrations of power", for which "Habermas' work in this area held out the promise of findings ways to transcend the problem of power in international politics" (DIEZ & STEANS 2005:128). Besides Habermas' contribution, the conceptual and methodological toolboxes of Michael Foucault and Pierre Bourdieu are usually employed by critical approaches to NPE seeking to raise "the dominative dimension of European foreign policy that arises from the EU's exercise of post-sovereign normative power" (MERLINGEN 2007:438). Empirical researches "scaled down to the micropolitical level of analysis" (op.cit:436) question why an intrinsic ethical component is ascribed to the EU identity.

Scholars like Arif Dirlik (1999) and Sanjay Seth (2009) indicate that globalism, historical sociology and the post-colonial approach are ways to counter Eurocentrism and superior readings of Europe's post-modern character in comparison to modern and primitive others, such as the Middle East, Russia and Turkey. The post-colonial voice moved into Europe seeks to "dislodge Europe from its privilege place in our thought" (KINNVALL 2016; SETH 2009), calling into question the third[22] and often forgotten

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[22] Regarding the first and second components of the European identity, Hansen states that "an analytical division is often invoked between internal factors or influences, such as those related to the German question, and external, or 'extra-European', influences, as in all those related to the Superpowers and the Cold War" (2002:484).

part of the European identity, "the break-up of the world order that had been structured on European colonialism and imperialism" (HANSEN 2002:484).

Such post-colonial echo becomes a problem in NPE as foreign policy when it is exercised as a demonstration of power rather than a channel to possible consensus. The idea of the EU as a model of regional integration inscribed in its political identity discourse, for example, is questioned by analysis of EU's influence in other modes of regionalism and economic integration such as Mercosur and ASEAN (GRUGEL 2004; BÖRZEL & RISSE 2009; GARELLI 2012; LENZ 2013), revealing that "By imposing their own model without considering the specific cultural, economic and social characteristics of certain regions and countries, the Europeans encourage mimicry and, in a sense, add to the colonial tradition rather than engaging the people of those regions and meeting their local needs" (CEBECI 2012:572).

The agenda of post-colonial theorists emphasizes "conceptions of boundary, territory, community and ethno-cultural belonging in the constitution of Europe (…) [as well as] how European integration must be read within the context of colonial and postcolonial globalization, migration and ethnicity" (KINNVALL 2016:153). Notwithstanding the positive character of Eurocentrism for the internal constitution of EU identity, relations of power and securitizing acts – like radar system in the Strait of Gibraltar, 8-kilometre-long perimeter wall in Ceuta – are strongly inscribed in demarcations of borders with non-Europeans, for instance the racialized immigrants from former African colonies.

Fisher-Onar and Nicolaïdis are exponents of the post-colonial agenda, which challenges Eurocentrism as the yardstick for "knowledge-forms" in the Third World (also CHAKRABARTY 1995; 2000). The authors claim to a reconstitution of the European agency, "a decentering agenda", suggesting a re-interpretation of the NPE discourse as a sophisticated version of the EU-centric narrative, which marginalized the colonialist past with "the violence this entailed and the echoes – direct or indirect – of *this* European past among those former 'subjects' among whom are to be found the rising powers of today's world" (FISHER-ONAR & NICOLAÏDIS 2013:284). The contribution of this approach towards a paradigm shift on the study of NPE and its practices may be located along three axes: *provincializing*, which means to question

Eurocentric civilizational assumptions of primacy; *engaging*, which means to learn with other's assumptions (mutual recognition); and *reconstruction*, which means to reflect on how a post-colonial power should act, bringing mutuality and recognition to the basis of EU external relations.

Post-colonial critiques of NPE are part of a successful endeavor from scholars to make non-Western claims to be heard in European Studies. Most of the traditional subjects are acting towards the enlargement of the agenda on Self/Other in order to make Europeans their audience, and to address their topics such as "the geopolitics of knowledge production" and spatiotemporal analysis. Post-colonialists question "to what extent do they [post-colonial, neo-colonial, post-imperial and empire] accurately capture contemporary process of domination in ways that can be distinguished from previous rounds of imperial conquest?" (HOOPER & KRAMSCH 2007:528).

In fact, NPE as foreign policy is extensively confronted by post-colonial analyses. Wolfgang Wagner assumes the EU as a liberal power, explaining that "political liberalism places a high value on the individual, and democratic institutions facilitate to hold the government accountable for advancing their security and well-being" (WAGNER 2017:6). Upon such features of liberal democracies, Tugba Basaran inquires, "how are securitized populations to be conceptualized if law works as a liberal technique of governing human conduct?" (2014 quoted in KINNVALL 2016:156). The EU relations with Turkey illustrates this question, with examples of double-standards deployed by the EU, how the EU resorts to *certain* norms and to the extent that it imposes compliance, reinforcing an asymmetrical relationship by othering and bordering Turkish people (KRAMER 2006; DIEZ 2007; CEBECI 2012; TOCCI 2014).

Ultimately, post-colonial echoes in demonstrations of power acquire contours of a problem of NPE as foreign policy when diversity is downplayed to such a degree that "The narratives being (re-)told rely not only on a fear of others but also on the scapegoating of the EU (…) [which] is caught in a contradictory position vis-à-vis its spatial components, as it is simultaneously constructed as a provider of universal multicultural rights and a nation-state writ large. It is viewed as both the foundations of European values and the exterminator of the same" (KINNVALL 2016:162). In other words, in order to assume its diversity in terms of values and policies as a positive

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feature of the nexus identity-foreign policy that "shows how the very terms through which identity are articulated reproduce political institutions such as the state and the EU, and *how this is always an internally contested practice*" (NEUMANN 1996:162), the Others call the EU to enlarge and strength the range of voices and experiences within its foreign policy, what would loop back to its identity in the form of legitimacy and recognition of NPE's project.

1.2.4.
Problem 4: Hegemony and political myths in NPE as foreign policy

The Gramscian sense of hegemony as firstly exposed in IR by Robert Cox in the 1980s remains a useful epistemological framework to expand the understanding about EU identity politics. The language of consent and coercion is also present within imaginaries and political myths that, simultaneously, constructs and sells the EU as a "seductive object of identification". These myths and narratives are "still central to the EU's self-legitimizing discourse, that of European integration as a great postwar peace project" (KOLVRAA 2016:171). Institutionalists (PEDERSEN 2002; FARRELL 2004) also agree that the EU can be considered a collective hegemony whose common strategy, albeit by non-military means, draws on coercive instruments like sanctions and conditionality.

According to Cox, "to the extent that the consensual aspect of power is in the forefront, hegemony prevails. Coercion is always latent, but is only applied in marginal, deviant cases. Hegemony is enough to ensure conformity of behavior in most people most of the time" (1983:1209-1210), what can be seen in cases that silenced consent may cover perceptions of hegemony in NPE as foreign policy. Those cases are crucial policy areas in which the EU imposes "the EU values and way of life" as a model such as, "EU targets for reducing CO2", "EU role model in fighting poverty worldwide", "EU high-ranking of humanitarian aid" and "EU grants of duty-free access to its markets in order to encourage developing countries to embrace standards based on the EU model", to recall just few of what is in the Commission's book.

Indeed, Cox points that "international organization functions as the process through which the institutions of hegemony and its ideology are developed. (…) they ideologically legitimate the norms of the world order; they co-opt the elites from peripheral countries and they absorb counter-hegemonic ideas" (1983:1218), indicating that hegemony is *de facto* exercised by the disciplining power of norms particularly over peripheral actors. Lastly, Diez explains that "in the Gramscian conception of hegemony, there is an emphasis on both economic and cultural discursive factors, and that cultural and political factors are not simply determined by an economic base. Rather, norms and economic interests form one whole" (2013:201).

Thereafter, does the EU act as a normative hegemon? Agreeing with Emilian Kavalski that "normative power emerges as a *power in context* – it is not entirely an intrinsic property of an actor, but depends on the kind of interactions it has in specific contexts" (2013:250), I believe that the hegemonic dimension of NPE as identity project also varies according to actors and issue-areas of interactions. It is true that the EU's hegemonic character is more visible in its relations with the neighborhood than with countries of Latin America or Asia, for example. The same holds true for the effectiveness of policies and instruments, as overall, hegemony and effectiveness are matters of how much interaction there is with the EU.

Among analysis that illustrate such standpoint, Hiski Haukkala asserts about the EU Neighborhood Policy that "in fact, the EU can be envisaged as a regional normative hegemon that is using its economic and normative clout to build a set of highly asymmetrical bilateral relationships that help to facilitate an active transference of its norms and values" (2008:1602). Del Sarto in turn conceptualizes the EU as an *empire* toward its borderlands, due to "the EU's exporting of rules and practices to neighboring states as the modus operandi of empires in pursuit of their own interests; this modus operandi also serves the construction of a 'normative' identity" (2016:216).

Political myths and conceptions are also technologies of NPE as foreign policy that concur to its hegemonic potential. As explained by Kolvraa, political myths are important instruments of discursive and practical authority, they "are not merited by the empirical precision of their historical narrative, but rather by their ability to deliver significance" (2016:180). For instance, the EU capitalizes on the myths of "peace and

stability" and notion of "trade power", which are used to develop manifold disciplining instruments rooted in the conception of economic liberalism.

Lastly, Parker and Rosamond contend that conceptions of market and freedom compose "the NPE-ontological reality (…) a market cosmopolitan Europe is not simple the *condition of possibility* for the NPE-OR (…). It can also be regarded as the *very basis* of such characteristics" (2013:236/239). In this section, I presented a literature review which develops the internal tension of NPE as being both an identity project and a foreign policy. It then comes to the main point: a vicious circle in which these two parts of the NPE narrative undermine each other, starting from policies' contradictions and, subsequently, the EU being caught in a dilemma when it needs to react to them. In all this we had already the discussion that the EU has no true culture of dialogue. More, I posit that dialogue is perceived as undermining its ontological security, since it cannot really put its own norms into question. This circle of internal tensions is what I call the dilemma, wich I spell out in the next section.

1.3.
The identity-foreign policy dilemma of NPE

By assuming such a dilemma as a framework for understanding NPE, we see things which were not seen otherwise. In this section, I discuss pointers leading to the dilemma that are related to the problems of NPE as foreign policy connected to identity issues abovementioned, which are then articulated in the empirical conceptualization of dialogical processes that methodologically informs how to observe them in the cases. In a nutshell, although the EU is obviously aware that any recognition as normative power lies in the eyes of the addressee, we see that its identity discourse is not particularly flexible to allow for a more efficient, and at times just credible, foreign policy. EU ontological security is rooted in a Eurocentric cultural insensitivity that reaffirms itself with a more hostile vision of the Other when contestation arises in its external relations, in order to avoid internal destabilization.

The perceived and substantive impact of EU's foreign policy is reduced in the face of the Union's understanding of interaction with Others mainly by Othering or

selective modes of differentiation, therefore "a real improvement in the image of the EU in the world (…) will only be possible through a dramatic change to the current 'Othering' process, which by necessity should start with a new dialogue between Europe/ the EU and the world, close to and far away from the EU's borders" (DIDELON-LOISEAU & GRASLAND in CHABAN & HOLLAND 2014:92). Figure 1 summarizes such theoretical argument that I develop hereafter.
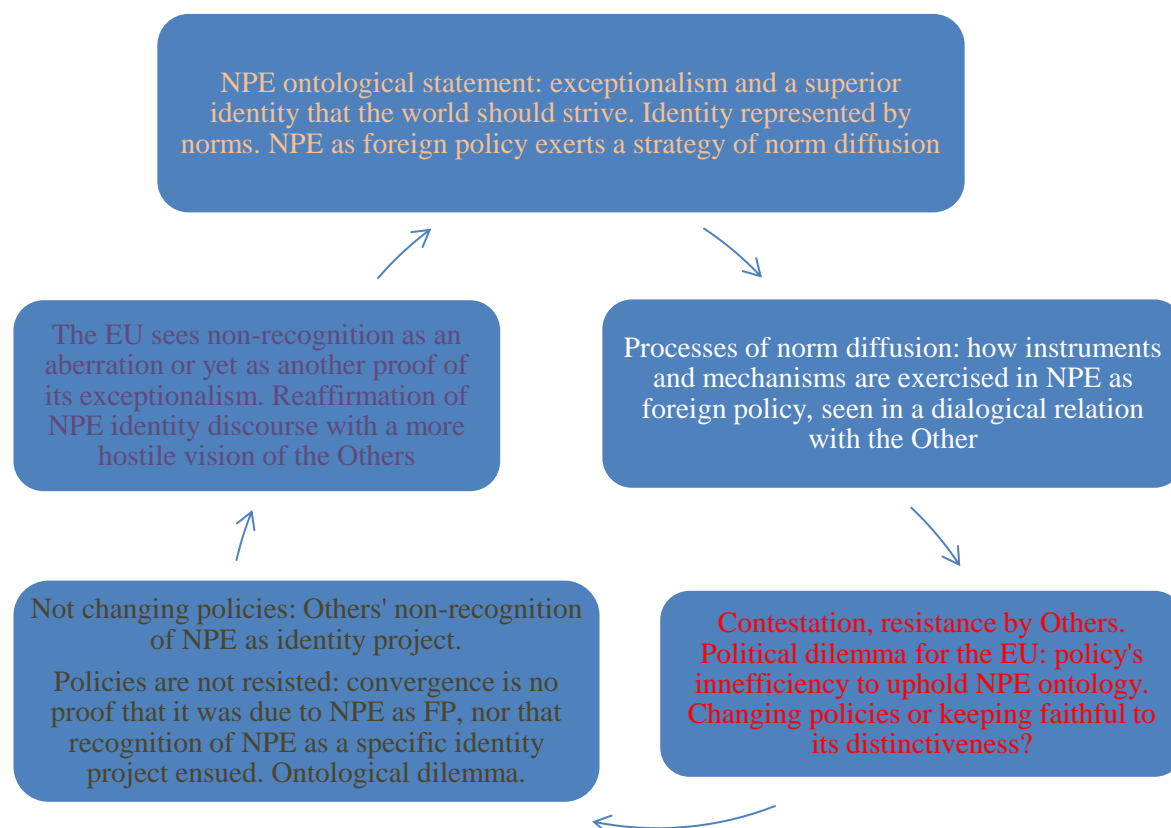
Figure 1 - The dilemma: a vicious circle of contradiction with regard to NPE

1.3.1.
Non-recognition and inefficient reform

This sub-section aims to show that the EU and the scholarship of EU are aware that policies are resisted in some cases (policy's inefficiency, as exposed in the third balloon of Figure 1). It attests to some reflection going on about both external

recognition and the NPE dilemma, as well as their relevance for the EU. Integrating Others' voices from the onset, I propose three leading points to the dilemma (or causes), further analyzed in the case studies. For the political one, it becomes clear that policy's contradiction is not a matter of mismanagement, as there is something more systematic behind, related to its entanglement with NPE. Then, for the most difficult dilemma, the ontological one, is hardly feasible for the EU to remedy. The construction of the EU identity *through* NPE hinders a way out without harming its ontological statements.

The path made by François Duchêne (1973), Hedley Bull (1982), Hans Maull (1990), Christopher Hill (1993), and Ian Manners (2000) displays a great increase of interest to understand EU's roles and instruments to act in global politics from within. It was only from the mid-2000s that studies about external perceptions of the EU started to complement the still growing literature on EU identity and roles, raising important questions such as "how do third countries see the EU?", "how do they interpret the EU's means of action?", "in which basis do they evaluate a supposed difference of actorness regarding the EU?", "do they recognize and legitimate the NPE?" and "how do they perceive the interaction with the EU?".

Notwithstanding third partners understand the need and achievement of strong internal coordination and the combination of preferences that informs the EU external action, what is at stake for them is the connection to the EU international role, i.e. how the EU translates its ambitions into behavior. The prevalence of perceptions of inconsistency is grounded on how the EU employs its instruments of foreign policy.

For instance, Ole Elgström (2007:959) and Thomas Diez (2013:197) mention the case of trade negotiations with the Global South to illustrate the gap between EU's normative arguments like solidarism and its interests reflected in its actual performance: "The EU portrays itself as a champion of free trade and liberalization, but is in some areas perceived to be a highly protectionist actor. (…) EU attempts to lead the debate on social issues and environment by linking these areas to trade are generally viewed with deep suspicion" (ELGSTRÖM 2007:959).

At the core of Others' perceptions is how the EU manages contestation (leading point 1). It is aforementioned that the EU identity project is internally constructed through conflicted interpretations and a constant exercise of accommodation of

cognitive maps and national preferences, substantiating the process of deliberative interactions within its institutions. Nonetheless, in its external relations, the EU does not engage in the same practice. It rarely accepts contestation to its norm catalogue and its attitude, especially with developing countries, is seen as patronizing, arrogant and teaching: "(…) the way it [the EU] deals with diversity and contradictions can become an aspirational goal at the international level. (…) A more dialogical approach would make EU actors more aware of what their counterparts think, thus promoting genuine two-way-interaction as a negotiations' model" (AGORA Forum 2013:5).

I content that neither laudatory nor critical approaches to NPE give necessary attention to the legitimizing role of contestation in historical processes of identity construction. As abovementioned, whereas the EU is struggling to set the grounds of we-feeling within its borders *through* contestation among member states (NEUMANN 1998), it would be the chance for critical approaches to ask for the same profile in its external relations. Instead, NPE as foreign policy acts *against* contestation, as its entanglement with NPE as identity provides a reading of contestation as an anomaly, or miscommunication, that will be mitigated over time.

Currently, European scholars and policy-makers are openly concerned about how to (re-) build an effective engagement specially with Southern countries, in order to "improve both the internal and external understanding of the EU; to make itself both heard and seen in an increasingly multipolar world; and to improve the perception of the EU partner countries in the context of euro-zone crisis and austerity politics" (MANNERS & WHITMAN 2013:188). Nonetheless, inasmuch communication is unidirectional through interpreters and translators, and contestation is problematic for the EU superior authority, efforts either towards recognition or an improved public diplomacy might be unsatisfactory.

Chaban and Holland indicate a "Buddah" characterization presumed by Brussels that is very different from the view of the EU in the Pacific, basically because of its self-confidence and image expressed by the Commission as a *partner for development* and *promoter of norms* in contrast to its patronizing and hegemonic attitude: "(…) it is watching closely, guiding, caring if you obey, but at the same time it is able to harm if you are not following the directions given from above, teaching,

pushing, punishing" (2009:5, original emphasis; see also BENGTSSON & ELGSTRÖM 2012:103). Such mismatch might derive from an external perception of the EU non-handling with differences, i.e. either distinct interpretation to the norms promoted, or resistance and critical engagement to the way those norms are exported (leading point 2).

The fact that "EU norms are therefore not simply passed on to third parties, but need to be reinterpreted in the process so as to write out the tensions at the core of the integration project. This also means, however, that there may well be conflicting interpretations of norms among EU Member States, and other EU actors" (DIEZ 2013:202) is well-know by the Others. Transposed to its foreign policy, a certain level of deliberation among different interpretations could be widely perceived as a source of normative power. Meanwhile, the Others feel restrained in interactions with the EU to demonstrate differences, either in trade or cooperation initiatives. They are seen as "take or leave it" and need to fulfill EU standards. For that, we have only few indications that NPE is in fact perceived as a uppermost identity, inside and outside, near and abroad (DIDELON-LOISEAU & GRASLAND in CHABAN & HOLLAND 2014:80-88; LUCARELLI 2007).

Lastly, I suggest for the sake of observation that the means the EU understands diffusion lacks an awareness of dialogical processes, disregarding difference and contestation as explanatory values to grasp identity issues. That is leading point 3 to the dilemma, which also relates to my second hypothesis – our understanding of norm diffusion is actually insufficient to explain policy's shortcomings. For the sake of developing such hypothesis through the analysis of NPE as foreign policy, embracing shortcomings and inefficiency, I develop a diffusion framework in Chapter 2.

In sum, studies on Others' perceptions of the EU demonstrate that NPE as a political project is nearly invisible inside the EU, where economic references predominate; it is seen with such strong criticism and suspicion near/outside, related to self-interest, double-standards and neo-colonialism; and with disagreement or lack of recognition abroad, where "the EU as a political actor is rarely mentioned in either case [Chinese and Indians respondents]. (…) 'Europe' appears to be an attractive region but with an ambivalent image (e.g. rich and imperialist). They help to trace pathways

through which we can empirically see either of the two dilemma, starting from NPE as foreign policy.

It is true that non-EU states shall not be happy with any standard, and that the different way to see power in NPE, in a classical normative power way, is simply not accepted. That does not mean that there is no distinctiveness in NPE at all. The EU may be a kind of normative power but some other states just do not care about that way it performs normative power. Nonetheless, considering that by NPE we have both a "model character" (as an ontology) and an active foreign policy strategy which is not only trying to make others see the EU in a certain light, but also change their norms, then the norm connecting how to understand power which is part of NPE is not effectively transmitted, what is *sine qua non* for all the rest. Despite knowing all this, the EU has troubles changing policy that are not just mismanagement but derive from the internal and systematic tensions of NPE exposed in this chapter.

1.3.2.
The dilemma explained

Borrowing explanations of Brent Steele, Bahar Rumelili and Jennifer Mitzen about Anthony Giddens' term of ontological security in *Modernity and Self-Identity* (1991), I conclude this section phrasing out the dilemma: NPE depicts a certain identity discourse that implies a sharply different mode of understanding and exercising norms diffusion than the one that the EU actually undertakes. The incongruence stems from the fact that "agency requires a cognitive stable environment" (MITZEN 2006:342) which, in the case of the EU, cannot be reached without the Eurocentric character that stabilizes the Self.

Eurocentrism, in turn, symbolizes a positive image inside the EU borders since "actors therefore achieve ontological security by routinizing their relations with significant others" (op.cit.), whereas outside it informs a kind of foreign policy that concur to the destabilization of the internal environment by the lack of Others' perceptions of legitimacy. What is more, despite the EU understanding that it does not behave as it should, it finds it so hard to change. NPE is necessary for the EU's ontological security, but its cultural insensitivity when it meets the Others, broadly

represented by Eurocentrism, is prompting a contestation that is actually blurring borders and hence undermining ontological security.

Hence, as exposed in Figure 1, the political dilemma starts from policy contradictions: when NPE as foreign policy is resisted, either the EU changes policy but then attesting to its normative ineffectiveness (which would be a self-contradiction), or it keeps its distinctiveness but then testifying to its powerlessness. Such dilemma evolves to an ontological one when the EU needs to react to it. Then it is caught: even when policies are not resisted in the first place, the EU reads convergence of policies and behavior as a successful NPE as foreign policy to uphold its identity discourse. Tending to see itself confirmed by the Others undermines the recognition by them, what ensues a vicious circle of more non-recognition and denial. It leads to a re-affirmation of NPE with a more hostile vision of the Other, and the vicious circle remains. The underlying ontological dilemma is this circle. I stretch it out in three steps.

The first step is to see NPE as an ontological statement: the EU is a new project that claims success to its story but is constantly in search of stability to its identity discourse. Such stabilization arrives both by its internal self-understanding and by the external recognition, as with all identities. Internally, the EU interaction occurs within a clearly demarcated space that is the first criteria for identity constituting. Within this space, some level of assimilation to the norms is required to take part in negotiations – norms are negotiated and, at the same time, they distinguish who is able to do so, based on shared interests, preferences and historical legacy. Finally, we have the processes through which **i)** all these components are assembled into a single representation (NPE) by practices and discourses, **ii)** this representation seeks to dissociate itself from others, enhancing those components, and **iii)** practices and discourses seek to legitimize the representation before the Others, in search of ontological security.

The second step is to stress that resistance concurs to undermine ontological security by, for example, blurring the boundaries of Self and Other as clarified by Rumelili: "while recognition reproduces the clear boundary between identity and difference that the exclusive identity depends on, resistance threaten the exclusive identity by blurring the boundary" (RUMELILI 2004:38). Resistance and recognition

are therefore practices of the interactions Self-Other in and by means of foreign policy, i.e. they are two sides of the same coin.

Considering that "an agent is ontologically secure when they choose a course of action comfortable with their sense of self-identity. (…) It is important to note, however, that not all agents have equivalent reflexive capabilities. Some may be so incapable of adequately monitoring routines that they fail to accommodate identity threats" (STEELE 2005:526), Steele shows that the connection identity-foreign policy is indeed necessary to NPE ontological security, for which I add up the constituting role of the Others (as with any identity).

NPE instruments and mechanisms such as democracy promotion, institutional strengthening, common market and membership set up such connection. Nonetheless, by observing its discourse and practices while interacting with Others upon constituting norms such as democracy and human rights, we see that "the underlying assumption of these programmes implies that the world can be shaped according to European democracy and welfare state standards (including the export of the European model of regional integration). The programs themselves show little sensitivity for national or local cultures and values" (BÖRZEL & RISSE 2004:3). The quote illustrates my premise that, to understand NPE dilemma, it is crucial to look at the "how", i.e. the processes of EU interaction with Others during the course of diffusion, and not only to its supposed soft measures. This premise is developed in the scope of the second hypothesis, in the next chapter.

Hence, shat happens if ontological security is challenged? This question began to be of concern both of the EU and EU scholars when the EU has come to be insecure about it itself, with the developments of mid-2000s in Europe associated with the Euroscepticism. Lene Hansen explains that "yet as identities are constructed through an articulation of a large number of signs in processes of differentiation and processes of linking, it is possible to analyze the *relative* ability of a discourse to present a construction of identity which is not (seen as) highly internally unstable" (HANSEN 2006:26), for what NPE has made the case.

The new scenario after the Eurocrisis compelled the EU to increase its attention to resistance/recognition through Commission's funding of investigations and projects

on external perceptions. These projects engage with ongoing debates about the sources of legitimacy of EU norms, to what extend these norms legitimize its interests and in which basis Others should accept "a superior rationality of European norms and be willing to support the extension of the EU's norm-based governance to the global level" (BICKERTON in WHITMAN 2011:38).

The third step of the dilemma is therefore the result of processes of diffusion, characterizing the vicious circle or dilemma enunciated above. NPE which was meant internally to stabilize the EU is universalizing in its external reach, and hence prompts a behavior that will necessarily face possible contestation and resistance. Faced with this situation, the EU steps up its own vision of itself as NPE and turns more Eurocentric, encouraging the argument that the EU is unable to remedy discriminatory and conflictual relationships with those Others that it names the subjects of violations, non-compliance and unable "to embrace international standards based on the European model", to quote again the Commission's words.

I have previously mentioned four distinct problems of NPE as foreign policy related to NPE as an identity project that configure the origins of the dilemma. They are: **i)** the EU mode of accommodate differences inside its borders and of differentiate itself from Others at the outside, practicing Othering in foreign policy; **ii)** the positive potential of Eurocentrism to articulate the EU political identity internally, and how Eurocentrism as a broad representation of superiority harms NPE as foreign policy, which reinforces asymmetrical relationships with Others; **iii)** the post-colonial voice to report demonstrations of power by imposition, securitizing acts, bordering, racialization and marginalization of immigrants from former colonies in NPE as foreign policy; and **iv)** the hegemonic character of consent and coercion constructed to sell the EU, which is central to EU's self-legitimation, exercised by the disciplining power of norms over Others in NPE foreign policy.

Puzzlingly, the EU is well informed that policy has met with such problems in some parts of the world, but it is incapable to find a remedy. This last section was meant to show that it is so not due to sheer incompetence, but something more fundamental and systematic. We saw that the examples and situations where tensions arise are concerned to the mode of communication established by the EU towards the Others.

The majority of studies in Others' perceptions of the EU have tackled cases with Others who do not share core Euro-Western culture, or are direct targets of the EU's bargaining power over trade and/or membership. By contrast, I selected Others who do not have any problem when see NPE as identity project, in the first place.

The Others mostly translate EU's behavior into the priority given to avoid security problems and to guarantee its protectionist power. Lucarelli exposes that "surprisingly, we could not find much evidence of the EU being widely seen as 'normative power' exporting universal values of democracy and human rights" (2007:269), whereas Chaban, Elgström and Holland (2006:259) imply that a EU normative leadership is to a large extent dependent on the policy-field (environmental, energy, human rights) and kind of policy (cooperation, aid, assistance, trade partnership). The image of the EU as patronizing, imposing and preaching norms globally is widely consensual at least among the Global South, however, the intensity and impact of such behavior/ image differ.

I believe that the research on outsiders' perceptions can contribute to the question not yet satisfactorily spelled out within the literature of NPE, which is "how is the NPE mobilized through mechanisms and instruments of EU's foreign policy?". This question leads us to rethink how the EU recognizes the Others, and how much attention is given to sociocultural differences, parameters and conditions of interactions. In order to be legitimate, NPE needs the Others as part of it and not as receivers or takers, since its success is not only measured by policy outcomes but by recognition and capacity to shape, influence or determine others' beliefs and desires.

Before turning to the conclusion, I phrase the two working hypotheses as follows:

1) NPE ontological statement – the exceptional character of the EU identity that supposedly legitimizes its distinct role as a global norm-setter – is making the EU difficult to find a way out of the dilemma. This way, diffusion and resistance to NPE as foreign policy are leading to non-recognition of NPE as identity project in several parts of the world;

2) Our understanding of *norm diffusion* must be improved to allow for precise empirical applicability. It is actually insufficient to explain NPE policy's

shortcomings and contradictions in relation to its identity discourse.

In the next chapters, firstly, I develop a theoretical framework of diffusion to analyze NPE as foreign policy and, secondly, an empirical conceptualization of dialogical processes of diffusion that includes resistance. The cases are paradigmatic for theory building and hypotheses developing: I tackle the EU relation with CELAC in the field of international cooperation, and with Brazil in the field of human rights, respectively.

1.4.
Conclusion

> "However, in response to the destructive power of this nationalism, *values and habits also developed* which have given contemporary Europe, in its incomparably rich cultural diversity, its own face. This is how Europe at large presents itself to non-Europeans. A culture which for centuries has been beset more than any other by [internal] conflicts (…), has had to painfully learn *how differences can be communicated, contradictions institutionalized, and tensions stabilized.* The acknowledgement of differences – *the reciprocal acknowledgement of the Other in his otherness* – can also become *a feature of a common identity*" (HABERMAS & DERRIDA 2003:294, my emphasis).

Most of the research conducted until the present days on adversities that NPE as policy strategy has met in some parts of the world show that:

> "the general absence of images of the EU as a normative power takes three very different forms. One variant is that the EU is not understood as having a special role in the normative field as it is not normatively different or superior, but is a political partner. (…) A second variant is that the EU is seen as promoting certain legitimate norms. However, the EU's promotion of these norms is not viewed as credible as it is interpreted as a cover for attempts to exercise neo-colonial political control. (…) The third variant is that the EU does not promote legitimate universal values. The Union's promotion of certain norms is understood as an expression of Eurocentrism and clashes with the views of other parts of the world" (LARSEN 2014:904-905).

Henrik Larsen's variants or reasons why the EU is not recognized as a NPE conform to the problems of NPE as a foreign policy strategy I stated in the chapter. In addition, I disclosed points leading to the dilemma that suggest a fundamental impossibility for the EU to remedy such problems between its policies and external

non-recognition, which were guided by the scholarship of Other's perception of the EU encompassing studies requested by the Commission.

In studies of external perceptions of the EU[23], we see the critique that "on the one hand, conceptualizations of the EU's international identity – especially the NPE hypothesis – cite cultural factors among the leading diffusion mechanisms. (…) On the other hand, theoretical reflections of EU foreign policy actions are still often informed by the 'capabilities-expectations gap' hypothesis" (CHABAN & HOLLAND 2014:7). I claim that external images both constitute the EU-Self and are relevant for foreign policy's efficiency to ensure ontological security underpinned by such constitution.

Those images are manifested through EU-Others interactions in foreign policy. Michito Tsuruoka states that "if the EU's self-identification as a particular kind of power in the world is not shared by others in the international community, such identification loses most of its meaning in the real world and the usefulness as a tool in analyzing the role of the EU in the world" (2008:5), thereby concurring that these perceptions are constructed both by interactions with the EU and Others' cultural filters[24] (TSURUOKA 2008:3).

Once we have understood that norm diffusion (as the EU foreign policy strategy) gets stuck in several cases, we have to more carefully understand what diffusion actually entails so far for the EU and EU scholarship. In Chapter 2 I develop a theoretical framework to analyze NPE as foreign policy that accounts for the need to enlarge our current knowledge of norm diffusion, in order to catch on why and how the EU foreign policy strategy is meeting with adversities particularly outside Europe.

Most of the time, as empirical researches with the Global South demonstrate, the "real" diffusion strategy does not predominate as the main enabling factor of EU external policies outcomes: "the image of the EU as a normative power is the strongest in countries which hope to obtain closer links with the EU – and possibly membership.

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[23]The last volume edited by Natalia Chaban and Martin Holland ("Communicating Europe in times of crisis", 2014) together with Sonia Lucarelli's analysis ("See from the outside: the state of the art on the external image of the EU", 2014) offer a wide picture about the last topics, approaches and methods covered by the sub-field of external perceptions, as well as about the set of interdisciplinary dialogues beyond EU studies with, for example, cultural studies, history, geography, sociology, political science and communication.

[24] By cultural filters I mean a broad scope of pre-understandings, meanings-in-use, domestic conditions, cognitive maps, own normative catalogue, political and cultural identity, and preferences that informs Others' perceptions.

The perceived importance of EU normative status within and around Europe was not, and is not, shared by the rest of the world" (LARSEN 2014:906). The "real" diffusion strategy, as I call it, is thus to be seen upon the relation itself and not upon the visible effects or outcomes that are so far one of the targets of the norm diffusion literature. Given that these are looking too short and are conceived in a uni-directional manner, in Chapter 3 I conceptualize dialogical processes that are meant to provide a reference against which to assess the mechanisms in the empirical analysis.

Therefore, the next two chapters enlarge the awareness of diffusion as how it is currently presented in the literature and understood by the EU, and provide a focus on the process that clarify how mechanisms are employed by the EU as seen from the Others. The dialogical move is central to explain why effectiveness of NPE as foreign policy as read out of a convergence of norms is not sufficient to uphold ontological security of NPE. Effectiveness seen in a linear perspective is in itself no proof that this convergence is due to NPE as a foreign policy, nor that it involves the recognition of NPE as a specific identity project.

2
Diffusion framework to analyze NPE as foreign policy

The previous chapter has developed an internal dilemma between the two components of NPE as foreign policy and identity politics/ontological security which undermine each other. It has also referred to the underlying problem of the dilemma: the unidirectional and non-dialogical way norm diffusion is conceived so far both by politicians but also by scholars, and which has been recognized as a problem not the least by the non-recognition of NPE by Others.

I have introduced the argument and hypotheses of the thesis, explaining the dilemma of NPE through some problems that came up with the literature which are connected to the EU identity politics. I dealt with NPE as identity encompassing Self and Other images, i.e. what NPE represents to the EU ontological security and how Others see it. On the one side, NPE represents the EU as a "peace project" on which the Commission and the Council work "to create a basis of legitimacy and international identity for the EU by persuading external and internal audiences of the strength of the normative component of its policy objectives and actions (…) Presenting it as a transferable concept of postmodern political governance based on universal 'benign' values and soft power instruments" (MICHALSKI in MELISSEN 2005:126/135).

On the other side, through different approaches I accessed complexities with NPE as identity project when it is looked from other parts of the world, where the EU channels and instruments of communicating its message are not leading to the positive feedback regards the NPE (expected) legitimizing role for the EU political identity. In a next step, this chapter therefore unpacks and elucidates the so far known mechanisms of norm diffusion as they are understood by the EU and employed in its strategy of NPE as foreign policy behind those channels and instruments, towards expanding the EU presence worldwide.

Through the variety of instruments and mechanisms of NPE as foreign policy, the strategy consists in spreading EU norms according to its interests in each situation in such a way that those instruments and mechanisms lead back to the EU's utmost goal of being recognized as NPE – an international actor that performs both an

alternative way of doing world politics (away from classical power politics), and a specific policy based on diffusion of certain norms and de-securitizing acts.

Interesting to note, it is argued among EU scholars that there is a "lack of political consensus on the EU's overall objectives and interests", and that the normative content used to persuade Others of EU's ideas and norms are also the very rationale on which common policies are built. Hence, at the same time that "it is beyond doubt that the confusion surrounding the EU's foreign policy objectives reduces its overall credibility as an actor and makes the task of communicating its wider intentions difficult" (op.cit.:140), the role of NPE for the EU ontological security is significantly strengthened.

Nonetheless, a political dilemma arises when those instruments and mechanisms of NPE as foreign policy *do not* lead to external recognition. As my second hypothesis, I write that we need a better understanding of diffusion in order to see NPE policy's shortcoming that we cannot see otherwise. In order to further explore the political and ontological dilemma with the case studies, I begin the present chapter conducting an inquiry of diffusion as a phenomenon to, subsequently, derive mechanisms and factors to analyze NPE as foreign policy.

Hereafter, in Chapter 3 I conduct an empirical conceptualization of dialogical processes between the EU and the Others to be applied to the cases, what bears in those assessments of NPE as identity and as foreign policy. Considering that EU instruments and mechanisms of foreign policy represent both how the EU perceives itself and understands diffusion as a policy strategy, with "dialogical lenses" we see what NPE do to the EU ontological security, or what goes wrong with NPE in terms of external recognition.

Therefore, my argument here unfolds in three steps, related to diffusion as the main strategy of NPE as foreign policy: at first, we cannot take for granted that the EU does diffuses its norms without seriously account for what it means to diffuse something, i.e. to critically engage with the literature of norm diffusion for understanding NPE. At second, that this critical engagement allows for the construction of a specific framework of diffusion raising a "positive side" of contestation as well, in the sense that it does not undermine the possibility of consensus and some sort of

change. Thirdly, that we must understand those instruments and mechanisms of NPE as foreign policy in light of such framework of diffusion, what makes the case for "rustles" on the surface of outcomes that might cover crucial implications to NPE as identity.

Instead of taking the EU foreign policy to substantiate assumptions of the norm diffusion literature, I derive a specific framework that opens venues of criticism upon NPE as a policy strategy. One of these venues is the inefficiency of policies to provide recognition of NPE as identity in a global outreach. I name it 'dilemma' due to the contradiction it entails: the way the EU understands diffusion is contradicting its identity insofar that its understanding is proven to make diffusion an insufficient condition to recognition, whereas the way the EU understands contestation makes it a cause of non-recognition.

Hence, although both diffusion and resistance with regard to NPE as foreign policy seem to lead to non-recognition of NPE as identity, the problem likely lies rather on the EU understanding of the phenomenon of diffusion than on the instruments and mechanisms themselves. The diffusion framework evolves from the need to account for such understanding, i.e. to theorize NPE as a policy strategy – what does diffusion mean and represent for NPE as foreign policy, and what are its implications to the EU identity politics?

Considering my three steps to unfold the argument, the chapter proceeds as follows: as NPE policies function on the basis of (an expected) diffusion, in section two I single diffusion out of other correlated phenomena, setting its properties and pointing to some divergences I have regarding terminology within the state of the art of diffusion. Rather than provide another summary of policy diffusion – compiling theories, mechanisms, logics, categories, comparisons and examples –, I define what diffusion is, as distinguished from other processes, as well as its implications to change. The definition is driven by four properties: what is diffused, in which context, under which conditions, and which type of outcome can emerge.

I organize those properties in a framework of diffusion raising a positive side of contestation as well, in the sense that it increases the possibility of consensus and legitimacy. The framework shows that diffusion is an essentially sense-making process

based on interaction through communication. It is a relational phenomenon in that it is only understandable when seen in the relation itself, and not simply from individual actors. To grasp such relationality, in the framework I contrast norm diffusion and policy transfer.

The literature on norms diffusion presents fuzzy conceptualizations that also contribute to undermine some of its applicability, as in the case of NPE. My effort to distinguish diffusion from other phenomena is towards to, in section three, make and justify a selection of mechanisms through which diffusion operates. In the conclusion I return to the quest of looking at the NPE as a policy strategy (what does diffusion mean and represent for NPE as foreign policy?) in light of such framework that portrays an ideal type of normative actor.

This thesis contributes to the theorization of NPE as a policy strategy (empirical event) showing other relevant approaches to analyze NPE as foreign policy beyond "NPE as an observational theory". In this chapter, I offer an understanding of NPE as a policy strategy through the norm diffusion approach, showing its relevance and potential to problematize the EU identity-foreign policy co-constitution.

2.1.
Diffusion as an observable phenomenon

Elkins & Simmons argue that *diffusion* is a term "in need of definitional clarity. (…) A principal source of confusion, we find, concerns its use as both outcome and process. (…) For some scholars, *diffusion* connotes just that: an outcome characterized by a disseminated practice or policy. (…) For most sociologists and political scientists, however, *diffusion* is not an outcome but the flagship term for a large class of mechanisms and processes associated with a likely outcome" (2005:36)[25]. Drawing on their acknowledgment, *I set a distinction since the outset: diffusion here is taken as the*

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[25] Actually, the diffusion research on a global scale offers manifold possibilities to learn about other phenomena, being also the object for analysis. For example, Newmark mentions technology diffusion as an international phenomenon (2002:10), and Solingen, "as both firewall and conduit [of diffusion], as is dramatically evident in ongoing contests over democratization" (2012:634). Trade is taken as an indicator of the mechanism competition (MAGGETTI & GILARDI 2016:94), and as a mechanism in itself "for the diffusion of formal labor standards" (SOLINGEN 2012:634). Language, as an essential component of communication responsible for the spread out of ideas through societal actors or media markets, is also an object spread among contexts in order to achieve minimal coordination (English, for example).

process through which some sort of change is the outcome, needing mechanisms to account for that. Usually, scholars set two types of diffusion processes: *vertical*, where there is a dominant actor/ country/ organization as the main provider of the innovation ('leader-laggard model'), or a hegemonic power coordinating the process (coercion); and *horizontal*, where there is a kind of interaction among the same units (learning and competition, for example), or it is a case of neighboring emulation (BERRY & BERRY in SABATIER et al. 1999; ELKINS & SIMMONS 2005:35; DALEY & GARAND 2005).

Encompassing the types, the *design* of the process may vary depending on how diffusion is approached. Seeking to not impose my interpretation, I exemplify this variation drawing on scholars that work with two different approaches to diffusion. Then I summarize their main components in a table, indicating which is my own approach that will guide the thesis, as well as my own definition of diffusion based on such approach.

2.1.1.
Two modes of understanding diffusion

From a historical perspective, 'diffusion processes' is one among other possibilities to account for the existence of cross-borders similarities, regularities and convergences of ideas, behaviors or policies over time. As mentioned by Everett Rogers (1983:1) and years later, by Marie Laure Djelic (2008:539), the notion of 'cultural heritage' – beliefs and meanings constructed throughout a given temporality – is crucial to orient the historical path of actions and decisions in a given community that constrain the acceptance and adoption of new elements. Therefore, conceptions of time inform the movement of culture-building, what is the background condition of an agent-driven process of diffusion.

Marie Laure Djelic, Everett Rogers and Etel Solingen are examples of scholars working with diffusion from different perspectives and fields of knowledge. Respectively, from sociology, communication and international relations, their ideas comprise a useful guideline to trace the most important properties of diffusion. Djelic uses the term (time)'bounded' and Rogers, 'custom-oriented' to call our attention to

the three main components constituting diffusion processes, which are specific of a given community in a given temporality: culture, environment and individuals (ROGERS 1983:2, also SOLINGEN 2012:632[26]).

Another direction to understand the potential of diffusion to change the reality over time is proposed by Strang & Meyer (1993:501), by the reflection upon how structural similarities foster diffusion processes. The authors explain that *modernity* is precisely the structure of notions that normalize environment and individuals, i.e. the 'hegemonic cultural frame' able to create standards and spaces through which elements (ideas, practices) diffuse rapidly. The modernization argument emphasizes the universalizing power of modernity to account for the frequency of exchanges among communities (nation-states) – it takes *isomorphism* [27] , understood as structural similarities or hegemonic cultural frame, as the primary condition that informs the logic of diffusion. Based on these two modes of understanding diffusion, I organize the main differences in the table below:

Table 1: Two modes of understanding diffusion

	Rogers (1983), Djelic (2008)	Strang & Meyer (1993)
	Cultural heritage	**Modernity**
Context or Structure	Cultural beliefs, local tradition, norms and values, set of meanings	Similarities (ex.: structural regularities; 'hegemonic cultural frame'; universalized notions of progress and justice; standardized analyses of means-ends relationships; ahistorical view of human and society)

[26] Solingen writes about 'the *politics* of transnational diffusion', which 'requires identification and characterization of four main ingredients': stimulus, medium, social agents and outcomes.
[27] To further explanation on the potential of isomorphism for the analyses of policy diffusion, see RADAELLI, C., "Policy transfer in the European Union: institutional isomorphism as a source of legitimacy", *Governance*, v.13, n.1, 2000. For isomorphism taken as a concept developed within organizational theory, see DIMAGGIO & POWELL 1983.

Outcome and Effect	Change in preference formation[28] Convergence	Diffusion Transnational standards
Time and Space	Historical (sequences)/ Site of connectedness *Weberian inspiration*	Teleological (progress, efficiency) / Decontextualized *Durkheim inspiration*
Channels	Voluntary and meaningful interactions embedding: local communication; critical engagement in dialogue comprising contestation that may or may not lead to consensus "process in which participants create and share information with one another in order to reach mutual understanding" (Rogers 1983:5). Central place to actors that are responsible for formulation and transport of ideas (Djelic 2008:545-546).	Cross-borders communication and mimicry "theorized models of adopters and practices that motivate diffusion" (Strang & Mayer 1993:506).

I drive the present thesis in view of the 'cultural heritage' approach of Rogers, Djelic and Solingen primarily because I assume a sociocultural context that must be assessed in order to verify the outcome. Moreover, I do not assume convergence since the outset of encounters, and not even as a necessary part of the outcome of all objects of diffusion: for example, norms can diffuse without necessarily leading to convergence. As the present chapter demonstrates, a serious operationalization of an agent-driven process of diffusion starts from the encounters, which structure the communication through system of meanings of each actor then possibly *constructing* convergence. Later on, I present how communication unfolds by means of precise

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[28] Change is acceptance or adoption of innovations. "Diffusion is a kind of social change" (ROGERS 1983:6).

mechanisms, yet first off I shall emphasize that I include contestation as a way to participate in communication as well.

Contestation is a derogatory attitude towards the content or the mode that it is communicated that, over the interaction, may (or may not) contribute to some degree of consensus and convergence. Therefore, contestation underlines a kind of 'positive potential' of opposing standpoints regards some aspect of the interaction, which is not necessarily a contributing condition to settle a scenario of antagonism or divergence. As said above that convergence is constructed rather than a given feature of diffusion, contestation has also the contingent potential to foster a mutual understanding and, ultimately, some sort of change.

In light of this reading and the concepts assigned in the table, *I define diffusion as a time-bounded process entailing some sort of change within specific sociocultural contexts, which results from the destabilization of a current set of significances among individuals embedded in voluntary and meaningful interactions*. This definition captures the three main components constituting diffusion processes attributed by Rogers, Djelic and Solingen (culture, environment and individuals) as well as my primary concern of outlining a pathway for change over actors' preferences and their context's elements.

I shall also emphasize that my reading of diffusion processes contrasts with the NPE theoretical perspective that is built upon the idea that there is convergence 'out there', structuring interactions and communication. Instead, I look at norm diffusion, for example, as a process that may constructs convergences upon the preferences of actors by means of voluntary and meaningful interactions. The reading is a critical engagement with the literature of diffusion too, insofar that the reading helps us both i) to understand how NPE would ideally work well as a foreign policy strategy in line with NPE as identity, and ii) to disclose overlaps and fuzzy conceptualizations in the literature of diffusion that hinder the abovementioned understanding.

Hereafter, due to my goal to ascertain how diffusion actually works through the empirical analysis, and what goes wrong within the processes of both cases, I develop the framework with properties applied to norm diffusion, clearing off confusions about what is a diffusion process different from other movements of transfer. Before turning

the attention to the properties of diffusion themselves, I sketch examples of empirical elements that are subject to change, according to the literature.

2.1.1.1.
Empirical elements that are subject to change in diffusion processes

An interesting concern observed in the literature about processes of policy/ norms diffusion and diffusion of innovations is regarding *change as a possible effect*, which may or may not lead to convergence but necessarily displays a kind of alteration in the previous status. Following Table 1, we can assess the possibility of change by unpacking the bundles of *context* and *channels* that, overall, constitute the two basic directions of researches that bring together processes of diffusion and change. Hence, I proceed with the conceptual exposition of subjects to change, than of the context within which diffusion occurs (and other of its properties) and, in the next section, I discuss the channels and mechanisms (*through what* and *how* diffusion occurs).

In the present study, I observe that how the EU understands diffusion and applies its instruments and mechanisms of foreign policy is contradicting its identity insofar that its understanding is proven to make diffusion an insufficient condition to recognition of NPE as identity, whereas the way the EU understands contestation makes it a cause of non-recognition. I had named it a dilemma due to the contradiction it entails. Therefore, I read diffusion as a *circular* move, instead of the linear mode 'sender-receiver', that leads to *some sort of change within the context as the outcome*, through distinct channels and mechanisms.

Consistent with the 'cultural heritage' approach presented in Table 1 and with my reading of diffusion in light of this approach, *'a kind of social change' implied by diffusion means any kind of alteration upon any property of the diffused object (norm, policy, behavior)[29], even if it does not result in commonality[30]*. That is the reason why

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[29] For example, 'properties' are also described by Hall's three *types* or *orders* of change (1993): "first order change in which only the settings or calibrations of policy instruments vary; second order change in which the types of instruments used to effect policy are changed; and third order change in which the goals of policy are altered" (HOWLETT & RAYNER 2008:387).

[30] I subscribe also to Capano's clear definition of social change: "a given entity (society, human behaviour, policy, political party) 'changes' when, between time *t* and time *t1*, there is empirical evidence that it has undergone changes to its properties (shape, state or quality)" (2009:9).

the idea of change is so crucial to the present study of diffusion as an agent-driven strategy of NPE, encompassing a contingent positive potential of contestation over the communication. But this is not the only and not even the most prominent definition found in the diffusion literature.

Usually, definitions revolve around the connection between diffusion and similarity, such as Weyland's "[in substantive terms] diffusion entails the adoption of the same policy framework in varied national settings; thus, it produces commonality in diversity" (2005:265), or the context/conditions of interdependence, globalization and (un)coordination, such as Elkins & Simmons' "the interdependence in diffusion is uncoordinated. Thus, the actions and choices of one country affect another, but not through any collaboration, imposition, or otherwise programmed effort on the party of any of the actors" (2005:38).

Most of the following empirical elements that are subject to change in diffusion processes are mentioned in the literature of policy processes, which aims to theorize the complex interactions among policy components, establishing frameworks that may better explain the diversity of these interactions. *Diffusion is one example of policy processes, as well as policy is one among other objects that might diffuse.* According to Giessen (2011), there are different methodological and theoretical approaches in social sciences accounting to explanations of change of a given entity. Within these approaches, the starting point is to define the dependent variable (what changes), a research agenda that is not clearly systematized so far.

For instance, Weyland identifies four theoretical frameworks to explain diffusion – "external pressure, symbolic or normative imitation, rational learning, and cognitive heuristics" (2005:268), within which it is possible to cluster Giessen's empirical elements of change (2011:250-254). These theoretical frameworks refer to specific arranging of the (sociocultural) content of the context, which guides policy-makers in order to adopt, adapt, converge or alter a given object (or any of its properties) along diffusion:

Table 2: Weyland's frameworks and objects of change

Theoretical frameworks	External pressure	Symbolic or normative imitation (magnetic attraction; legitimacy)	Rational learning (goal-oriented choice driven by given interests)	Cognitive heuristics (inferential shortcuts)
Empirical elements	External shocks and crisis; veto players	Ideas, narrations, frames; institutions	Policy networks, subsystems and their bureaucracy; epistemic communities, entrepreneurs; political parties	Values, beliefs; epistemic communities, entrepreneurs

Wieland's frameworks support my approach to diffusion in the sense that, given the analysis of NPE, I work mainly with norms and related elements placed in the symbolic and cognitive columns, what reinforces the role of interaction and communication. As diffusion is one example of policy transfer, it is taken as a 'theory' comprising the abovementioned elements and explanations of change, in addition to mechanisms and outcomes. The conclusion of Cairney and Heikkila's analysis also reinforces my previous assumption regards the three main components constituting diffusion – culture, environment and individuals: "overall, innovation/ diffusion models focus primarily on actors, ideas, and contexts, with other factors discussed implicitly" (1999:381).

Therefore, in this section *I contend that diffusion is contextual because it is directly dependent on culture and a set of meanings, yet it is not directed to the structural context but instead to individuals*. Having previously defined diffusion as a time-bounded process entailing some sort of change within specific sociocultural contexts, which results from the destabilization of a current set of significances among

individuals embedded in voluntary and meaningful interactions, in the next sub-section I turn to its properties.

2.1.1.2.
Properties of diffusion processes

In this section I turn the focus to four properties of diffusion, exploring the attributes of *what gets diffused* (innovations, practices, policies, paradigms, ideas, norms, institutions), *in which context, under which conditions, and what types of outcomes.* By the explanation of these properties I outline divergences I have with the literature and clarify those conceptualizations that are important to both the discussion of mechanisms and the development of a sufficient understanding about diffusion that allows us to see what goes wrong with NPE as a policy strategy. In the next section I discuss *through what* and *how* diffusion processes may occur (channels and mechanisms), and in the conclusion I set the parallel with NPE as foreign policy.

2.1.1.3.
What diffuses?

According to Fabrizio Gilardi, "one of the appeals of the diffusion approach is that it can be applied to a wide range of social and political phenomena" (in CARLSNAES et. al. 2012:7). For instance, Peter Hall (1993) developed the concept of 'policy paradigm', which points to the possibility of diffusion and changes across sociocultural contexts with specific ideas, goals and available instruments, as well as over the paradigm itself (first-order change). *Policies* are indeed the most covered object in the diffusion literature (BENNETT & HOWLETT 1992:283-285; GRAHAM, SHIPAN & VOLDEN 2012), either within states or among them; from institutions to states and *vice-versa*; inter-regionally; through and among transnational entities (NGOs, companies, terrorists). Besides policies, also norms, ideas, institutions, practices, innovations and models[31], with a focus on the *scope* of change, constitute an interesting

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[31] See SOLINGEN 2012:633-634 for a comprehensible account of "what diffuses (and what doesn't): who, why, and how?"

part of the 'what diffuses' agenda[32]. In this sub-section I unpack innovations, norms and institutions as examples.

Investigating the diffusion of innovations, Walker (1969) and Rogers (1983) agree on the centrality of newness in order to define the subject, respectively: "an innovation will be defined simply as a program or policy which is new to the states adopting it, no matter how old the program may be or how many other states may have adopted it" (WALKER 1969:881), or "an innovation is an idea, practice, or object that is perceived as new by an individual or other unit of adoption" (ROGERS 1983:11). Rogers goes further by explaining that "the newness aspect of an innovation may be expressed in terms of knowledge, persuasion or a decision to adopt", endorsing the uncertain character of change that is also reflected in Walker's goal to study "the conditions under which state decision makers are most likely to adopt a new program".

Knowledge, persuasion and decision constitute the cognitive path through which an innovation comes into practice, by means of communication and its background conditions: perceptions, prevalent values and norms, past experiences, current needs and skills, evaluation/ information exchange. Due to the active role of these conditions, it is expected a slightly modification of the object of diffusion, as "an innovation is not necessarily invariant during the process of its diffusion. And adopting an innovation is not necessarily a passive role of just implementing a standard template of the new idea" (ROGERS 1983:17).

Turning the attention to norms which, together with values, principles and beliefs, is the content of NPE, Annika Björkdahl is particularly interested in the role of *all* actors involved, characterizing diffusion as a *frictional* process of norms export and import that can capture "both repressive top-down imposition of norms and local responses in terms of adoption, adaptation, resistance and rejection. (…) Hence, encounters may produce *hybrid normative outcomes* containing components of both the norm exporter and the norm importer, obscuring their boundaries" (2015:5). The hybridism that characterizes norm diffusion is not equivalent to convergence, and it is visible only under the condition of expanding the picture to encompass all actors involved in interaction. The four feasible options of local responses raised by Björkdahl

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[32] These objects are examples of what Solingen calls 'stimulus' in 'the politics of transnational diffusion' (2012:633).

underscores the focus of change on preferences rather than on material rewards insofar that there might be a *scale* of change. And the options also point to the possibility of *partial* convergence, which arises from the set of meanings of interacting actors.

Martha Finnemore and Kathryn Sikkink assume that "new norms never enter a normative vacuum but instead emerge in a highly contested normative space where they may compete with others norms and perceptions of interest" (1998:897), also underlining the role of encounters to shape the outcome of norm diffusion. Norms imply an assessment of particular cultural filters at the micro-level of local practices to unveil what kind of change in preferences diffusion and validation had caused. Frictions and contestation over norms, and even resistance to normative discourses are not static and ultimate. They vary in quality and upon different types of norms such as fundamental norms and standardized procedures, constructing change through encounters. In the coming Table 3 I indicate what I mean by norm diffusion embedding inputs from all properties of this section.

Norms are different from policies, for example, that when diffused can change pay-off structures, organizing principles or behavioral norms whose "meanings are more directly linked to stakeholder expectations" (WIERNER 2017a:116), and incentives concerning the sociocultural contexts. Institutions is another *it* of what diffuses, either institutional designs or subjects among institutions. Robert Keohane and Alexander Ovodenko investigate institutional diffusion in multilateral policy contexts, defining *institutional diffusion* as "the process by which institutional characteristics spread to international institutions from a point of innovation to points of potential adoption", stressing "the causal and temporal relationship between similarly designed institutions, not merely to the institutional similarity alone" (2012:524).

Therefore, this definition helps to resume the assumptions until here: depending on the kind of change upon those objects of diffusion (policy, norm, innovation, institution), 're-invention' occurs through the course of interactions. Those interactions, in turn, determine either the presence of diffusion or of other course of transfer. Nonetheless, there are features of the context and contributing conditions that also play a role in pinpointing to diffusion and the kind of change as well, as we see below.

2.1.1.4.
Diffusion in which context and under which conditions?

Among other elements concerning the diffusion of innovations, Rogers deals with two overarching aspects of the context: how the context affects diffusion, and which is the effect of behavioral norms that structure the context in which diffusion occurs. Regarding the first, he sums up that "this structure gives regularity and stability to human behavior in a social system; it allows one to predict behavior with some degree of accuracy. Thus, structure represents one type of information in that it decreases uncertainty. (…) The structure of a social system can facilitate or impede the diffusion of innovations in the system" (1983:24-26).

Regarding the second, he explains that this type of norm is "established behavior patterns for the members of a social system. They define a range of tolerable behavior and serve as a guide or a standard" (op.cit.:27), operating by different categories (cultural, religious, political norms) at any level of the community. Based on his definitions, I call 'context' the social structure within which units interact with some degree of predictability and behavior pattern, in a way of mutual impact and constitution.

According to Rogers, diffusion is likely to occur within given social contexts with specific behavioral norms that are created and respected by the range of individuals who share similar perceptions about social categories and their borders ('tolerable behavior'). Rogers depicts the kind of *local context* that was the starting point to empirical studies of diffusion, later recognized as 'horizontal diffusion', such as: the spread of a given policy or idea among different areas of the country; or of an institutional design among different levels of the government; or of a norm or practice among different societal actors of the state (WALKER 1969; BERRY & BERRY in SABATIER 1999). However, the development of the diffusion field of study over time has been unfolding other possibilities of interaction, broadening the concept of 'context' and challenging the idea of 'stable structural conditions'.

While the first studies on diffusion considered local contexts and horizontal diffusion among actors of the state, neighbors or, at best, across states' borders of the same region, further on diffusion gained another level of complexity embracing the

global context. Gilardi claims that "diffusion pertains directly to disputes over the definition, causes, and consequences of globalization" (2012:3), encompassing subnational and transnational diffusion through institutions, organizations, entrepreneurs or social networks. Terms like 'world society', 'worldwide models', 'global cultural and associational processes' began to be part of diffusion grammar, downplaying the idea that actors are able to take 'independent-of-anything' decisions.

Within the current state of affairs, the key notion is that diffusion is prone to occur amidst different contexts, switching the perspective to the *global structure*. Contexts, in turn, encompass several features - spatial, cultural, historical, normative, institutional and economic - leading to a significant shrinkage of the role of borders. The global structure is the space within which many units of different contexts interact, in movements of constant reconstruction of the space itself. In international relations, scholars point to the term *clustering* to think diffusion globally: geographical proximity facilitates interaction and the exchange of local features among actors that, in turn, increases the probability of similar choices to deal with given situations. Policy clusters of diffusion, then, is an effect of neighboring in that the choice of one actor is a factor in the choices of others among those that interact closely[33] (ELKINS & SIMMONS 2005:35; DOBBIN, SIMMONS & GARRETT 2007:453).

Despite the independent character of decision-making, we can say that the fact of counting in others' choices is a consequence of the *interdependent* character of the global structure. Although I do not fully subscribe to Strang's definition quoted by Gilardi & Maggetti (2016:89) that "[diffusion refers to] any process where prior adoption of a trait or practice in a population alters the probability of adoption for the remaining non-adopters", it also underlines the fact that events are linked under a given condition - structural interdependence.

I believe that due to features that are overlooked by scholars, such as conditions or features of the interactions themselves, important aspects and elements of diffusion in particular are missed. Returning to Roger's assumptions about context (what he calls social structure), I claim that stability, regularity, prediction, uncertainty decrease and

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[33] Solingen quoting Kim (2012) substantiates how close interaction is an indispensable variable to clusters of diffusion: "States are found more likely to initiate and use human rights prosecutions if culturally similar neighbours sharing language or religion – not reducible to geography adjacency – have done so" (2012:637).

patterns are *features of the context that facilitate interactions* from which individuals recognize the possibility to adopt an 'up-to-diffuse' innovation. In this sense, I perceive similarity, which is a static term, as a facilitating factor of diffusion concerning its context, i.e. the culturally closer the communicating units, the less complex is the interpretation of their respective action[34].

Were the facilitating conditions that triggered the path of interactions from intra to inter contexts the same? How did the study of diffusion reach the global? In other words, diffusion requires specific conditions that qualify its interaction such as voluntary character and meaning-in-context[35]. These conditions set mechanisms of diffusion apart from mechanisms of transfer. Scholars of diffusion are then encouraged to add conditions for changes *within* sociocultural contexts directed to individuals and meanings, and not only upon the global structure.

Above I presented the conditions or features of the global structure that affect all sociocultural contexts. By zooming these features, I also substantiated the gap in the literature regarding conditions or features of the interactions that configure diffusion. Seeking to fill such gap, below I address important conceptual divergences I have regarding terms that might overlap within the literature of diffusion.

I do recognize important distinctions between diffusion, convergence and transfer. The definition of (policy) convergence as "the growing similarity of policies over time. (…) Transfer and diffusion are processes that might result in convergence. Thus, the factors triggering these processes can be interpreted as potential causes of convergence" (HOLZINGER & KNILL 2005:776/779, also see KERR 1983:3 quoted in KNILL 2005:765) has no clear mention to context, to facilitating conditions or to intervening steps (interaction, interpretation). Hence, convergence is constituted by

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[34] Strang & Meyer also corroborate this claim: "we argue that diffusion is importantly shaped and accelerated by *culturally analysed similarities among actors*, and by theorized accounts of actors and practices" (1993:487).

[35] According to Mwihaki's definition, "*meaning as use* refers to speaker meaning and particularly the intention of the speaker on the desired communicative effect of the utterance. (…) This definition hinges on a tenet that sees language as a symbolic tool of social interaction and human communication. The tenet emphasizes the system of rules and principles that define how language functions in everyday life, whereby meaning is considered a pragmatic phenomenon with a diversity of uses which are governed by tacit rules. Application of the latter depends on the communicative setting, social relationships and cultural contexts" (MWIHAKI, 2004:128).

units reacting similarly either *because of* diffusion or transfer – it is a possible outcome of clusters of diffusion, or of interdependence[36].

Transfer, in turn, connotes the ongoing changing of the subjects either during the process of diffusion or processes of other nature, as we shall see below. The elements of diffusion (objects, actors, communication and meaning-in-context) are 'tuned' with transfer due to the former encompasses the later, but the way round cannot be verified – there are transfer movements out of diffusion processes. *Regarding transfer during the process of diffusion*, Bender, Keller & Willing (2014:11) add that "furthermore, the literature often equates voluntary policy transfer with lesson-drawing (e.g. DOLOWITZ & MARSH 2000; EVANS 2004:3; 2008) or policy learning by treating 'voluntary policy transfer […] as a process in which policies implemented elsewhere are examined by rational political actors for their potential utilization within another political system' (EVANS 2008:7)". In this case, transfer is a property of policy diffusion (how does it occur), such as the mechanisms of lesson-drawing and policy learning.

Regarding transfer out of diffusion processes, the comprehensive policy transfer's review of Dolowitz and Marsh underlines another important aspect: *transfer is a movement that can arise either under voluntary or *coercive conditions*, "(…) an important category of policy transfer involves one government or supra-national pushing, or even forcing, another government to adopt a particular policy" (1996:344). As explained by Benson and Jordan, Dolowitz and Marsh's conception of transfer indicates that "the essentially rational and voluntary nature of lesson drawing, as conceptualize by Rose (1993), as a key distinction" in relation to coercive policy transfer (2011:368). Therefore, concerning diffusion we have that:

> *Diffusion is the overarching process that implies some sort of change within the sociocultural context upon any property of the object by means of voluntary and meaningful interactions; Transfer refers to the ongoing change happening over diffusion, likely visible through distinct mechanisms such as lesson-drawing or learning; Change is the outcome itself; Convergence is a dynamic feature of the outcome yet not essential.*

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[36] (…) convergence is not *necessarily* an outcome of international diffusion; and that, in any event, diffusion in the realm of strategically interactive human behavior hardly ever resembles 'copy and paste'" (SOLINGEN 2012:641).

When the process is *not* diffusion, transfer might still take place yet under other conditions, and through different instruments and mechanisms. Giving an example, besides the structural features presented above, bargaining power and material rewards are conditions to impose conditionality and sanctions (instruments) through coercion and competition (channels), qualifying a scenario of possibly effective transfer but away from diffusion. In general, structural features do affect diffusion but are not enough to account for its unit of analysis, the interaction. In turn, structural features have a stronger impact on transfer out of diffusion processes.
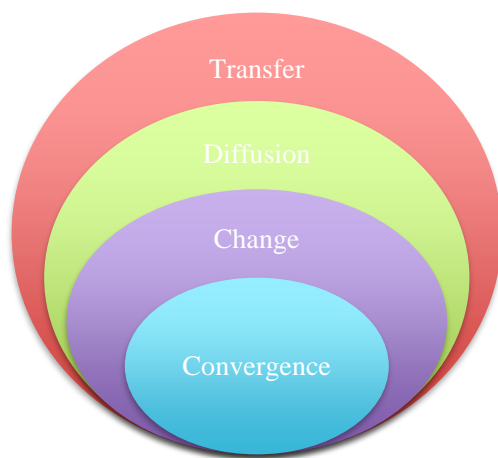
Figure 2: Decoupled terms

Convergence is a contingent feature of the kind of change, hence there might also be change without convergence; **Change** might occur either upon or within the context, depending on the conditions, instruments and mechanisms with more influence in the process. When change is upon the context, there might be a case of transfer under strong influence of structutal features. When change is within the context, upon culture and individuals bringing about voluntary and meaningful interactions, there might be a case of diffusion; **Diffusion** is the process itself, requiring voluntary conditions as features of interactions; and **Transfer** is related to diffusion mechanisms such as lesson-drawing and policy learning, so it would be within diffusion as one of its properties. *But transfer also relates to other mechanisms out of diffusion*, such as cases under either conditions or mechanisms of direct coercion. 'Policy' is an example of 'what can be transferred' out of diffusion: under direct coercive conditions, transfer acts as a mechanism that alters the pay-off structure, but does not account for the interactive nature of diffusion.

Concerning mechanisms, studies devoted to theorize diffusion usually pinpoint to two main rationalities within which mechanisms are allocated in: rationalist and

reflexive. Dobbin, Simmons & Garrett (2007), for example, review four processes of diffusion (constructivism, coercion, competition, and learning) that fit within the two rationalities. Torben Heinze offers a comprehensive explanation, led by mechanism-thinking: coercion and competition are diffusion mechanisms that belong to the rationalist rationale and are based on structural explanations towards altering material structures. Learning, in turn, is a broad term that may be unpacked in order to catch the rationale of the process at hand, belonging to actor-centered explanations towards altering either causal or normative beliefs (HEINZE 2011:8, Figure 2). Heinze does not look at constructivism as a mechanism.

My divergence bears in mind that "the politics of international non/ diffusion are about social change, or its absence" (SOLINGEN 2012:637). As even Heinze illustrates, direct coercion and competition *do not* touch upon change in preferences (within contexts) but instead on material alteration or incentives (upon the context). Accordingly, Gilardi defines that "coercion means that a given unit adopts policy following pressure from powerful countries or international organizations. EU and IMF are cases in point[37]. Although coercion can certainly influence policy adoption, diffusion implies that no central actors are coordinating the spread of a policy[38]" (2016:90), referring to the type of horizontal diffusion.

Meseguer and Gilardi agree with this interpretation, assuming that "coercion may be a worldwide policy convergence, *but if one is to be conceptually coherent, coercion should not be considered as a mechanism of policy and institutional diffusion.* (…) As for *economic competition mechanism*, it is subject to either strategic or coercive interpretations. (…) Note that one may interpret economic competition as coercion of a 'decentralized' type. In this case, it is the market that proffers the sanctions" (2005:5, emphasis added).

Their mentioning of 'economic competition' requires a last important distinction. As said above, coercion and competition can be seen as transfer

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[37] See also Dobbin, Simmons & Garrett 2007:454-457. The authors describe three forms of 'direct coercion': conditionality, policy leadership and hegemonic ideas, of which I only agree with the first. Policy leadership and hegemonic ideas are, in my view, forms of **indirect coercion** that affect the probability of transfer. In case that the leadership is intentionally exercised and that there are specialists defining the rightness under given circumstances (p.452, ways of social acceptance of policies), it does not undermines the condition of voluntary coordination and turns to be a case of coordinated diffusion that may change causal and normative beliefs.

[38] It matches with Elkins & Simmons' definition of 'uncoordinated diffusion' (2005:38-39).

mechanisms that do not affect basic preferences, but only pay-off structures. They can induce only behavioral change – recalling Rogers's sense of context and behavioral norms that structure the context –, not change in fundamental values or decisions. Heinze does not underline this distinction, considering coercion and competition as mechanisms of 'overarching' diffusion, in which sense I disagree with him.

However, competition can also be strategic and not coercive. In the case of economic liberalism, there is interaction with actual competitors within a competitive scenario, (DOBBIN, SIMMONS & GARRETT 2007:457-459). Structural externalities in trade networks can measure the degree to which countries are real competitors, pressuring others to adopt a policy. Thus, I do not consider economic competition in itself as a diffusion mechanism, but the coordinated interaction that the competitive condition enables may perform a case of vertical diffusion.

Vertical diffusion is indeed an odd type in the politics of diffusion. On the one hand, it is a process through which an actor is the main provider of an innovation, and mediates the acceptance and adoption of the subject by the other actor – it characterizes an actor-centered explanation towards altering causal or normative beliefs (Berry & Berry's 'leader-laggard model' in SABATIER 1999:176; HEINZE 2011). On the other hand, it is more influenced by the interdependent context and the competitive condition that it might entail. As I have analyzed in this subsection, interdependence is an external/ contextual feature that matters in order to observe the difference that institutions, epistemic communities, advocacy coalitions, trade networks, governments and societal actors make in others' choices.

Hence, vertical diffusion encompasses "the potential role of externalities, or functional interdependence, in indirect coercive transfer. (…) There is little doubt that externalities, which result from interdependence, push government to work together to solve common problems. (…) The world economy constrains individual governments and economic pressures can lead to transfer" (DOLOWITZ & MARSH 1996:348), yet not disregarding some sort of interaction among the actors (or competitors) towards altering preferences and beliefs. Since norm diffusion is usually thought to include that change in preferences – a change in values/ norms that affects preference formation –,

coercion and competition may well be mechanisms for policy transfer, but not for norm diffusion.

To summarize until here, we saw that: the conditions broadly mentioned in the literature apply for transfer and, at most, for vertical diffusion in case of strategic competition with interaction amidst actual competitors. They refer to features of the context itself – clustering, neighboring, interdependence and similarity – leaving the blank of accounting for conditions of interactions within the context like meaning-in-context and voluntary character, which are the most relevant aspect 'to know diffusion when we see it'. In a nutshell, coercion *vs.* voluntary character is the central opposition between transfer and diffusion phenomena. Transfer is out of diffusion in cases of direct coercion and coercive competition. But it can be also part of diffusion, representing an ongoing change through diffusion mechanisms of 'thick learning' (internalization), lesson-drawing and, at the limit, strategic competition (interested learning).

2.1.1.5.
Which type of outcomes can emerge from diffusion processes?

Taking as an example, the NPE as foreign policy resorts to instruments and mechanisms through which impacting the Other in a way of reaching its overarching goals related to identity and interests. It drives the process expecting certain outcomes that satisfy its goals. However, NPE is a special case of norm diffusion, i.e. not all norm diffusion is normative power. Instruments and mechanisms can be thought as those that lead to a certain outcome without any intentionality or goal. From the pure perspective of outcomes, we can say that they do not depend or directly derive from given mechanisms, but are contingent. Outcomes are related to different cognitive setups of actors, they are always indefinite and likely overlap when diffusion is evolving. More than one outcome emerges during the process, and researches with focus on impact can attribute values to the outcomes in order to see the 'degree' that was reached by a specific correlation with the other properties.

Concretely, the literature is divided by those who consider all kinds of possible outcomes, no matter if the actors' goal was reached (effectiveness), and those who

focus on 'positive outcomes'. Sandra Lavenex and Frank Schimmelfennig are part of the second strand, mentioning "*rule selection* in international negotiations and agreements, *rule adoption* in domestic legislation, and *rule application* in domestic political and administrative practice" (2009:800). Annika Björkdahl, in turn, is part of the first strand, presenting a conceptual framework of outcomes from encounters amidst external (EU) norms and local practices that "emphasizes translation of imported European norms into changes of institutional arrangements, policies, and/or practices by recipients" (2015:4).

I had previously referred to her local responses in this chapter, underlining the hint she gives on scale of change, or values of outcomes that are defined as follows: *adoption*, when local practices comply with new norms; *adaptation*, when compliance happens by means of contextualizing external norms to local characteristics and practices; *resistance*, when local characteristics dominate and few local practices comply with imported norms; and *rejection*, when local practices do not comply. Björkdahl's distinction between resistance and rejection makes the case for my significance of contestation as a way to participate in communication as well. It displays the possibility of consensus and compliance upon a package of norms as a result of meaning exchange over interaction.

Due to the contingent character of outcomes, my option is to follow Björkdahl's selection that, I believe, gives equal relevance to all actors involved and a better sense of diffusion as a dialogical process, reconfiguring the model sender-receiver. Although not mentioned in her definitions, I believe that her selection assembles the totality of responses not only in cases of actor-driven diffusion such as NPE. In cases of emulation and lesson-drawing, for example, notwithstanding that diffusion is more induced by the context and conditions that relate to it and less by actors, those outcomes apply in the same way.

The definitions and differentiations expressed in this section represent my framework to guide the theoretical understanding of NPE, as well as the inquiry into the reasons for the potential external non-recognition of NPE as identity in both paradigmatic cases of diffusion and resistance. For the sake of having the framework as clear as possible, I propose the following systematization of the concepts by means

of setting apart norm diffusion (due to the entanglement with NPE) and policy transfer. As I exposed in Figure 2, there is transfer in and out of diffusion processes, nonetheless in the following Table 3 I mainly pursue to set the differences -– transfer out of diffusion.

As I explained within the outcomes, NPE is one example of norm diffusion but not all norm diffusion is normative power. The main contrasts are that i) norm diffusion may not involve convergence as it is a dynamic concept related to outcomes, whereas normative power is embedded in a convergent normative structure as a static feature, i.e. it depends on an acceptance of universalized norms and values, a shared 'hegemonic cultural frame'. In addition, ii) norm diffusion may have horizontal origins, i.e. it may be interaction-driven like in cases of neighboring through emulation, whereas normative power is essentially actor-driven. When NPE is present, and this explains emulation too, we can see it performing another form of 'power' that affects norm diffusion, like soft power in the sense of being a model of attraction. I return to the analysis of NPE in the conclusion in light of such framework summarized in the following Table:

Table 3: Framework of diffusion

	Norm diffusion	Policy transfer
Definition	It is a time-bounded process that entails some sort of outcome out of interaction through communication (channel). It does not require convergence since the outset. The process can be: Vertical (actor-driven): norm entrepreneurs Horizontal (interaction-driven): neighboring, strategic competition	It refers to an ongoing change mainly derived from cost-benefit analysis. It can be voluntary (lesson-drawing or learning) or coercive. Also of the types: Vertical (actor-driven): hegemonic power, IOs Horizontal (structure-driven): economic competition

Conditions	Affect interactions within sociocultural contexts. Meaning-in-context, critical engagement in dialogue comprising contestation, situational interpretation, voluntary character	Affect the global structure. Little acute interaction. Bargaining power, direct coercion, pressures, coercive competition.
Context	Sociocultural context: system of meanings, pre-understandings that structure the dialogue. The context gives regularity, stability and behavior pattern to interactions and its channels	Global structure: clustering, interdependence, globalization, similarity.
Outcome	Change *within* sociocultural contexts, in values, norms, beliefs that account for preference formation. Values of outcomes: adoption, adaptation, resistance and rejection of new norms.	Change *upon* the context, in pay-off structures and behavior (behavioral norms, material incentives).
Nature of change	Hybrid normative change. It does not necessarily lead to convergence of policies, but we may have convergence of norms. It is a kind of alteration upon any property of the norm: shape, state or quality	Pragmatic change. Convergence of policies is more likely, but not norms. It is an alteration in settings of instruments or instruments themselves that affect the policy.

2.2.
Deriving mechanisms from the diffusion framework for the analysis of NPE

> "(…) the process underlying diffusion can be seen as an inherently sense-making one, where actors jointly construct an understanding of the appropriateness and worth of some practice" (STRANG & MEYER 1993:489).

I do recognize that the explanation of diffusion is highly questionable partly because of the "long list of colorful metaphors and modifiers found in the decades of diffusion studies" (GRAHAM, SHIPAN & VOLDEN 2012:690; also MAGGETTI & GILARDI 2016:101-103) that, as we saw until here, gives room for conceptual overlapping and linguistic inaccuracy. Attempting to contribute to diffusion studies, I combined an extensive amount of reflections from scholars since the 70s towards set up properties of diffusion, apart from other processes often mentioned in those studies.

With those properties, I aim to underline that i) yes, the features of the global structure affect norm diffusion but they are not enough to explain the conditions[39] that affect interactions within sociocultural contexts that, in turn, are crucial to understand diffusion outcomes; ii) the channels of diffusion revolve around communication since it requires some sort of interaction that accesses the value and normative system of actors, but they are not the mechanisms *per se*.

Based on Table 3 I develop my own selection of mechanisms excluding the ones that relate to *direct coercion* and *coercive competition*, as they are conditions (and mechanisms) exclusively of transfer. For instance, common instruments of EU foreign policy like conditionality and sanctions are excluded as well due to they are part of such mechanisms mentioned above, not affecting the sociocultural context of Others neither interactions among them. In turn, they might be effective instruments of policy transfer, according to context and conditions of the global structure set in the Table.

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[39] This idea refers to the possibility that the same contingency acts as conductor or firewall for diffusion (see STRANG & MEYER 1993:490 and SOLINGEN 2012:633-640). We cannot define general scope conditions under which certain diffusion process will work. Instead, we should look at situation specific in terms of time/space and issue in order to grasp how uncertainty becomes decision to adopt/ adapt new norms through voluntary interactions.

In this last section, I propose a theorization of mechanisms, which is the last property of diffusion, and a subsequent analysis of NPE in light of the diffusion framework, in order to shed light on inaccuracies regarding the EU understanding of diffusion and its use of instruments and mechanisms that might contribute to the inefficiency of its policies to provide recognition for NPE as identity.

2.2.1.
The relevance of the conditions of diffusion to theorize about mechanisms

In the previous section, I claimed that the large literature of diffusion might overlook specific conditions under which interactions within sociocultural contexts bring about diffusion. Most of scholars stuck at the surface of conditions of the global structure and, at best, indicate the features of sociocultural contexts (regularity, stability, predictability) that affect and favor diffusion. However, the interaction that happens within those sociocultural contexts is the unit of analysis needing explanation.

Two reasons account for the focus on interaction. First, the process of diffusion is interactive by nature since it regards changes upon value and normative systems that affect the preferences of actors. Second, it results from a challenging analytical concern raised by Strang and Meyer (1993:490) and Solingen (2012:633): interactions can also increase conflict and boundary formation. It can promote convergence or increase variance and, in this sense, the transmission of innovations meets firewalls with potential for 'non-catalyzing' change.

Who or what are the firewalls responsible for non-diffusion? Unexpectedly, they are the same actors and objects of diffusion: "different states seek to hinder or accelerate the diffusion of international power through war, trade, finance, soft power, balancing or institutions. International institutions can accelerate or contain the diffusion of norms, authority, and best practices. (…) The G20 was empowered at the outset of the Great Recession as a firewall against global crisis" (SOLINGEN 2012:634). Hence, disregarding an accurate look at qualities of interactions and focusing solely on the global structure, we cannot grasp how and why diffusion met such firewalls.

To give another example, international treaties can constitute a firewall or be conductive to norm diffusion. On the one hand, they can increase the costs of norm adoption – so far, under Article 26 of the Vienna Convention, treaties are binding on the contracting states. On the other hand, international institutions and their convening treaties can channel the diffusion of norms and practices. What determines when actors and objects will channel or hinder diffusion is thus the qualities of interactions as they embrace what is going on within sociocultural contexts. Even in rationalist models, interaction among competitors is recognized as crucial to grasp what effects of competition under pressuring external factors (financial crisis, norms following the 'threshold' logic, see ELKINS & SIMMONS 2005:39) upon settings of instruments or strategies.

Habermas also has referred to the sociocultural context itself, already demonstrating the centrality of interaction towards the achievement of mutual understanding. According to him, "(…) cultural patterns of interpretation, evaluation and expression serve as resources for the achievement of mutual understanding by the participants who want to negotiate a common definition of a situation and, within that framework, to arrive at a consensus regarding something in the world" (HABERMAS 1987b:134). In Table 3, I indicated meaning-in-context, critical engagement in dialogue comprising contestation, situational interpretation and voluntary character as important conditions affecting interactions within sociocultural contexts, arguing that they shall enforce legitimacy and consensus upon the norm and among the actors involved.

I believe that these conditions are crucial to understand diffusion as a relational process since they assess cultural practices and how they inform the outcome. For instance, inasmuch as the EU would be able to engage in interactions through communication and recognize Others' meanings manifested by contestation to its claims, a hybrid normative change would probably come up, inducing some sort of change within Others' sociocultural contexts. In her book "The invisible constitution of politics" (2008a), Antje Wiener started the reflection upon the fact that cultural practices are not being satisfactorily entangled in norm researches, which leads to

overlook how norms might be validate or contested by the interpretation of actors from different backgrounds.

In her recent developments regarding contestation (2014), Wiener states two research assumptions: norms have an inherently contested quality and contestation is a necessary component to establish normative validity. Validity, in turn, is understood as the condition to achieve legitimacy for rules, norms and procedures of governance, through the practice of meaning generation. My diffusion framework is in line with her account on contestation as a crucial practice in foreign policy of a self-perceived normative power actor.

In other words, contestation "as a specific form of critical dialogue with the intention of 'change' by either rejecting the status quo, or making claims towards changing the status quo" (WIENER 2014:40) might contribute to the success of norm diffusion as a policy strategy of NPE in terms of ensuring the EU ontological security as a global norm-setter before the Others. In sum, being ontologically attached to norms, the EU needs the ability to deal with the challenges of norms externalization in order to achieve recognition for its identity in a global outreach: "Assuming that contestation is a constituting part of norms (…) would also open up a perspective on the role of norms (…) as symbols around which identities are shaped" (NIEMANN & SCHILLINGER 2016:48). Based on this reasoning on the conditions of diffusion, the next subsection accounts for the mechanisms that will guide the empirical analysis.

2.2.2.
Theorizing the mechanisms of diffusion

Normative and instrumental rationalities have both ideational and material grounds that inform preferences, interests, rightness, effects and values of outcomes in decision-making (CHECKEL 1997, 2005; BRAUN & GILARDI 2006; HEINZE 2011), contributing to the wide variation in the selection of mechanisms among scholars. Considering diffusion as a process, in this sub-section I argue that it is *how* unities influence each other (interaction) that indicate which mechanism follows. Looking at Maggetti and Gilardi's reasoning in their 'structure of the policy diffusion concept' (2016:92), we see that mechanisms (learning, emulation and competition) reflect a

degree of interaction even when referred to the competition mechanism, what underlines the centrality of conditions of diffusion to theorize about mechanisms.

The enduring absence of consensus on the methodological and theoretical criteria to conduct empirical investigations in the field of international diffusion is settled according to the epistemological orientation and goals of the researcher[40]. Based on the discussion of the properties of diffusion and the resulted framework I presented in the prior section, together with my explanation about the conditions that affect interactions within sociocultural contexts, I list and justify below my own selection of mechanisms that will guide the analysis of NPE and the case studies: emulation (imitation/ mimicry); localization and subsidiarity; socialization by persuasion; and learning.

To justify my selection of mechanisms, I mention the summary of six ways in which policy and norm diffusion occur within the normative power approach according to Ian Manners (2002:244-245), later quoted by Anna Michalski (2005:127) and Manners and Whitman (2013): "i) *contagion* (unintentional diffusion); ii) the *informational* mode through strategic communications; iii) the *procedural* mode through institutionalized contractual agreements with third partners; iv) *transference* through exchanges of goods, aid, trade, or technological assistance; v) *overt* diffusion through the physical presence of the EU abroad; and vi) the *cultural filter* leading to the construction of knowledge by third parties" (2013:189).

Manners says that "the EU's normative power stems from six factors [abovementioned] (…) shaping norm diffusion in international relations" (2002:244), therefore I relate them to the *channels of interaction – through what communication is developed?* Michalski explains the role of Commission's delegations abroad, basic documents like the European Security Strategy and DGs, as well as their respective instruments of communication (2005:133-141) that embrace Manners' six factors or ways through which NPE shapes policy and norms diffusion. That way, NPE actors and instruments constitute the general setup, and mechanisms are the corresponding

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[40] See also BRAUN, GILARDI, FUGLISTER & LUYET in HOLZINGER, JORGENS & KNILL (eds.) 2007:39-52; HEINZE 2011; MAGGETTI & GILARDI 2016.

meaningful combinations of channels during interactions towards a specific outcome – how does communication develop?

Bearing in mind that those are combinations across channels, i.e. channels shall take part in different mechanisms, I suggest a correspondence between my selection of mechanisms and Manners' six factors (channels), justifying the former through the fact that there are few authors that do exclude mechanisms of imposition, coercion and bargaining power without interaction from their selections too. Even the procedural mode through contractual agreements emphasizes 'value translation', ensuring "that such interpretation and translation remains a two-way communication process" (MANNERS & WHITMAN 2013:191).

The mechanism *emulation* combines contagion and overt (the EU as a presence); *learning* embraces the procedural mode and transference; *socialization by persuasion* corresponds to the informational mode and transference; and, lastly, *localization and subsidiarity* express third parties' engagement with the procedural mode and the relevance of their cultural filter, as it "is based on the interplay between the construction of knowledge and the creation of social and political identity by the subjects of norm diffusion. (…) the cultural filter presents the greatest challenge for EU public diplomacy" (MANNERS & WHITMAN 2013:193).

To wrap up, I return to the concern of this chapter that is, through a critical analysis of diffusion studies, to construct a framework to understand NPE as foreign policy. I claim that, so far, there are problems concerning the way NPE is supposed to work that remain elusive due to our insufficient awareness of norm diffusion and its mechanisms. Therefore, the theoretical-methodological setup will be completed in Chapter 3 where I ascertain the existence and operationalization of the dilemma. Merging the elements of the diffusion framework developed in this chapter with the identity politics of NPE approached in Chapter 1, I formulate a typology of dialogical processes of diffusion between the EU and the Others (Latin American countries, in my case studies) that allows me to check the dilemma in two paradigmatic cases. Returning to the consideration of the four mechanisms, I define them in light of the literature and my framework:

2.3.2.1.
Emulation (imitation/ mimicry)

The first definition of mimicry comes from the organizational theory investigated by DiMaggio and Powell, which mention that uncertainty, legitimacy and success are powerful forces encouraging imitation. The authors point to the *uncoordinated diffusion* or what I called horizontal (interaction-driven) that emerged from this mechanism, "the modeled organization may be unaware of the modeling or may have no desire to be copied; it merely serves as a convenient source of practices that the borrowing organization may use. Organizations tend to model themselves after similar organizations in their field that they perceive to be more legitimate or successful" (1983:151-152).

Brinks & Coppedge highlight the example of *neighboring* "to distinguish true diffusion from illusions of diffusion created by regional clustering of domestic factors, global trends, or correlated disturbances. (…) The core assumption of this model is that countries are rewarded when their regimes are similar to those of their neighbors. (…) what matters is that some influential actors champion regime convergence" (2006:464-467). Lee and Strang substantiate this assumption alleging that "the notion of peer-based emulation implies that countries will influence each other more when they are engaged in closer interaction, and when they share background characteristics such as a common language" (2006:889).

Gilardi adds the normative relevance, "emulation can be defined as the process whereby policies diffuse because of their normative and socially constructed properties instead of their objective characteristics. (…) it can also be understood as norm diffusion" (2012:22). Finally, Heinze also underlines the role of legitimacy and the increasing of social rewards in norms emulation cases, "rather than changing one's beliefs on the appropriateness of a specific policy, emulation patterns stem from a change in the reputational payoffs linked with the embracing of a certain norms and policy" (2011:21).

2.3.2.2.
Localization and subsidiarity

The terms are coined by Amitav Acharya (2014; 2012:183-209) in order to set how ideas and norms make regional orders, and how they diffuse across the regional-global divide, stressing the role of so-called norm-takers. They are especially important to my diffusion account since there is no other perspective that emphasizes the interplay of trans/international ideas, values, norms and beliefs with local practices through the *construction* of congruence instead of a static and existential possible match. These processes encompass transmission, situational interpretation and complex interaction, going further to reconstitute the subject of diffusion in order to reach congruence with pre-existing tradition, order and practice, "in which the role of local actors is more crucial than that of outside actors" (2014:186).

Acharya claims that "norm diffusion should be understood as a two-way process" (in PAUL 2012:201), focusing on the empowering potential of local agency and the higher probability of adaptation as the outcome. Exploring the normative influence of the EU in Macedonia, Björkdahl exemplifies this claim saying that "these international norms [Ohrid Agreement] may rapidly be localized as a normative match can be constructed with the norms guiding the earlier Macedonian policy of active neutrality" (2005:272).

Hence, *localization* is a dynamic process of 'matchmaking' that focuses on the role of political, organizational and cultural domestic variables in conditioning the reception of new global norms. It embraces a voluntary change initiated by local actors that does not compete with identities. Rather, it keeps the fundamentals of the existing one by enhancing the legitimacy and authority of the norm-takers and strengthening, not replacing, local norms (synchronicity).

Subsidiarity, in turn, is the process of exporting/ 'universalizing' norms created locally in which "local actors develop new rules with a view to preserve their autonomy from dominance, neglect, violation, or abuse by more powerful central actors" (ACHARYA 2014:218). In this sense, local actors may adopt a normative behavior of norm rejecters or makers in order to regulate their relations with powerful actors and steer their demands collectively.

Acharya uses norm subsidiarity "to designate and conceptualize norm construction by Third World states" (op.cit.:220), which seek to question the European order and the North-Western-centric system of rules that marginalize them from the global norm-making process. Ann Towns gives an example of subsidiarity, naming 'international diffusion from below' – the norm of sex quotas to raise the participation of woman in legislatures. It was advocated and exported from Latin America in the 1990s and, at first, supported mostly by Southern countries from Africa and Asia, which had demonstrated favorable during UN meetings. European countries, otherwise, strongly resisted to electoral gender quotas. Then Towns concludes that "the social hierarchy between the developed West and 'the rest' appears to be so well entrenched that it becomes difficult for Europeans to draw lessons from other parts of the world" (2012:202).

2.3.2.3.
Socialization

This mechanism indicates the possibility of change in behavior, preferences and expectations through *persuasion* or *social influence* (JOHNSTON 2001:502). Assuming that social influence "elicits pro-norm behavior through the distribution of social rewards and punishments (…) by utilizing conditionality reinforced by material rewards to be distributed *after* all conditions have been met" (FLOCKHART 2005:48-49), I do not consider it a socializing mean[41]. Both Johnston and Flockhart emphasize the importance of context (sociocultural) and conditions (affecting interactions), as well as the variation across apparent similar cases, indicating different degrees of internalization (micro process of socialization). For instance, Checkel calls *'Type I internalization'* a behavior that stems from social influence, when actors "acquiring the knowledge that enables them to act in accordance with expectations" without deep understanding; *'Type II internalization'* a pro-norm behavior due to the acceptance of given norms as 'the right thing to do', when "agents actively and reflectively internalize new understandings (…) their interests and preferences are open for redefinition" (2005: 804-812).

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[41] I argue that norms can be transferred through social influences under coercive means, but since diffusion is a voluntary process of sense-making interactions, I leave coercive strategies out of the present scope.

Jeffrey Checkel also points to three mechanisms regarding how actors switch from a logic of consequences (induced by costs/ benefits calculations) to a logic of appropriateness (socialization): *strategic calculation* (instrumental rationality towards social or material rewards by conditionality), *role playing* (boundedly rationality, 'type I', "no process of reflective internalization driven by communicative processes has occurred" op. cit.:810) and *normative suasion* ('type II', "agents actively and reflectively internalize new understandings" op.cit.:812).

Based on Checkel's definition, I conceive socialization as the mechanism, internalization as a step within socialization, and normative suasion or persuasion as means by which socialization turns out well. I unpack persuasion as presented by Checkel due to it embraces type II internalization, which is the closest step referring to what I meant by the conditions of norm diffusion. Describing the 'complex socialization model', Flockhart claims that both strategies, social influence and persuasion, will be influenced by the self- and other-categorization filter[42]. I would say that social influence focuses on the 'in-group', holding instruments and strategies to reach the Self's goals.

Diffusion by persuasion, in turn, focuses on the Other's filters to make them strive for what they would not otherwise. To persuade somebody to adopt a norm, changing attitudes and deeply held beliefs is a mechanism grounded in communication, without either material or mental coercion: "furthermore Checkel suggests that persuasion is more likely to be effective if serious deliberative argument is used as opposed to lecturing or demanding" (FLOCKHART 2005:47-49). In this sense, two elements that are part of the categorization filter determine the possibility of convincing by deliberative communication: **i)** to have the goal of membership/ acceptance in a social group which identity is seen as hierarchically superior, and **ii)** the 'extension' of identification between prior rules, norms and standards of the actor being persuaded with the 'in-group' that he aims to take part, as "the 'merits' of the argument are persuasive, *given* internalized standards for evaluating truth claims" (JOHNSTON 2001:496).

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[42] Flockhart summarizes that "what is important in the self- and other-categorization process is both 'the other' which defines what 'the self' is *not*, but also the 'significant we' or 'in-group', which defines what 'the self' *is striving towards*" (2005:47).

In the case of norms, perceptions of legitimacy regarding the object and the persuader are crucial for deliberative communication and thus to socialization effects (HEINZE 2011:19-20). Drawing on Majone that "the main justification of advocacy and persuasion in democratic policy-making is their function in a continuous process of mutual learning through discourse" (1989:41), learning is the last mechanism to be outlined in this chapter.

2.3.2.4.
Learning

The first impressive feature of learning as a diffusion mechanism is the manifold 'profiles' it had received so far: Bayesian (BREEN 1999), rational (BOUDON 1996), bounded rational (MESEGUER 2004; 2005), institutional/ organizational/ governmental (MARCH & OLSEN 1988), complex, second order, social (HALL 1993), causal, cognitive (JERVIS 1976; WEYLAND 2007), collective (HAAS 1991). Within the wide diversity of mechanisms-selection aforementioned, at least one of the 'learning types' is picked up by all authors. This fact makes 'learning' a common ground to actor-oriented approaches of either diffusion or transfer, no matter which rationale or kind of change is at play. Because of the intersection with my description of diffusion, I adopt the definition of Levy that "experiential learning as a change of beliefs (or the degree of confidence in one's beliefs) or the development of new beliefs, skills or procedures as a result of the observation and interpretation of [others'] experience" (1994:283).

Learning is a diffusion mechanism that highly fosters what I called hybrid normative change through interpretation, framing, argumentative influence, translation and evaluation made possible from particular historical worldviews (HEINZE 2011:15-16). While learning is neither necessary nor sufficient for policy change due to the possible presence of other constraints for the implementation of new policies[43], or the reinforcement of previous beliefs, it is also a political problem-driven process, "(…) purposive: a problem is set and a solution us sought. (…) on the basis of observed

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[43] Learning is conducive but not decisive in actors' minds towards an outcome, as "the impact of learning on foreign policy change may derive as much from its interaction effects with systemic and domestic political variables as from its individual effects" (LEVY 1994:306).

experience and a better understanding of which policies may lead to particular outcomes" (MESEGUER 2004:6-7).

There are few rational approaches such as Bayesian learning that relates learning to rational choice "in the sense that it makes optimal use of available information", "in which people act in accordance with the beliefs they hold about the nature of the world. By observing the outcomes of these actions they modify their beliefs" (LEVY 1994:285; BREEN 1999:464). Lastly, I note that learning also refers to transfer, leading to specific changes in settings of instruments and behavioral norms. In this case, actors resort to cognitive shortcuts to learn with others' experience within uncertainties and imperfect information that characterizes the global structure[44] in order to maximize their perception of 'success' and 'effectiveness' concerning pay-offs (BRAUN & GILARDI 2006:306-307; DOBBIN, SIMMONS & GARRETT 2007:460-462; GILARDI 2012:21).

2.4.
Conclusion

As we saw in Chapter 1, the EU's identity and legitimacy as a normative, value-based international actor is a project ongoing. Within this project, *normative power* (NP) aims to promote a normative change at the intra/ inter levels of governance that does not rely on imposition and orthodox mechanisms stemming from the time when international politics was a matter of "ensure security under anarchy". The existence of the EU is, in itself, a change of this traditional mentality. Hereby, as I had conclude in that chapter, NPE as policy strategy is developed both within the contentious framework of EU identity – "*the way in which* certain norms have been conceived and incorporated into external policy reveals a certain security-predicated rationalism" (YOUNGS 2004:421) – and through the *making* of interactions.

The discussion of identity, perceptions and recognitions about NPE exposed in Chapter 1, in addition to the diffusion framework that I presented here ground my

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[44] Elkins & Simmons summarize the actor/structural constraints as: "Again, however, policy makers are limited by the data available to them, their resources to undertake analysis, and their own cognitive faculties. (…) we describe two processes that have predictable diffusion effects: learning from available models and learning from those in one's reference group" (2005:43).

argument that two analytical moves are of outmost importance to uncover unintended effects or dilemmas of actual NPE policies. Firstly, in order to establish a consistent reasoning about the EU's understanding and exercising of norms diffusion, it is necessary to observe the role of the Other in its discursive identity. The type of relation that the EU sets with Others comes in a large extent from the interpretation that the EU carries out about them within its own process of self-identification[45], and vice-versa. The Others, alike, have an active role in setting the relation that, in turn, is guided at the same extent by their knowledge and interpretation about the EU. Of similar importance is, secondly, to enlarge the current boundaries of who are the EU's Others, incorporating the perspective of long-standing partners placed outside the Union's sphere of direct influence, namely developing countries or 'emerging powers', in order to possibly uncover unintended effects or dilemmas that NPE may hold.

Relying on those properties and mechanisms, in the following Chapter 3 I construct a typology of dialogical processes of diffusion encompassing resistance and contestation in order to explain NPE dilemma. I recreate different pathways in two paradigmatic cases, integrating the Other from the onset. By doing this, I show that the attention given so far to the mode that the EU exercises its power in order to meet recognition lacks, at first, a crucial global outreach and, at second, a reflexive endeavor on the role of the Others to propose less obvious alternatives for the enhancement of the EU actorness.

That said, the present chapter proposed a conceptual framework of diffusion to support the coming operationalization and empirical analyses. I considered mechanisms that derive from the properties of diffusion explained in section one, as well as from the conditions that affect interactions within sociocultural contexts – voluntary character, interpretation, contestation, and space-time boundary –, filling an alleged gap in the literature. My approach to diffusion targets actor-oriented processes. It is so due to I do not see the necessary potential to promote significant changes in preferences of Others in context-driven types of diffusion, although I do recognize that

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[45] Lucarelli mentions that "Others are seen to be treated as relevant to the self-identification process in three broad respects: recognition; distinctiveness and otherness; and external labelling, boundaries and meanings" (2008:32-35).

structural features and factors related to the sociocultural context can influence diffusion.

Moreover, I do recognize that policies, norms and other subjects may be transferred among countries and other spaces, and that convergence can be a recurring outcome under mechanisms of coercion, competition and conditionality. Yet, these cases are different from cases of diffusion. Diffusion entails hits and misses because information and translation are imperfect and diverse, so as the cognitive shortcuts of each actor. Firewalls and the numerous ways that diffusion can go wrong are both part of the construction of new orders and breakthrough, in which actors' choices are interdependent.

In this context, the actorness of the EU is an undisputed fact although it says little about its mode of exercising NPE. For this purpose, it is necessary to understand diffusion as a dialogical movement of *interpreting* norms and *constructing* common meanings, co-constituted by numerous factors in which normative change depends mainly on how differences are handled and how conditions of interactions are translated into decisions. The framework proposed here emphasizes a problem within the diffusion literature that for a long time hampered my own comprehension of the case studies – due to its linear-causal track instead of a dialogical account, the "mainstream reading" in diffusion studies[46] rarely breaks down the components in order to clarify the mode of interaction and communication *per se*, what explains the existence of distinct phenomena related to the movement of innovations.

For the case of NPE, although the overall perspective of diffusion as a policy strategy to uphold Europe/ EU's ontological security over time that has been part of analysis amidst several scholarships, the 'gearbox' of how such strategy might/ might not work is just short while ago being open, particularly by public diplomacy, external governance and others perceptions' studies. Among many examples of such studies cited throughout this thesis, Jan Melissen argues that "the normative component of the EU's constitutional construction (values, norms and principles) constitute, within the

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[46] I call mainstream with no negative value at all, as those studies are as important as followed critics and alternative views to increase the quality of this field of study. They set the parameters through which diffusion was grasped for around ten years, and the vast majority of what I call mainstream studies is cited in the present chapter. However, I justify the need for such meticulous 'back to the bedrocks' I conducted here given few examples of alternative views so far, and the speed that changes are happening around us, increasingly overcoming an one-way direction.

constraints of its institutional and political structure, the backbone of the European foreign policy doctrine (…) The normative component is important in legitimizing the EU's soft power, but unless it is effectively communicated to external and internal audiences, much of its potential impact will be lost" (MELISSEN 2005:125/127).

Therefore, in the next chapter I evolve to an empirical conceptualization of dialogical processes operationalizing the framework developed in this chapter through analytical categories that accommodate the complexities of the case studies. I elaborate a typology of dialogical processes of diffusion to explain NPE dilemma, in light of the above theoretical framework summarized in Table 3. Thereafter, the empirical observation through the interaction with Southern actors shows that the supposed diffusion of EU norms through specific instruments reflect how it deals with different cultural backgrounds, its understanding of the purpose of exercising normative power (its perspective about what is 'change'), and how norms may diffuse (its use of the mechanisms).

The endeavor conducted in this chapter was meant to substantiate the existence of a contradiction that NPE as foreign policy, as it is currently understood by the EU, entails towards the EU ontological security: policies are inefficient to provide external recognition of NPE as identity. Empirically, this contradiction is observed by a dialogical approach to the cases that, instead of comparing outcomes, reveals that recognition as the ultimate expectation of NPE as identity depends on mechanisms, conditions and parameters at place that are defined within encounters, by the EU and those Others' understandings of difference, diffusion and normative power. Ultimately, strategy is also part of the recognition that may arise or not in Others perceptions, also informed by their material and ideational systems of preferences.

In the politics of norm reception, recognition of NPE as identity project seldom immediately follows up foreign policies' effective outcomes in terms of convergence of policies and behavior. There are several important parameters and conditions determining those outcomes from Others' lenses which, I argue, must be integrated in the analysis in order to see if convergence was due to NPE as foreign policy, and also if it includes the recognition to NPE as a specific identity project.

3
Empirical conceptualization of dialogical processes

3.1.
The Others and the dilemma: clarifications about identities' recognition

Recognition is one indicator of positive interplay between identity and foreign policy, or an indicator that would fill Noureddine's gap. To achieve recognition for their established national identities is a concern of most state actors yet their identities are based on sovereignty, authority, territoriality and citizenship. This way, their struggle for ontological security is, so to speak, intersubjective, embracing the Self and "social structures they produce and participate in. These social structures are constitutive of shared conventions and social attitudes/norms which individuals need to rely upon in order to sustain their ontological security" (VIEIRA 2017:6). Whereas for states the focus on ontological security is on "internal processes of discursive self-articulation of national biographies", in the case of EU, because of its ontological entanglement with NPE, we might say that the focus is on "externally induced processes of identity creation and maintenance" (op.cit.:7).

For the EU, whose political identity is being constructed in a double level and on other basis than those of states, the quest of 'to achieve recognition' is ongoing. Hence, the EU does systematically include Others' perceptions but in a biased way that confirms and reinforces its own images[47]. Others' perceptions are then articulated in EU foreign policy, but in a way that accommodate to EU's self-representations. Accordingly, it is of utmost importance for the EU that its political identity becomes part of Others' 'mindmaps', both to make NPE as a strategy coincide with its norms and to undermine stereotypes from the other side.

Since I do not assume that Others are there to just understand the EU and negotiate its identity representations on *its* own terms, countries like Brazil become interesting for case studies of NPE from Others' perceptions. It is so, because, just as

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[47] See, for instance, the empirical research conducted by Keuleers, F., Fonck, D. and Keukeleire, S. (2016) that demonstrates the occurrence of EU-centric approaches pervading current scholarship on EU foreign policy. The authors say that "only 18.40% of articles, i.e. one out of every 5.5 analyses of EU foreign policy, paid attention to the actual impact, relevance or evaluation of the EU's policy in the targeted state or region" (2016:11). Such rate of analyses is even shorter when attention is turned to negative, resisted or adversary impact, what deludes the EU policy-makers with a biased vision that the uniqueness of the EU identity project is also perceived abroad.

Brazil is not passive and a mere receiver of EU normative communication (as most of the countries are not, either), it has no 'ontological clash' with the EU in the first place. For instance, Brazil is 'ontologically' different from Russia, for whom NPE is profoundly undermining its own ontological security of great power. Russia basically denies the EU to be anything like NPE since otherwise its own policies would need to change.

This is not the case of Brazil, for whom the existence of NPE does not undermine its own ontological security, as Brazil is 'partly' Self-considered a member of the Western civilization[48]. Therefore, different from Russia, Brazil coincides with the EU in the defense and promotion of most norms and principles, including the ones analyzed in the cases (development cooperation and human rights), as well as the means to do so as they are portrayed in the NPE identity discourse, i.e. away of imposition and securitizing acts.

The dilemma arises precisely despite a certain normative alignment. If Brazil were completely different from the EU in terms of ideational and normative orientations, then its resistance or the difficulty to dialogue would easily be explained away by its difference. Precisely because they are normatively aligned, the identity discourse of the EU is more unsettled. The 'significant other' or friend is always a bigger problem for identity discourses (HOPF 2002).

The impact on Brazil's system of meanings derives from *how* those means are employed by the EU – through which mechanisms, instruments and approaches. In this sense, ontological security concerns of Brazil might have been under threat *if* Brazil perceived that the EU employs those means coherently with its identity discourse *and* Brazil itself is not able or willing to do the same. Thus, Brazil's likely non-recognition of NPE as identity is a critique of the inefficiency of EU's policies to provide recognition, rather than a safeguard of Brazil's own ontological security concerns. It is only since fifteen years, however, that the EU has begun to notice the relevance of more dialogue and negotiation – increased in number and quality – especially with Others like Brazil, that have no fundamental problems when seeing NPE.

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[48] I use the term 'partly' agreeing with Vieira (2017) that Brazil has a hybrid subjectivity, articulated over its postcolonial self-understanding.

As said in Chapter 1, it was only after the show of internal frictions upon the European Constitution in the mid-2000s that a serious reflection about EU political identity took the place of NPE high-days of self-confidence. These reflections split up in research questions about the construction of collective identity and sense of community (IDNET Project, 2003) and, on the other side, about re-tracing the foundations of EU legitimacy in connection with its political identity (CERUTTI 2006). The perspective of Others is, in turn, an important component of the second strand of reflections in the sense that, as explained by Cerutti, "the legitimacy stemming from the substantive performances of the Union works only in conjunction with the legitimacy deriving to it from its perceived conformity to a model of just and good governance" (2006:3).

In other words, the Others became a factor for the EU identity as a social representation, as their perceptions is one element that mediates the relationship between the Union and the social world – now also in the self-understanding of the EU. In Chryssochoou's 'process framework', identity consists in a circle of knowing, claiming and recognizing (IDNET Final Report 2003:32), linking the individual to its actions as they are recognized by other identities in the social world. In Chapter 2, I focused on diffusion as a key strategy of EU foreign policy that represents how the Union would, ideally, set its external relations, admitting resistance as a constructive criticism ensued by democratic communication. I set few boundaries 'to know diffusion when we see it', clarifying a bit more about legitimacy too.

Herewith, how to know the EU coherency with NPE as a discursive identity in its external governance beyond Europe? I propose to give the floor to the Others themselves by means of a dialogical 'circle of knowing, claiming and recognizing', contributing to a less Eurocentric mapping of NPE's role in the current stage of EU-Self construction.

3.2.
Social mechanisms for studying dialogical processes

This chapter derives from the need to study the dilemma. It operationalizes the idea of dialogical processes through a framework of empirical mechanisms that is, by

the end of the chapter, organized in a typology. Preceding a typological theory, which one central purpose is to explain what causal pathways might operate in cases after having developed contingent generalizations about combinations of variables that constitute the types, the typology has the main concern of accommodating case complexities into analytical categories of different processes. For the typology that embraces both cases, I propose two general types of processes that represent my explanandum, *diffusion* and *resistance*.

After having defined the diffusion framework for studying NPE as foreign policy, the present chapter helps me ascertain the existence and mechanisms of the dilemma. At first I illustrate the meaning of a dialogical process (what it exactly implies). Then I elaborate on the typology itself: through the categories and factors, I show how non-recognition happens both in a case that it is visible through resistance, and also in another where there is an apparent conformity, explaining the NPE dilemma that starts from NPE as foreign policy.

Five categories are proposed for the typology that draw on i) the conceptual framework for studying norm diffusion as a foreign policy strategy of NPE (ch.2); ii) research designs informed by Others' perceptions (ch.1); iii) identity politics of NPE (ch.1); iv) the problems of NPE as a foreign policy strategy that acts as a link between self-identification and external recognition (ch.1/ch.3). Those categories help to identify how components of the typology 'speak to each other', that is, to meaningfully explain how they vary within the types in a way that both cases have the same effect.

Lastly, I present how to analyze the cases with all factors of the typology, discussing the methods of critical discourse analysis (CDA), the selection of empirical cases and their properties. Thereby, what are those cases about, and which is the nature of the uncommon in my selection of cases? Both are cases of mechanisms of diffusion that reveal a political dilemma for NPE when its foreign policy is resisted, and an ontological one when it is apparently successful. Moreover, I do not suggest that non-recognition is the only possible effect of dialogical processes of diffusion that embrace the EU. Rather, I suggest that the present framework of empirical mechanisms for studying those types of processes comprises an original approach to recriate causal paths that start from NPE as foreign policy and then end up in either of the two dilemma.

For the Others, *how* NPE is exercised through the instruments and mechanisms of foreign policy as well as *which* conditions and parameters mold the outcome, are the most important factors at stake. This 'adjustment' in focus – *dialogicality* – allows us to see incongruences among the debates of NPE as a foreign policy strategy and as an identity project. As previously mentioned, means and goals of NPE as policy aim to stabilize the EU identity as a legitimate and superior normative actor on a global scale.

This aim can be witnessed, for example, in the last speech of Jean-Claude Juncker, current Head of the EC, issued on 13th September 2017[49]: "For me, Europe is more than just a single market. More than money, more than a currency, more than euro. *It was always about values*. (…) As for us, we will always keep our hands stretched out towards the great Turkish people and all those who are ready to work with us *on the basis of our values*. (…) Europeans will wake up to a Union where *we stand by all our values*" (emphases added). Hence, what is a dialogical process and what does it add to understand why the EU ontological security can be undermined by NPE as foreign policy both in cases of diffusion and resistance?

3.3.
What is a dialogical process?

The relational feature of identities relies basically on the interplay set in Figure 3 between self-images, foreign policy and external recognition. Self-images are source for action but, as detailed above, cannot critically account for coherency or legitimacy of the Self as an agent. In this sense, the 'feedback' provided by Others' perceptions that are also informed by their self-understandings, is crucial for the Self's ontological security. Hereby, it is how Self and Other negotiate their representations by means of instruments and mechanisms of foreign policy that will impact on recognition, i.e. an external inducement of identity maintenance.

In order to account for dialogical processes empirically, four mechanisms of diffusion – and resistance as a critical engagement admitted by an ideal type of

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[49] Available in: http://europa.eu/rapid/press-release_SPEECH-17-3165_en.htm. Access on October 2017.

normative actor – are proposed, based on the conceptual framework of Chapter 2: *emulation, localization and subsidiarity, socialization by persuasion, and learning*. They were selected in light of a particular understanding of diffusion that conceives frictional mobilizations of parameters and conditions of each actor towards some sort of change within sociocultural contexts, in values, norms, beliefs that account for preference formation.

In a dialogical perspective, binomials such as 'makers/takers', 'senders/receivers' are disregarded reflecting the hybrid character of diffusion. I consider that when none of the mechanisms listed above are verified, it might be cases of policy transfer motivated by material or structural constraints (hierarchy or competition without interaction), leaving the possibility of 'dialogicality realization' aside[50].

Moreover, diffusion and resistance are not confined to given scope conditions. Although I explore the hypotheses through Southern countries, this study does not subscribe to the argument that there is a causal relation between the weakness of NPE and spatial distance as a property of the context. Rather, it argues that it is crucial for the EU to take part in Others' mind maps, empirically contributing to the EU external governance approach by pointing to cases that have received little attention in the literature so far.

Regarding the EU, due to its ontological entanglement with NPE, the Self-Other identity negotiation through foreign policy instruments occurs on the basis of each ones' understanding of *differences* (referring to the modes of differentiation) and *recognition*. In order to scrutinize 'dialogicality', the following sub-sections demonstrate changes over time in the articulation of those two concepts by the EU and EU scholars. Thereby, I assume that such re-articulation is an ongoing awareness within the EU that something in the way that it includes (selected) Others' perceptions in its self-image is hindering external recognition and harming its ontological security.

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[50] In the literature on mechanisms of 'Europeanization beyond Europe' (Schimmelfennig 2012), material incentives are in parallel with conditionality, the compulsory impact and the compliance mode of governance. The EU provides incentives "such as financial aid, market access or institutional ties on the condition that non-member governments follow EU's demands. The effectiveness of this mechanism depends on the size of the EU's rewards and the credibility of its conditionality" (2012:8). For the purpose of my thesis and its definition of norms diffusion, conditionality is not a factor to be taken into account.

Hence, my purpose is to show that such re-articulation of difference and recognition by the EU has the potential to enlarge the extent to which its foreign policy might uphold its identity discourse through the impact of instruments and mechanisms on Others' parameters and system of meanings. The very practice of 'conciliation of meanings' with Others, exploring the positive potential of differences during the course of norm diffusion is what I call the dialogical process towards the fulfillment of NPE as an identity project.

3.3.1.
Difference and Recognition: how are these concepts re-articulated in EU self-understanding and representations of power through norms? And which is the connection between such re-articulation and dialogical relations with Others?

3.3.1.1.
Difference

In Chapter 1 I have demonstrated how the concept of difference was articulated within the idea of European integration after the II World War: retaking the pioneer spirit of the XVII century, European states developed the common belief about a *European Union* as the representation of the future, progress and post-modernity. In accordance, Hartmut Kaelble argues that, since the 1960s, the impact of atrocities of two World Wars resulted in a reconstruction of European self-understanding that, in turn, became to see itself as "a Europe whose unity consisted of diversity. (…) rising expectations for a European political power center that had not existed before, the European Union" (KAELBLE in EISENSTADT 2002:178).

Kaelble writes that, during the last half of the twentieth century, categories of modernity like progress, threat and pioneer spirit gained other views and interpretation within Europe, challenging particularly the concept of European superiority (op.cit.:171). The EU was imagined to be unique in its nature: diverse, peaceful, safe and strong, by the power of market and human rights[51]. In order to accommodate this

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[51]   4 November 1950: signature of the Human Rights and Fundamental Rights Conventions in Rome, Italy.
        18 April 1951: Belgium, France, Germany, Italy, Luxembourg and the Netherlands sign the Treaty of Paris establishing the European Coal and Steel Community (ECSC).

communitarian imaginary, norms and institutions gave materiality to the unparalleled level of domestication of state power, in addition to the current integration of twenty-eight economies.

Later on, in the post-Cold War period, debates steered among EU scholars around ways to reinvigorate the EU as a political and social agent, turning the attention to EU's self-representations. Although a large share of the literature begun with a focus on the "distinctive role of the EU based on its values, images and principles (VIPs)" (LUCARELLI in LUCARELLI & MANNERS 2006:3), substantiating its exceptionalism and transformative character, currently there is an enlarged space for divergent interpretations that arise from EU declarations and speeches. For example, Chiara Formenti-Ujlaki sees that the Copenhagen Criteria displays that the EU "already saw the differences of the new entrants not as contributing to their common good, but as potential dangers to their collective strength. (…) In fact, the asymmetry of power is so pronounced, the door is barely open for any negotiation" (FORMENTI-UJLAKI in RAUBE & SATTLER 2011:150-151).

Such hierarchical self-understanding of difference still may be verified in EU policies especially towards its neighbors, but the end of the heydays of self-confidence after the Euroscepticism brought about anew proposals to think difference [52] in alternative ways, emphasizing its potential to positively impact the EU external governance in the sense that "such positive impacts of difference result in greater effectiveness and legitimacy of policy outputs in international affairs" (RAUBE in RAUBE & SATTLER 2011:107).

Several European scholars of this line of thought draw on Habermas communicative rationale implying that "the EU would encourage inclusive and open communicative discourses – in the EU and in global settings", "questioning the EU's applicability of its own ideals, interests and norms, when she encounters the 'other'" (op.cit.). Communicative democracy is thereby the condition to the proposed positive potential of difference, "in which different actors and organizations are able to present

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27 May 1952: Belgium, France, Germany, Italy, Luxembourg and the Netherlands sign the European Defence Community (EDC) Treaty in Paris.

[52] Christine Landfried (2006:766) distinguishes between structural (ideas, identities, interests, institutions, in space and time) and concrete difference, with the first inducing the second in a multitude of fields like history, religion, language, culture, economy.

their arguments and where actor preferences are subject to change" (op.cit.:109). Only by means of communicative interaction one can transform his perspectives, exchanging and learning differently located meanings and experiences, as "different social positions encounter one another with the awareness of their difference. This does not mean that we believe we have no similarities; *difference is not total otherness*" (YOUNG in BENHABIB 1996:127, emphasis added).

Therefore, as recognized by Raube (2011:110) and Landfried (2006:769), inclusiveness and equality are the principled conditions to foster positive potentials of difference, which directly impact identity-shaping processes by democratic communication. Regarding the EU external governance, Raube advocates a 'outside-in perspective' and 'bottom-up-processes' in order to encompass those principled conditions and enhance the effectiveness and legitimacy of decisions. "The positive potential of incorporating an understanding of difference can very likely increase the acceptance of the EU's policy on the ground in the long run" (RAUBE in RAUBE & SATTLER 2011:120).

The authors' assessment is gradually visible for EU actors: the dimension of public outreach and consultation conducted by Nathalie Tocci, Special Advisor to HRVP Mogherini, throughout the preparation of the EU Global Strategy 2016, is an example of such concern of incorporating an understanding of difference by listening and receiving opinion pieces of representatives from several countries outside the EU like the US, Brazil, India and China.

In short, we have that, while a Eurocentric and hierarchical idea of difference sharply contributed to establish the EU in terms of which diversity was to be accepted (inside its borders), by mid-2000s such an idea begun to be increasingly challenged inside and outside EU borders, shaking its own sense of identity. With the goal to find out how to enhance both the EU legitimacy internally and effectiveness of its policies externally, some European scholars propose a re-articulation of difference in light of the Habermasian communicative rationale to guide EU foreign policy. In such re-articulation, difference is not otherness but an opportunity for exchanging and learning, including distinct meanings met in EU-Others encounters during the process of diffusion.

The centrality of norms as what reflect the ongoing re-articulation in practice, which has been gradually endorsed by the EU, is visible amidst strands that consider either "EU norms operating in a top-down model", or in a broadly transformative belief on "human progress and power of legal frameworks". Thereby, the breakthrough of the EU external governance approach is to disclose that it is paramount for the EU ontological security to expand beyond Europe the scope of voices able to take part in conciliation of meanings with the EU. NPE as foreign policy became a mean to depict how much and with whom the EU is willing to undertake a dialogical relation regards its VIPs embedded in policies, based on a renewed understanding of difference.

3.3.1.2.
Recognition

Targeting collective identity formation and logics of interaction, Erick Ringmar tells us that "we cannot be without being described, and unless we are recognized, we have no social identity. (…) It is only recognized that our identities will come to have continuity over time and space" (RINGMAR 2010:8). It is in order to assure recognition to NPE as identity project, thus stabilizing the EU ontological security that a renewed understanding of difference is proposed to guide NPE as foreign policy. Thus, how would this re-articulation of difference affect mutual recognition in EU-Others encounters? According to Jürgen Haacke, who writes about recognition within the Frankfurt School contrasting Jürgen Habermas's and Axel Honneth's thoughts, for Habermas, struggles for recognition in practice derive "from the exercise of communicative rationality and the extent to which international actors allow for the possibility of an impartial point of view being constructed" (HAACKE 2005:193).

Accordingly, James Tully writes that "struggles over recognition are struggles over the intersubjective 'norms' under which the members of any system of government recognize each other *as* members and coordinate their interaction. (…) daily communication, interpretation, negotiation and action among members interacting 'normally' subtlety modify the norms to which they are subject" (TULLY 2004:86/89, original emphasis). This means that, for the EU, there is a direct

relationship between exploring the positive potential of difference in foreign policy and accepting a hybrid outcome out of its strategy of norm diffusion.

That is precisely where the dilemma of NPE lies: a foreign policy which is one that provides recognition to its identity discourse might not diffuse its norms, but accepting to change this policy then risks undermining, in turn, the very anchor of the identity project. Therefore, applying dialogicality, we see that what is at stake for the NPE ontological dilemma is an impossibility to admit contested perceptions to its identity claims when meeting the Other in foreign policy. Hence, I turn to the following question to guide the orchestration of both dialogical processes: How does the EU handle with difference and contestation in its relations with Latin American countries?

External non-recognition of NPE as identity project demands an observation of how difference and identity claims relate to each other – from both sides. In the next section I build the typology of dialogical processes to explain the dilemma and, subsequently, discuss the selection of cases and methods of critical analysis.

3.4.
Typology of dialogical processes to explain the dilemma

The main theoretical discussion was to show that some aspects in the EU mode of interacting with Others beyond Europe leads us to believe that external non-recognition to NPE as identity project has been there. I selected the cases on processes that include resistance to NPE as foreign policy and, almost more importantly, one where there is none. Considering that I cannot make general statements for non-recognition, as it might have several causes and explanatory paths, I can see how NPE mechanisms that are supposed to work as foreign policy do not work out. It is, therefore, a study informed by potential equifinality which concentrates to get some better grasp on the processes and their variety: since I take norms diffusion as dialogical, categories of the typology vary on the way the process is perceived (resistance or not).

The theoretical contribution is hence upon developing a better comprehension of norm diffusion mechanisms integrating difference and contestation from the onset. The empirical contribution, as I specify below, is to show policy dilemma coming out of

the interrelationship between the ontological and foreign policy projects of NPE.

3.4.1.
Analytical view of the cases

The present thesis has two paradigmatic case studies that have been chosen with the goal of theory developing as a way to show specific causal paths through which NPE dilemma occurs. Theory and hypotheses seek to advance the role of Others within the research agenda of EU external governance, by examining mechanisms of diffusion and resistance in a dialogical perspective. George and Bennett's focus on "the comparative advantage of case study methods and on these methods' ability to contribute to the development of theories that can accommodate various forms of complex causality. The case study approach – the detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events (…)" (2005:5) has thus helped me to case and methods' selection.

The cases are context-dependent, carry a large number of qualitative factors within five proposed categories that allow for the formulation of idiosyncratic aspects for each case. They are theory development by the development of hypotheses that make the argument plausible, i.e. there is a concatenation of processes that leads to a situation where NPE as foreign policy can undermine NPE as identity and produce hence the dilemma. Notwithstanding I conduct the cases with a considered amount of oral and written sources, as well as iconographies and personal impressions, the sources are not exhaustive. Nuances and more perceptions concerning other relevant issues within the cases are still to be captured, and the main limitation is the availability/ possibility to follow up Latin American countries and EU Officials, respectively for each case.

The case selection overcomes the bias posed by effective outcomes, i.e. diffusion entails recognition, resistance entails non-recognition; and by preconceived ideas, i.e. contestation ends in resistance, dialogue ends in consensus. Both are cases used to shed light on the processes of norm diffusion to establish hypotheses about how norm diffusion actually works. Doing so, I aim to make plausible the argument of the NPE political and ontological dilemma.

The empirical objective is to show the NPE dilemma in practice, for what I spell out the steps of the causal paths that are reproduced in the flowchart below: one would get into this dilemma if norm diffusion or NPE as foreign policy is not recognized – even if there is policy convergence. As I presented in Chapter 2, convergence is rather a possible effect of diffusion than one of its condition. Moreover, norm diffusion is different of transfer in that the last might be either one of the previous' properties or take place out of diffusion. Diffusion, in turn, implies meaningful interactions and some sort of change within Others' sociocultural contexts, not requiring convergence.

Non-recognition of NPE as foreign policy is hence the effect that the EU does not sufficiently conceive diffusion dialogically – when conceiving it like that, however, would be hard for NPE as identity, as the EU would have to engage in contestation upon its policies and norms, negotiating the anchor of its own project. To move to an empirical analysis of NPE, I therefore (1) separate norm diffusion from mere transfer through the categories of the typology: selection of four specific mechanisms, interactive components of those mechanisms, conditions and parameters; (2) conceptualise processes in a dialogical manner, endogeneizing the Other into the analysis through the categories that reflect how difference and contestation are handle in EU-Others interaction; (3) devise case studies that look at the processes of diffusion and resistance to NPE as foreign policy and as identity project; (4) allow for variance in the case studies to assess also cases where policy convergence has happened, but no recognition ensued (aparently successful diffusion).

In the first case of development cooperation, external non-recognition of NPE as identity is a causal effect of diffusion as understood by the EU in its foreign policy strategy. It hence does not lead to external recognition of NPE as identity what, as I argue, is not automatically visible due to our – and the EU – narrow understanding of diffusion (second hypothesis). In the second case of human rights, external non-recognition is the causal effect of Brazilian resistance to NPE as foreign policy, what could end up in the EU keeping faithful to its distinctiveness but then testifying to its powerlessness, or acting by other means then running into a self-contradiction of the policy. Schematically, we have the steps:
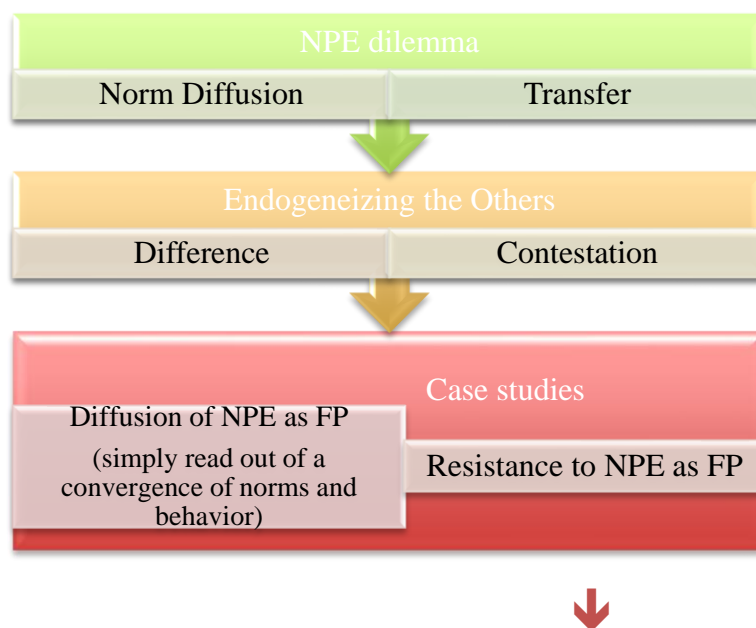
Figure 4: Flowchart to observe the NPE dilemma in practice

Potential equifinality: non-recognition of NPE as identity project.

3.4.2.
Categories and factors of the typology

The typology assembles five categories within each there are three to four factors that perform dialogical processes of the two types. The categories are: (1) *mechanisms* of the framework of diffusion/ resistance previously selected in Chapter 2; (2) *interactive components of those mechanisms* that help to specify the extent that instruments and mechanisms of foreign policy have impacted on actors' system of meanings; (3) *conditions of the types* that affects the EU and Others; (4) Others' *parameters* to read NPE as foreign policy and to act, according to their system of meanings; and (5) *EU modes of interaction* from which I inductively suggest *causes of NPE dilemma* (or leading points) seen from the Others.

Those causes underpin the driving argument that even successful NPE as foreign policy undermines NPE as identity, and NPE as identity politics can undermine its foreign policy exactly when its tendency to see itself confirmed when meeting the

Other undermines its recognition by the Other, i.e. *the different processes that lead to the same outcome*.

The **mechanisms** are selected in Chapter 2, characterizing an ideal type of normative actor[53] that conceives diffusion as a foreign policy strategy in terms of frictional relations between background meanings of each actor: *emulation, localization and subsidiarity, socialization by persuasion, and learning*. When looked from a dialogical perspective, those mechanisms reflect the hybrid character of diffusion – and resistance admitted as a critical engagement with Others' normative claims –, largely affected by external circumstances and perceptions about internal conditions of both actors.

In these encounters, the degree of impact of instruments and mechanisms of foreign policy upon Others' pre-understandings is not fixed, as it is also affected by the interplay between the abovementioned constrains and conditions. For this reason, I call **interactive components of mechanisms** in order to emphasize the hybrid character of the types: *adoption, adaptation, resistance or rejection*. They are also treated as outcomes[54] of diffusion proposed by Björkdahl though not strict in terms of an 'effective situation' of diffusion, making the case for dialogical processes of diffusion and resistance.

I also consider different **conditions**[55] of diffusion and resistance that affect the engagement Self-Other across policies, reflecting the EU modes of handling differences and the extent to which domestic structures of Others drive the interaction: A) Institutions – modes and effects of external governance are shaped by *internal EU modes of governance and rules*. "EU institutions provide the template for the externalization of EU policies, rules, and modes of governance and condition their effectiveness" (LAVENEX & SCHIMMELFENNIG 2009:802);

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[53] According to Patrick T. Jackson, ideal types are "intended less to predict actual concrete outcomes and more to provide a conceptual baseline in terms of which actual outcomes can be comprehended. (…) Indeed, the whole procedure of ideal-typical analysis is all about the transmutation of cultural values into useful analytical tools" (JACKSON 2011:144).
[54] BJÖRKDAHL et. al.:2015:4.
[55] LAVENEX & SCHIMMELFENNIG 2009:802-805.

B) Power – modes and effects of EU external governance are shaped by *EU resources vis-à-vis, and interdependence* with, third countries and to alternative poles of governance and influence;

C) Domestic structure of third countries may condition the modes of external governance and their effectiveness.

To encompass Others' system of meanings, the **parameters** indicate how they structure the dialogue with the EU as well as read the EU instruments and mechanisms of foreign policy, influencing on their perceptions and discourses about NPE as identity that may ensue:

A) Perceptions of legality and legitimacy of EU norms;

B) International constraints (power, uncertainty, security, economy);

C) National identity and interests (previous normative and social order).

These three parameters are the most cited in the literature and are suitable to my empirical goal: however, they are not exhaustive and are contingent to different case studies. It is important to mention that the quality of dialogue that the EU is able and willing to pursue with Others directly influences those parameters, as they are also a product of what the Others know about the EU. Therefore, the degree and quality of information might contribute to perceptions of legality and legitimacy as well as to international constrains, positively or negatively. Quality of information, communication and interaction, in turn, relates back to the way that the EU sees itself.

For the fifth category, I consider three modes of interaction that might be reinforced by the EU, gathered from several researches of the EU external governance agenda[56]. The modes are connected to the conditions of the types but give little attention to Others' parameters. That is so due to the lacunae that still exist in the agenda, which is a weak articulation between mechanisms and instruments of EU external governance 'beyond Europe', and Others' perceptions and cultural frames. Thereafter, I expose the EU modes of interaction and then I explain the causes of NPE dilemma themselves, in detail.

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[56] See notably the Special Issue of the *Journal of European Public Policy* (16:6, September 2009) edited by Sandra Lavenex and Frank Schimmelfennig, entitled "European Union External Governance", and the Special Issue of the *Cambridge Review of International Affairs* (29:1, May 2016) edited by Olivier Grouille, entitled "EU's contemporary partnership policy".

A) Hierarchy – "formal and precise rules that are non-negotiable and legally binding as well as enforceable upon actors", characterizing vertical relations of domination and subordination (LAVENEX & SCHIMMELFENNIG 2009:797/800). Also named 'compliance' (KNILL & LENSCHOW 2005), 'negative externalities' (LAVENEX & UÇARER 2004) and 'compulsory impact' (DIEZ, STETTER, ALBERT 2006);

B) Network – "network qualities such as deliberative processes, co-ownership and density of interaction are likely to enhance the legitimacy of rules and are thus conducive to their expansion" (SCHIMMELFENNIG & SEDELMEIER 2005). It is a relationship in which actors are formally equal. Although it does not preclude the possibility of power asymmetries, actors have equal rights and no party can bind the other to a measure without the latter's consent. Instruments are based on mutual agreement and often prescribe procedural modes of interaction on the basis of bargaining or arguing. This is also named 'communication' (KNILL & LENSCHOW 2005);

C) Market – outcomes are the result of competition. Regulatory approximation as a consequence of competitive pressure. It represents the EU's 'indirect impact' resulting from its presence in addition to third countries' interdependence within its system of regional governance, rather than any form of association. It is a kind of 'governance by externalization' produced by the EU's internal market and competitive policies. Also named 'competition' (KNILL & LENSCHOW 2005) and '(in)opportune conditionality' (LAVENEX & UÇARER 2004).

To those modes of interaction I relate proposed *causes of NPE dilemma* to be observed in the empirical analysis. I consider all categories mentioned above, thinking how the concepts of difference and contestation, which I take as central features of the dialogical approach, relate to them. Thereafter, I compose the typology, which is filled in the conclusion of the thesis, with principal information from the cases.

When the EU interacts *hierarchically*, the Others see it stifling the potential of contestation towards consensus, reinforcing power asymmetries and inequalities. Contestation does not necessarily ends up in resistance: Lisbeth Zimmermann and Nicole Deitelhoff define applicatory discourses of contestation as "the right

interpretation and application of a norm. Over time, such applicatory discourses often lead to changing interpretations of a norm (…). The context of the concrete situation always reigns supreme. In such discourses, the appropriateness principle is decisive. It measures the degree of coherence between the norm and all relevant characteristics of the respective situation at hand" (ZIMMERMANN & DEITELHOFF 2013:5).

Contestation might be an expression of critical engagement with a given normative representation through deliberation or justification, for example (WIENER 2017a:109/112), which is likely to take place both in cases of diffusion and resistance. Acting hierarchically, the EU might transfer its norms and policies but such mode of interaction 'fences' their validity against applicatory discourses or critical engagement that would, in contrast, generates normative power.

When the interaction is based on communication and has *network* qualities, as in the present case of development cooperation, there is yet the possibility that policy convergence has happened without evidences that this convergence is due to NPE as a foreign policy, nor that recognition of NPE as identity ensued. Such possibility might be connected to the absence of a positive handling of differences from the EU. The EU sees itself interacting more horizontally and on the basis of mutual interests, so as how COPOLAD appears. Nevertheless, listening to Latin American' representatives, we might grasp how the EU currently articulates the potential of differences through its instruments of foreign policy.

Following Raube and Landfried's advices to foster positive potential of difference, the Others possibly do not see the EU open to 'bottom-up' or 'outside-in' perspectives of diffusion, but mainly interested in exploring topics that have a given convergence through which it becomes easier to transfer its own visions. It follows that, although a certain level of adaptation may occur, simultaneously the Others shall struggle to demonstrate how challenging is to expose some degree of critique to the EU regarding its norms, policies and approaches, informed by their pre-understandings and local circumstances. The communication is possibly monological rather than relational. Lastly, we have a *market* context that is present in the case of human rights. Competitive pressures might reinforce interdependence rather than association, however the case also involves fundamental values, principles and norms of the EU

assembled in claims of human rights defense. Hence, in the eyes of Brazil, NPE as identity project is purely contradicted by a foreign policy that prioritizes private interests and norms that favor profit over human rights. With this brief exposition of the causes, I do not suggest that they are mutually exclusive neither that they exclusively relate to each EU mode of interaction – causes and correlations are inductive from the paradigmatic cases analyzed. Below, I systematize them in the typology for the sake of transforming complexities of the cases into analytical categories and factors.

Table 4: Typology of diffusion and resistance to explain the NPE dilemma

Colour code:

Green: factors related to the type of process 'diffusion';

Black: factors related to the type of process 'resistance';

Red: common factors for both processes.

CATEGORIES	TYPE 1: DIFFUSION		TYPE 2: RESISTANCE	
MECHANISMS OF THE TYPES	EMULATION (EU as a presence)	LEARNING	LOCALIZATION/ SUBSIDIARITY	Socialization by PERSUASION (Type II internalization)
INTERACTIVE COMPONENTS OF MECHANISMS	Adoption; Adaptation	Adaptation; Rejection	Adaptation/ Resistance	Adoption; Adaptation
CONDITIONS OF DIFFUSION AND RESISTANCE	EU institutions and Domestic structure of Others	EU institutions and Domestic structure of Others	Interdependence and Domestic structure of Others	EU power vis-à-vis the Others and Domestic structure of Others
PARAMETERS OF OTHERS	Legality/ Legitimacy and National factors	Legality/ Legitimacy and National factors	National factors and International constraints	National factors and International constraints

CAUSES OF NPE DILEMMA: related to the EU MODES OF INTERACTION	Hierarchy or Market	Non-handling of differences; Network or Hierarchy	Need new understanding of diffusion Negative potential of contestation Network / Hierarchy	Non-handling of differences Need new understanding of diffusion Market or Network

My theoretical framework and research design seek to observe a correspondence between NPE as identity and foreign policy projects that I outline as leading potentially to a dilemma if external non-recogntion is taken serioulsy.

Cases strictly related to the *market* mode of interaction are intriguing at this point. At the same time that they portray an indirect impact or externalization produced by the EU internal market's norms "as a presence" (emulation), international constraints like interdependence and economic asymmetries might play a greater role than NPE in "persuading" third parties to accept its norms on trade. On the other hand, as exposed in Chapter 2, diffusion might also result from interactive and voluntary competition over trade policies, what characterizes 'power in trade'[57] confirmed by several bi-/regional EU relations[58]. My justification to *not* look at cases of trade is to avoid the risk of dealing with 'power through trade' entangled to 'power in trade', what might reflect the EU geopolitical power to replicate its system of market liberalization above the voluntary intention of Others.

The next section deals with the selection of cases and methods of analysis. The consequence of my case selection is the exclusion of most of the cases covered by the literature so far, in which mechanisms reflect both instruments and means of their exercising that do not correspond to the diffusion framework I previously developed. For example, investigations on the effects of the *acquis communautaire* towards

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[57] Meunier and Nicolaidis distinguish between power *in* trade – exporting goods, services and capital – and power *through* trade – exporting standards and norms of governance, in order to argue that "trade stands perhaps as the most effective mode of EU action" and power, that is, "getting others to want to do what is in the EU's interest" (MEUNIER & NIKOLAIDIS 2006:912).
[58] For instance, on the bilateral level, the EU has preferential agreements with many Southern countries. On the regional level, the EU has an economic partnership agreement with ASEAN.

candidate countries of Central and Eastern Europe, upon which the EU has deployed its fundamental instrument of membership/conditionality through the politics of enlargement (SCHIMMELFENNING & SEDELMEIER 2004). Likewise, research about the ENP, which covers its Eastern and Southern neighbors, as well as about the EEA EFTA (BARACANI 2009; LAVENEX 2008; FREYBURG et. al. 2009; KELLEY 2006), reflect cases of coercion, sanctions (usually comprising general trade/ financial restrictions)[59] and material rewards (mostly in trade, business and services, or funding).

In these examples, several EU norms were transferred and accepted with no indicative of a successful NPE as foreign policy through diffusion. The EU mode of interaction is hierarchical, deeply asymmetrical, unilateral and leaves no space for discourses of contestation and differences. Instead, as I detail thereafter, I choose cases that differ in terms of mechanisms in order to develop a better understanding of diffusion, integrating the Others through dialogicality from the onset. Moreover, in terms of methodology, at first I had the typology to understand the processes, i.e. it tells us what factors are at stake. A second step is from the typology to its application in the empirical analysis. How do actually analyze the processes with all these factors of the typology?

3.5.
The selection of cases and methods of critical analysis

The selection of cases follows the logic exposed in the typology: they aim to explain the argument that two dilemma between NPE as foreign policy and identity project ensues when we endogeneize the Other in processes of diffusion through mechanisms that account for the observation of differences, contestation and recognition within the processes. They are paradigmatic cases for theory building and hypothesis-development, probably entailing equifinality, which underline the variety of processes. Both cases embrace EU relations within the Global South. I focus on

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[59] "European Union. Restrictive measures (sanctions) in force". Updated on 7.7.2016.
In: http://eeas.europa.eu/archives/docs/cfsp/sanctions/docs/measures_en.pdf

Latin American countries and Brazil, respectively, due to they comprise a great challenge for this kind of study as, how it was already discussed in this chapter, they do not have any problem when see NPE as identity project.

Yet, colonization and the subsequent political development of those countries within Western normative standards also make them a puzzle when it comes to the definition of their respective foreign policy and identities. The former is pursued as an instrument towards national-development: in order to overcome institutional, social and economic fragilities, Brazil and Mexico for example take their natural advantages (resources, population, size, geography) and normative basis as bargaining power in their bilateral relations with developed countries and in multilateral forums. In terms of identity, however, Latin America is predominantly self-identified with the South and all of its demands of reforms, equality, autonomy and fairer labor conditions in the context of globalization.

Regarding how to analyze the cases through the factors summarized in the typology, the tools of critical discourse analysis (CDA) – informed by context, extralinguistic factors (culture, society, ideology), linguistic categories and interdisciplinary claims (close to sociological and socio-psychological perspectives) – are particularly suited for observing processes rich in contingent aspects, as demonstrated by Meyer and Wodak in the figure of "critical discourse studies as a circular process" (MEYER & WODAK 2016:14).
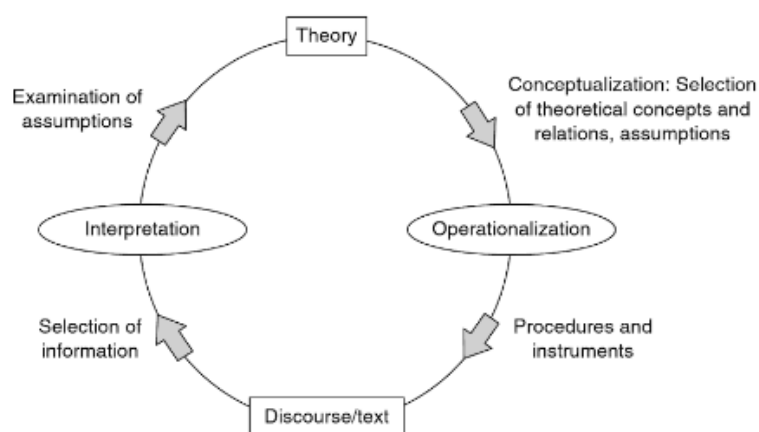
Figure 1.1   Critical discourse studies as a circular process

"In the tradition of critical theory, CDA aims to make transparent the discursive aspects of societal disparities and inequalities" (MEYER in MEYER & WODAK

2001:30). Furthermore, because I am dealing with non-recognition, the type of analysis I make highlights discursive manifestations. Recognition (or not) is an abstract object that, as we saw in section three, can also bring with it questions of hypocrisy, asymmetry, contestation and uncertainty that are, similarly, intangible. Hence, it is somehow possible *to see them* through discursive manifestations of "power, hierarchy building, exclusion and subordination" through the tools of CDA.

Those discursive manifestations are thereby practices reconstructed by means of *social representations* which are, in turn, the evidences I collect for the analysis. As defined by Neumann, representations are devices to account for meaning by language, which variation indicates belonging to different discourses and social groups (NEUMANN in KLOTZ & PRAKASH 2008:70-73). As quoted by Meyer:

> "Serge Moscovici (1981) coined the notion of social representations as a bulk of concepts, opinions, attitudes, evaluations, images and explanations which result from daily life and are sustained by communication. (…) Social representations are bound to specific social groups and not spanning society as a whole. They are dynamic constructs and subject to permanent change. (…) Van Dijk names three forms of social representations relevant to the understanding of discourse: firstly knowledge (personal, group, cultural), secondly attitudes (not in the social-psychological understanding), and thirdly ideologies. Discourses take place within society, and can only be understood in the interplay of social situation, action, actor, and societal structures" (MEYER in MEYER & WODAK 2001:21).

Subsequently, I describe what the cases are, how they fit the selection and how I assessed them.

3.5.1.
Cooperation Programme between Latin America, the Caribbean and the European Union on Drugs Policies (COPOLAD)

The case is a process of apparently successful diffusion of NPE as foreign policy that,

when seen with dialogical lenses integrating CELAC's social representations, reveals that convergence of norms and behavior happened rather because of conditions and parameters of Others than because of NPE as foreign policy. Moreover, I focus on how

the EU articulates difference and contestation through its instruments and mechanisms – here I have reasons to believe that it fostered non-recognition of the discourse portraying NPE as identity. Consequently, NPE as identity politics, which cannot question its extraordinary nature, can undermine the attractiveness of NPE as foreign policy exactly due to its tendency to see itself confirmed when meeting the Other. In the long run, missing recognition will inevitably affect its identity politics.

The data I used to assess the case relied mainly on: nineteen semi-structured interviews with ten Latin American representatives, four officials from international organizations (CICAD/OAS, EMCDDA, UNODC), three European representatives, and two from COPOLAD; official documents of COPOLAD available in its web site[60] and provided by practitioners; work material produced by the EMCDDA available in its web site[61]; sources of national drugs policies of Peru, Portugal, Bolivia, Guatemala, Chile, Uruguay, Ecuador and Czech Republic provided by representatives; and participant observation in the COPOLAD 2nd Annual Meeting on National Drugs Observatories for one week, in November 2017 (Lisbon, Portugal).

Throughout the Meeting and interviews as well, I identified the discourses that frame the cooperation project, with their meanings and representations in Latin American and European stakeholders' statements. In order to contrast frames, I assessed representations through selected concepts, general policy orientation and examples of contestation with support of the work material and official sources both from the EU and Latin America. Parameters and conditions of the typology are reflected in those representations, giving materiality to the distinction among frames that take part in COPOLAD.

Participant observation is another tool of CDA applied in this case as well, "a particularly effective way of exploring the difference between the 'frontstage' and 'backstage' – between formal, idealized accounts of a culture, and the messy divergences of actual practice" (GUSTERSON in KLOTZ & PRAKASH 2008:100). Socialized with Latin American, Caribbean and European representatives, OAS, EU and UN practitioners in COPOLAD (totalizing ninety-one people) during the 2nd

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[60] http://copolad.eu/en/actividades/ficha/11
[61] http://www.emcdda.europa.eu/

Annual Meeting on National Drugs Observatories, I was able to see those social representations sustained by communication, to learn about the construction of their perceptions on the ground, and to ultimately change my own perception regards drugs policies in Latin America. Through semi-structured interviews conducted during the Meeting and before it, by Skype, phone and e-mail, I could raise common expressions, compared words and 'translated' spontaneous reactions to specific questions that sometimes starkly diverged.

Besides a set of elementary questions regarding the period of working with drugs policies, his/her position in National Drug Secretariats, and features of his/her participation in COPOLAD, I drew a 'branched chain' of questions according to their interests and identities. Informal conversation has been also a valuable resource, as we exchanged ideas and impressions about the Meeting's dynamics that lead me to grasp more nuanced representations of their frames. Overall,

> "I came to think of myself as having conversations not just with unique individuals, each fascinating in his and her own right, but also with a single entity: a discourse community. As these unfolding conversations suggested recurrent discursive themes, news avenues of inquiry, or newly evident lacunae in my own understanding, so the questioning shifted (…)./ Ethnography (…) holds the promise of a human(e) science that seeks objectivity without objectifying its subjects, that balances rigor with reflexivity, and *understands that human action cannot be investigated apart from the local meanings attached to it*" (op.cit.:104/113).

In sum, convergence of policy and norms are of limited relevance to see recognition of NPE as identity project. Indeed, the degree of non-recognition varies, as it also varies the degree of effectiveness of policies amidst CELAC countries. It is within the representations of Latin American countries mostly in regard to their parameters of interaction with the EU and the conditions of diffusion that (non-) recognition and other related concepts such as power asymmetries and hypocrisy are rooted.

3.5.2.
The Human Right to Health: the EU-Brazil dispute over global access to medicines

In the case of human rights, the Brazilian normative position is performed by resistance to NPE as foreign policy in relation to global access to medicines. Resistance reveals opposing representations and frames that characterize Brazil and EU's parameters and conditions throughout the period of negotiation and advocacy. It substantiates the political dilemma: if the EU keeps faithful to its own project, it attests to its powerlessness. If the EU changes its strategy towards effective diffusion and overcoming of resistance, it puts its distinctiveness into question.

Different from the cooperation project for which I searched for a number of interviews and drew a set of elementary questions to situate myself with the interviewee background, for this case on access to medicines I searched for few specialized individuals from different 'speech places' to conduct more extensive conversations. I previously knew my interviewee's background and had to study about their past-present activities on the field in order to formulate concrete questions, and to interact with their narratives.

The case develops in a chronological path through representations of the actors themselves (not only Brazilians) collected by sources of diverse natures, such as: interviews with people that act in specific 'frontlines' – Government, experts, practitioners, activists, scholars, patients; statements, images and reports focusing on Brazil yet not suppressing rich contributions of other Southern countries. I relied also on NGOs and media sources that exhibit the prominence gained by the issue among a broad range of social sectors. Brazilian resistance was mainly represented by the engagement with EU's arguments in multilateral forums.

Mostly because of the crucial role of Ambassador Roberto Azevedo, I choose to unfold the EU-Brazil dispute *through* his statements within the WTO and the TRIPS Council during the 'high peak' of 2008-2010, always followed by the EU responses. This was indeed the course of action: EU representatives were not much careful with the apprehension of the Indian cargo intended to Brazil since the outset – it seemed a

legal routine action of the border customs, so they were reactive to the Brazilian interventions.

With regard to Ambassador Celso Amorim, who was the Brazilian representative to the negotiation of the Doha Declaration on TRIPS and Public Health in 2001 and still has a prominent role in the field as the current Head of UNITAID, I choose significant interviews and declarations given between 2005-2017 and released to the public, in order to capture distinct phases of the resistance. As the Brazilian Chancellor between 2003-2010, Mr. Amorim has a 'branched' and intense participation representing Brazil on the promotion of global access to medicines, displayed by his speeches from meetings with Indian Ministers before the WTO dispute settlement to the recent UN High-Level Panel on Access to Medicines, in which Mr. Jorge Bermudez from Fiocruz was another Brazilian member.

Brazil's contestation as a critical engagement with EU's normative standpoints has impacted the EU self-perception to the extent that it demonstrated few changing actions towards Southern demands (open consultation, altering regulation), but yet was not able to overcome such resistance. Certainly, Brazil does not have the same economic *power to* threat the EU as the EU has and usually makes use, and this is one reason for Brazil having look at other power resources. The EU did not have an effective diffusion strategy and Brazil made a case for resistance, or "diffusion from below" through normative applicatory discourses of contestation that were able to find some degree of consensus with the EU.

3.6.
Conclusion

The EU has become aware that its foreign policy, under the banner of NPE, is met with more and more resistance. On the one hand, EU scholars had established the importance of external perceptions to advance the coherence between EU foreign policy and international identity since early 2000s when, according to Chaban & Holland, the specific field of EU external perceptions emerged (in JORGENSEN et. al. 2015:676). On the other hand, the EU has also launched initiatives to make it less top-

down, seeking to increase the quality of its global actorness and to pursue stabilization internally. In 2006, the first empirical project on 'EU external images' fully founded by the European Commission in the scope of FP6 started. Over the last ten years, the recognized importance attributed by the Commission to the role of Others' perceptions in the EU external governance has been growing.

However, in practice, the outputs of such iniatives appear to have troubles to be realized. Why is it so hard? The thesis explores this idea and provides an analysis of mechanisms that could potentially explain why NPE, understood as a foreign policy, runs into systematic dilemma in relation to its identity project. A first dilemma is political. If it faces resistance, it either overrules it, thereby undermining its status of a 'different' type of foreign policy that is depicted in its discourses; or it does not, and then does not succeed in its aim of norm diffusion.

But a more profound dilemma is connected to the fact that NPE is not just a foreign policy – it is also a central component of the EU's identity project. Even if norms are diffused and policies converge, NPE may not be recognized as the superior identity to which the international order should strive. The EU's identity project is driven from othering its own past and, currently, has difficulty to read resistance and contestation as propositions of how to improve its foreign policy. Hence, this non-recognition especially by countries like in Latin America that share, in principle, the same values poses a problem for NPE as identity.

In its extreme case, a successful NPE as foreign policy may undermine the ontological security of NPE as identity because the non-recognition may show that NPE is not self-evidently a superior identity. Given its identity discourse, the EU tends to read non-recognition as either miscommunication or an expression of an 'old' non-normative power identity. But what happens if it is done by countries sharing the same values?

In order to explore these dilemma, the thesis needs to provide a different conceptual framework that so far has been used in the study of norm diffusion. For this, it proposes three main steps. First, it is important to understand that NPE as foreign policy and as identity project cannot be thought independently of the Other. Processes of norm diffusion are no unilinear and one-directional, they have to be conceptualized

as dialogical and negotiated. Norm reception is thus an integral part of the diffusion analysis: as long as we do not know the reception of the mechanism, we cannot even know whether the diffusion was due to NPE as a foreign policy or feeds back into the recognition of NPE as an identity project.

Second, to clearly distinguish norm diffusion as pertinent to NPE from other similar processes, it suggests a central distinction between diffusion and transfer, explaining the variances between each one. Third, it proposes to integrate the Others' reactions (rejection, resistance, adaptation, adoption) and perceptions regarding EU modes of interaction into the very analysis of the process, through endogenizing their parameters and conditions of diffusion.

In order to shed light on those specific processes that may give rise to the two dilemma mentioned above, I have chosen the empirical analysis of two processes. They need to be cases where non-recognition happened. The aim is not to provide a general theory of NPE's success or not, or of the general causes for recognition or non-recognition, but to explore whether one can reconstruct processual paths that start from NPE as foreign policy and then end up in either of the two dilemma. I have chosen one case where non-recognition is visible in resistance, but also one case where it happened in apparent acquiescence.

The actual empirical analysis of those cases needs therefore to specify the policy initiatives of the EU (NPE as a policy), assess the interaction with the Other in the process with regard to norm diffusion and establish whether or not recognition has been indeed refused. These would be a necessary and probably sufficient condition for the first political dilemma. It would be a necessary but perhaps still not sufficient condition for the second more profound dilemma. This said, if the EU becomes aware of its non-recognition, it is put before either seeing this as an aberration that will be remedied over time or as a potential threat to its ontological security. It is hence stuck and may not change its approach, either because it would not be needed (just a question of time) or because it would be threatening its identity discourse.

The material for the analysis to assess policies and norms in their diffusion and recognition is based on official sources, interviews and participant observation, so as to reconstruct the social representations that drive the processes – from both sides. This

way, I derive causes of NPE dilemma from the EU modes of interaction targeting how difference and contestation were articulated, tentatively explaining why the outputs of the agenda on EU external perceptions are so hard to be realized in NPE as foreign policy.

3.6.1.
Introduction to the empirical part

Among studies of external perceptions of the EU that include Brazil and/ or the so-called Global South [62], we find a general conclusion that NPE is seen as an instrument of perpetuation of hierarchical relations, as illustrated in the quotes below:

> "The EU's determination to project its values and norms is seen in Brazil as problematic because diffusion of norms and dialogues are one-way. Such an excessive will of the EU and vertical relationship is a problem" (*PPMI/NCRE/NFG Consortium, Final Report 2015:75*). The EU "was rarely seen [by the strategic partners] as a norm-setter across the building blocks of the public opinion survey, media analyses and elite interviews" (*PPMI/NCRE/NFG Consortium, Executive Summary 2015:6*);
>
> "(…) by far the most recurrent images of the EU [according to the emerging powers' perceptions] have to do with its economic might rather than its political role (…). At the same time, such a generic recognition of Europe's unquestionable weight in international trade lives side-by-side with a harsh criticism of its commercial policies and negotiating stance in the main international forums" (FIORAMONTI in RENARD & BISCOP 2012:153);
>
> "It seems that the uniqueness of the EU as a global actor permeated by values such as solidarity, sustainable development, human rights promotion and the like, which is very common in the EU rhetoric, is belied by the common perceptions of the leading nations of the global South" (FIORAMONTI & POLETTI 2008:178).

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[62] Dominguez 2010; Fioramonti in Renard & Biscop 2012; Sandrin & Hoffmann 2016; Biato 2004; Gonzalez 2004; Ferreira-Pereira 2015; Fioramonti & Poletti 2008; Saraiva 2012; Gratius 2011, 2012; Chanona in Lucarelli & Fioramonti 2010; Poletti 2007, among others.

Moreover, in the eyes of BRICS countries, "(…) the idea of the EU as a 'normative power' is clearly limiting its relationship with these emerging powers: the latter have their own normative strategies and the EU has little room for maneuver in bilateral and multilateral negotiations" (SAUTENET in RENARD & BISCOP 2012:123). Lastly, in the eyes of Brazil, the EU is clearly interested in keeping the status quo of multilateralism and, thus, is not perceived as a potential partner for Brazilian revisionist aspirations of greater multipolarisation of international decisions (SARAIVA 2012; GRATIUS 2011).

At the same time, Brazilian actors (policy-makers, business representatives, scholars), for instance, do not deny the historical and cultural ties with Europe, which play a great role in their partnerships. Shared norms and values, such as democracy promotion, institution building and peacekeeping, are strongly recognized as well as the EU global influence on education, sustainable development and trade. My empirical goal in the next two chapters is to explore the paths through which one can observe dilemma of NPE in relations with countries that, in principle, share the same values and norms with the EU, and have no opposition in recognizing NPE as identity project. Respectively through a specific project and issue that reveal how the EU is perceived in Latin America, I substantiate how such perceptions, informed by their systems of meanings and supplied by NPE as foreign policy, might undermine NPE as identity.

As explained in Chapter 3, the following cases seek to explain processes instead of outcomes, although they are informed by a potential equifinality that is the non-recognition of NPE as a superior identity. Through an inductive analysis and the subsequent cross-case comparison, I show the NPE dilemma in practice: in the first case of development cooperation, external non-recognition of NPE as identity emerges from how diffusion worked, as understood by the EU in its foreign policy strategy. In this case, even an apparently successful diffusion – that is read out of convergence of norms and behaviors by the EU – is proven to *not* lead to external recognition of NPE as identity due to how the EU grasp contestation and differences during interactions with CELAC countries.

In the second case of human rights, Brazilian resistance to NPE as foreign policy and non-recognition of NPE as identity leads to the political dilemma: if the EU

overrules resistance, it is attesting for reconsidering its norms that are the building block of its identity discourse. If it does not, it is attesting for the powerlessness of its foreign policy, not succeeding in its main goal of norm diffusion.
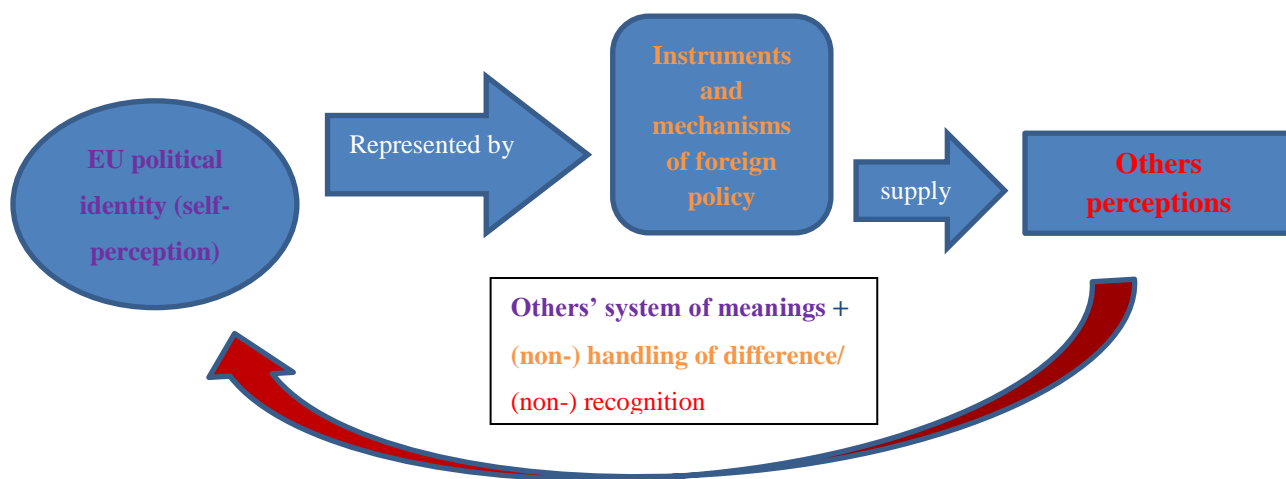
Figure 5: The chain of NPE applied to the cases

Colour code:

Orange: case of diffusion, development cooperation – there is no resistance to NPE as foreign policy, but non-recognition emerges from how diffusion worked, as understood by the EU. It is a case of deep power asymmetries and inequalities between the EU and CELAC, and also within CELAC. Therefore, those differences entail CELAC's applicatory contestation (changing normative interpretations to localize norms and approaches into different contexts), and are read by the EU with hostile lenses, strengthening its sense of exceptionalism.

Purple: case of resistance, human rights – there is resistance to NPE as foreign policy yet the main clash emerges from self-perceived identities, represented by different interpretations of norms since the onset. Brazil manifests its resistance to NPE as foreign policy through the engagement with the EU identity discourse, what makes the EU end up in a political dilemma of either overcoming resistance to diffuse, or keeping faithful to its norms and attesting to a non-effective foreign policy.

Red: non-recognition of NPE as identity as potential equifinality for both cases.

As we saw in the previous chapters, the EU is an international agent that acts mainly through institutions and the rule of law, for which norms and values are power resources. Diffusion is hereby a foreign policy strategy towards the ultimate expectation to achieve external recognition of its perceived identity, i.e. a legitimate normative actor. Actually, the Others' recognition is not only result of diffusion, but condition for norm diffusion to work.

In what follows, I present two examples within the EU relation with Latin America in fields of ultimate importance for the EU due to its claimed high potential to diffuse norms and values. In development cooperation and human rights, NPE as foreign policy strategy is largely considered successful by European scholars and practitioners because they see diffusion going on in most of the events. In parallel, such success represents the tendency to see external recognition of NPE as identity project. Yet, following the theoretical discussion, I argue that such tendency covers crucial tensions between NPE as foreign policy and identity that may undermine the last.

To substantiate my argument regarding the existence of NPE dilemma, an in-depth analysis internalizing Latin American perceptions and systems of meanings is another input of the present study. Among the three regions comprising the Global South, Latin America is close to Europe in terms of norms, principles, values and beliefs, i.e. the 'Western civilization', and in terms of economic development, it might be considered the most 'developed region' when we do not target single countries like China. For those starting reasons, Latin America already sets a great challenge for NPE scholarship and policy-making to grasp what goes wrong in terms of foreign policy and recognition.

Therefore, I target Latin American's perceptions and Brazilian's ones in each case, respectively, developing the hypothesis that the overarching inability to solve the dilemma likely rests on NPE very nature, which is related to a Eurocentric mode of exercising power that perpetuates hierarchical understandings of difference and diffusion. Both hypotheses and leading points (or causes) of NPE dilemma will be thereafter discussed in the Conclusion, with the cross-case comparison.

Employing a framework of analysis that carries an operationalization of dialogical processes as exposed in Chapter 3, the observation through the categories of

the typology allows me to better grasp those two processes, specifying what causal pathways operate in each case turning out in either of the two dilemma. I do not take the typology as the final point but rather as a start to the empirical analysis. Therefore, I need to translate the typology into research steps, which are specified in the beginning of each empirical chapter.

It is important to note that the present analysis – in light of such theoretical discussion that brings the politics of norm reception as an integral part of diffusion and the EU ontological security – offers a unique exploration of new pathways for understanding what is actually going on in NPE norm diffusion. It is thus an explorative exercised informed by theoretical choices, which let me assume that they have a chance to be superior to existing interpretations.

However, I do not assume that my choices are exhaustive. There might be potentially different pathways themselves where external non-recognition of EU identity is overlooked in interregional policy diffusion. To substantiate such theoretical choices and indicate the leading points to the dilemma, in the Conclusion I fill the typology in terms of concrete questions I would like to see answered in the empirical analysis.

To sum up, in the typology, the unit of analysis is *NPE as a process of Foreign Policy and Identity Construction*; the specific outcome of the processes when meeting the Other is *external non-recognition of NPE as identity*; the two types of processes, *diffusion and resistance*, should provide variation for understanding the process itself and its outcome. NPE dilemma are substantiated by explaining how mechanisms, parameters and conditions comprise distinct causal pathways in each case, entailing equifinality. Lastly, I add the category *causes of NPE dilemma* related to EU modes of interaction that inductively suggests *why* EU policies may undermine Others' recognition even when they appear to be effective – this category I discuss in the conclusion of each empirical chapter, in light of the respective analysis.

4
Inquiry of NPE by CELAC in the field of development cooperation

The Community of Latin American and Caribbean States (CELAC) as an intergovernmental community assembling thirty-three sovereign states was formally created in 2011 through the Caracas Declaration[63]. CELAC replaced the 'Rio Group' (Permanent Mechanism of Consultation and Political Coordination) – created in Rio de Janeiro in December of 1986 in order to contribute to "central issues of the regional and global agenda in accordance with the highest aspirations of our countries; as well as the impetus given to cooperation, integration and development in the region" (Caracas Declaration 2011:1) – with the aim to "promote and project a unified voice for Latin America and the Caribbean in the discussion of the principal issues" (op.cit.:3) in international meetings.

Although the low level of institutionalization and lack of legal and financial structures in CELAC is inevitably mentioned in the academic literature and policy studies [64], it is worthwhile to notice that the Community was determined to enhance regional integration through dialogue and political negotiation taking into account core principles of sovereignty like self-determination, non-interference, territorial integrity, prohibition of threat and force. Therefore, CELAC seems to be not inspired by any external organization or union but by demands emerged in the region, basically attending for countries' intention to deepen cooperation through a mechanism of dialogue and consensus, representing a 'highest expression of our will for unity in diversity' (op.cit.:9) while respecting the principles of flexibility and voluntary participation of members. CELAC's instruments are Action Plans agreed in annual summits and a Statute of Proceedings as an integral part of the Caracas Declaration.

It is currently the broadest dialogue platform among few other initiatives existing in the region (ALBA, ACN, CARICOM, MERCOSUR, UNASUR) that,

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[63]http://www.pnuma.org/forodeministros/19-reunion%20intersesional/documentos/CARACAS%20DECLARATION.pdf
[64] See, for example, the paper requested by the European Parliament's Committee on Foreign Affairs 2017:49; also MALAMUD, A., SEABRA, P. in Telò, M., Fawcett, L. and Ponjaert, F. (eds.) 2015: 325-336.

ultimately, reflect how states seek to address their differences and similarities concerning identities and interests, both intra and inter-regionally. Based on the analysis of official sources produced by CELAC, I suggest that it is the picture of how Latin American and Caribbean countries see themselves *before* thinking on how to interact or present such picture to the external world – it is an inward effort of constructing a 'zone' based on reflexions about assuring autonomy after the centuries of Northern domination and exploration, mainly driven by a growing sense of identity articulation around eradication of poverty, human rights and sustainable development. Hence, "perhaps the most relevant feature of CELAC is that it modifies expectations and incentives for the lining up of positions and, in its own case, collective action of the region within the 'unionist' identity framework and the matrixes of its member's' foreign policies" (SANAHUJA 2015:32).

In its 5th Summit (Punta Cana, 2017) participating countries reiterated CELAC as a mechanism of agreement, unity in diversity and political dialogue based on consensus, flexibility and voluntary participation, convening about several topics from security to poverty covering environment, gender, education and development[65]. In the Action Plan, the world drug problem is tackled with reference to the seven operative recommendations of the 2016 UNGASS[66], and cooperation has focused on South-South and Triangular under the coordination of the CELAC Working Group of International Cooperation.

In turn, the external view of the EU on CELAC might be seen, among other policy studies, in the European Parliament's paper[67] which assumes that the "EU-CELAC partnership can be defined as an *hybrid* interregional relationship between a

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[65] The list of topics encompasses: international peace and security; transparency and the fight against corruption; citizen security and the fight against transnational organized crime; food, nutrition and eradication of hunger; financing for development; tax cooperation; sustainable urban development; gender equality; education; youth; promotion of information and communication technologies; disaster risk management; climate change, environment and biodiversity; chemical substances and waste; world drug problem; development of innovation, science and technology; culture; cooperation; trade; migration; transnational and human rights; decolonization; relations with extra-regional partners; participation in international fora; multilateralism and reform of the UN; and strengthening of the Community. See Political Declaration of Punta Cana available in: http://www.itamaraty.gov.br/images/ed_integracao/docs_CELAC/DECLPOL.2017ENG.pdf

[66] (https://www.unodc.org/documents/postungass2016/outcome/V1603301-E.pdf)

[67] http://www.europarl.europa.eu/RegData/etudes/STUD/2017/578028/EXPO_STU(2017)578028_EN.pdf. In time, the European Parliament's paper entitled *'The EU-Latin American Strategic Partnership: state of play and ways forward'* was written by five European professors and researchers from the University of Leuven (Belgium), without any collaboration of Latin American experts.

highly institutionalized organization and a regional bloc with little institutionalization or permanent structures" (p.49). Such definition leaves space for grasping that i) the respective level of institutionalization of each party entails a correspondent level of internal hybridism; i.e. the EU is less hybrid because it is more institutionalized, and vice versa; ii) the hybrid character of the partnership derives from different levels of institutionalization of each party, overshadowing the internal composition of them; and lastly, iii) that CELAC represents a sort of 'unfulfilled organization', merely a bloc that aims but could not yet reach the high levels of arrangement stipulated by the EU in order to give an institutional character to the partnership.

I disagree with the abovementioned assumption on the view of CELAC as institution and, instead, I claim that hybridism and asymmetry as well have several faces within the practices of the EU-CELAC partnership: practices that seek for commonalities among hybrid actors that count on twenty-eight and thirty-three different world visions and political will, respectively, and the stamp of domination in their histories. Practices that deal with economic asymmetries and income inequalities on both sides of the partnership, as well as asymmetry as an intended consequence of the past and an unintended, but perhaps expected perception of the present.

That said, the forthcoming empirical analysis stresses those several faces of hybridism and asymmetry within the practices of COPOLAD, which is the case study. They are directly related to how CELAC actors observe the partnership on drugs problems and how the EU handle the existence of differences and contestation. Moreover, the extent to what recognition of NPE as an identity could be the case is at the interplay between the effect of NPE as foreign policy on CELAC' system of meanings and their cultural backgrounds that constitute the partnership. My goal is to reflect on EU identity and recognition from CELAC's perceptions yet rationalizing them in their own terms, that is, considering what CELAC is for those actors and how they seek to jointly act within the partnership with the EU. This is a novel interpretation of COPOLAD that traditionally sticks to EU terms, that is, expectations, diffusion, and effective outcomes.

According to the previous framework to analyze diffusion as a dialogical process, the guiding question at hand is thus *'how to explain the 'invisible' non-*

recognition of NPE as an identity from CELAC through a case of 'visible' diffusion of EU norms and policies? Through an inductive observation that I streamline thereafter, I show that external non-recognition of NPE as identity emerges from how diffusion worked, as understood by the EU in its foreign policy strategy. By being dependent on the self-understanding of the EU, diffusion is proven to *not* lead to external recognition of NPE as identity.

Therefore, the chapter is structured as follows: first section is meant to expose what is COPOLAD, indicating some evidences that it fits my case selection, rooted in its structure and features. It is a process through which there is no resistance to NPE as foreign policy but external recognition of NPE as identity does not happen. In section two, I streamline how I conduct the analysis, i.e. what I need of the distinctions in the typology to make the empirical point. Sections three, four and five tackle concrete issues of the Programme through the method of critical discourse analysis, through which I observe the process that leads to non-recognition and, hence, to the NPE ontological dilemma.

In section three, I tackle the very nature of COPOLAD, contrasting a broad scope of perceptions and representations from the EU and CELAC. Those representations have to do with the components draw from the typology, locating different standpoints relevant for the following sections. In sections four and five, I deal with the alleged "EU mode of selective interaction" and the Alternative Development approach, respectively. In the Conclusion, I wrap up how this analysis understands therefore mechanisms that include dialogicality in practice, substantiating my arguments and hypotheses.

4.1.
Background and state of the art of EU-CELAC relation regarding development cooperation

The framework for EU-CELAC development cooperation officially stated in Brussels Declaration *"Shaping our common future: working together for prosperous,*

cohesive and sustainable societies for our citizens"[68] starts with the assertion that "Our bi-regional dialogue and cooperation is based on shared values and a shared conviction that our interests are tied together in an interconnected and interdependent world. (…) We welcome recent developments of cooperation in CELAC based on the principles of unconditionality, solidarity, mutual benefits, and voluntary participation, among others" (2015:10-11). Would those principles be part of developments of cooperation in EU-CELAC strategic partnership as well?

Concretely, the Action Plan 2015-2017 sets five cross-cutting topics central to EU-CELAC development cooperation, under the commitments to "eradicate poverty in all its forms and achieving sustainable development in its three dimensions, that is, economic, social, and environmental" (Brussels Declaration 2015:6): education and employment; citizen security and gender; regional integration and migration; environment, biodiversity and energy; and the world drug problem[69]. Despite the long list of joint programs and initiatives, tangible outcomes remain more visible through the lenses of bilateralism.

Association Agreements, an Economic Partnership Agreement with Caribbean countries and Free Trade Agreements[70] gravitate around the EU-CELAC partnership, raising huge criticism about the EU *real* interests behind the rhetoric of cooperation and support to regional integration in Latin America. It is argued by Alberto Arroyo Picard et.al. that the kind of integration envisioned by the EU is embodied within those liberal agreements which, in turn, contrarily to favor consensus, intensify divisions and do not converge with proposals of Latin American social movements and Governments regarding block-to-block negotiations, as the case of EU-ACN negotiations towards the AAs is perhaps the most emblematic (PICARD et. al. 2009:16-18).

> "The AAs proposed by the EU seek to consolidate a development model in the region based on the logic of free trade and agro-exports from LA to the EU. This model also opts for the privatization of public companies, the deregulation of investments and free reign to transnational

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[68] https://www.consilium.europa.eu/media/23753/eu-celac-brussels-declaration.pdf

[69] See also the European Parliament's paper 2017:51, Table 1 'The 10 chapters of the EU-CELAC Action Plan and related initiatives' (Action Plans 2010, 2013, 2015).

[70] Currently, the EU has AAs and FTAs in force with Mexico (2000), Chile (2005) and Brazil (2007); provisionally applied with CARIFORUM (2008), Colombia, Ecuador and Peru (2013), and Central America (2013); and being negotiated with MERCOSUR since 2000.

> corporations, the development of mega-infrastructure projects to facilitate exports, and mono-crop agriculture. It is a model that the peoples and some LA governments reject today, because it undermines the possibility of building an alternative integration" (op.cit.:47).

With regard to FTAs, Mexico for example makes the case for minimized benefits in trade relations of the strategic partnership with the EU. As the first country in CELAC to set a free trade agreement with the EU, Mexico attests for the results: the country's trade sector continues to be dependent on the US and the EU has not stimulated Mexico's economic development as it was expected by local leaders. The FTA is criticized by the profit gap favoring the EU; the highly-concentrated EU investments in services, implying low levels of technology transfer to Mexico; and the omission of democratic and human rights practices in trade policies (SBERRO and RENARD, Workshop Report 2015; CHANONA 2009:7-13).

Therefore, we have reasons to suppose that the little institutionalization of CELAC and deep asymmetries in the bi-regional relationship *do not* explain limits and challenges to the implementation of joint initiatives nor the fulfillment of expected objectives of development cooperation. There are crucial reasons on the level of perceptions, both regarding each party and the partnership itself, that remain under-evaluated, leaving the blank of what could be a successful narrative to orient practical decisions.

Those reasons are visible for the ones that work with the promotion of the bi-regional relationship, like the EU-LAC Programme Manager [71] I interviewed in Hamburg on 6th October 2017, at the Foundation's headquarters, who analyzed that:

> "It is a moment of rebalance. LAC raised its political role. It is assuming a more visible, articulated and steady identity. It is diversifying actors and projects in their foreign policies. The EU-LAC cooperation is opaque because the EU has nearly no information about LAC but an excessive impetus for coordination. EU system lacks transparency and institutionalization is strong, it becomes difficult to follow for LAC countries. When the EU launches some compilation about the LAC region or the 'strategic partnership', often information is communicated and not jointly constructed. Consequently, studies reflect gaps in knowledge that surely impact on practices. The EU seeks for legitimacy. It aims to

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[71] EU-LAC Foundation, Programme Manager - Generation and Transfer of Knowledge at the Service of the Bi-regional Partnership.

> set shared interests to convince others on how to act on these interests. It is discursively clear from LAC positions that top-down approaches do not work, and that horizontal dialogues are the only way to move forward yet in practice it is different. LAC does not embrace EU values as a whole. The EU has money, it is asymmetrical how it is able to project its values via material resources. LAC insists on EU fragilities underlining its internal situation to show that problems are everywhere, and the idea to be a model is what makes the others to look for and show the EU its own problems".

Wolf Grabendorff, currently Director of Friedrich Ebert Foundation in Quito, endorses the Programme Manager's perception, writing that: "The lack of transparency and coordination within the EU have undermined trust in bi-regional cooperation, as it affects the sensitive issue of national sovereignty. (…) By now, the so-called EU-CELAC strategic partnership did not lead to a convergence of interests neither to a recognizable normative compatibility (…)" (GRABENDORFF 2012:32-33). José Antonio Sanahuja, in turn, stresses the idea of CELAC's changing attitude and call for more horizontality in the partnership: "even though Latin American and the Caribbean continue to be developing regions, they call for a more balanced relationship and new associations that are more horizontal, particularly in cooperation for development and its traditional North-South logic. (…) This is why a methodical political dialogue between the EU and CELAC, conceived as a space for socialization and mutual learning, is so relevant" (SANAHUJA 2015:31/34). Lastly, Anna Ayuso and Susanne Gratius affirm that "compared to the 1980s, when the EU just started its dialogue with the region, Europe has today less presence and influence in Latin America. The normative power of a more vulnerable EU is weaker, and LAC appears as a more cohesive, democratic and active region in the international arena" (AYUSO, GRATIUS 2016:249).

In this chapter I actively consider what CELAC countries perceive *in the making* of cooperation with the EU on drugs policies, contending that its findings are crucial to improve the quality of the partnership and, perhaps what is more, the legitimacy of the EU as a normative actor.

4.2.
What is COPOLAD and why would it be a significant case study?

At first, I contextualize COPOLAD within the broad spectrum of the European Commission's responsibilities and bodies of action. The present case takes place within a policy area of great relevance for the EU due to its large capacity of mobilizing resources and global outreach of engagement. According to DG DEVCO (The Commission's Directorate-General for International Cooperation and Development), international cooperation and development "is a cornerstone of EU relations with the outside world and contributes to the objectives of EU external action – alongside foreign, security and trade policy"[72], as "Europe is a global leader in development, being the world's biggest provider of Official Development Assistance" and has also a leading role in shaping the international agenda of financing for development.

In June of 2017, the EU launched a Joint Statement outlining the future of European development policy entitled "*New European Consensus on Development*[73] [that] represents a new collective vision and plan of action to eradicate poverty and achieve sustainable development". In this sense, we can say that International Cooperation and Development is a policy area targeted by the EU towards increasing its legitimacy and international role by means of an array of instruments[74] such as blending, the European Development Fund, Development Cooperation Instrument, grants to support projects and organizations, public contracts, budget and sector support, research programmes (Horizon 2020) and regional projects. As a EU norm, instruments are allocated geographically, according to countries, regions and territories' level of development, and mechanisms follow different logics as well like the eligibility criteria and principled conditionality[75].

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[72] https://ec.europa.eu/europeaid/policies/european-development-policy_en
[73] https://ec.europa.eu/europeaid/sites/devco/files/european-consensus-on-development-final-20170626_en.pdf
[74] For an overview of all EU Funding Instruments: https://ec.europa.eu/europeaid/funding/funding-instruments-programming/funding-instruments_en
[75] For instance, in LAC, "the shift in focus brought by the 'Agenda for Change' and in particular through its *differentiation approach*, resulted in the discontinuation, as from 2014, of bilateral development aid to eight countries in Latin America and one in the Caribbean: Argentina, Brazil, Chile, Costa Rica, Mexico, Panama, Uruguay, Venezuela and Bahamas". Such 'shift in focus' meant the political will of the EU to adapt to 'the new global poverty landscape' applying the differentiation approach. See study requested by the European Parliament's Committee on Development entitled *"Criteria for Differentiation and Methods for Phasing Out EU's Development*

COPOLAD was launched in 2011 entirely funded by the European Commission with a budget of 6.5 million Euros for a time-frame of four years. After the completion of this first phase, the continuity of cooperation with the EU on drugs policies was demand-driven by CELAC and promptly agreed by the EU at the II EU-CELAC Summit held in Brussels in 2015, on the basis of four reasons: "supports the development of consensus processes; helps to implement a sustainable demand-driven strategy on Drug Demand Reduction and Drug Supply Reduction; encourages bi-regional dialogue on drugs policies; and enhances the role of National Monitoring Centres"[76]. Hence, COPOLAD II was extended for more four years, with the EU total grant of 10 million Euros in its second phase started in January 2016.

The programme is mainly oriented by the principle of shared responsibility between all concerned stakeholders in the EU and CELAC countries, the evidence-based approach, and activities and initiatives contained in the EU-CELAC Action Plan 2015-2017[77] like technical assistance; coordination on prevention, treatment and rehabilitation; regional development of areas inclined to be drug producers; strengthening regional security structures; law enforcement; institutional capacity-building at both political and technical levels; and exchange of information regarding legislative and administrative treatment.

It has four covering components in order to achieve the goals of national institutional strengthening in CELAC and enhancing of bi-regional opportunities of political and technical dialogue on drug-related problems: consolidation of the National Drugs Observatories (NDO), capacity-building in Drug Demand Reduction, capacity-building in Drug Supply Reduction, and support to political dialogue and consolidation of the EU-CELAC Coordination and Cooperation Mechanism on Drugs. Moreover, each component has Working Groups (WG) that unfolds specific topics. Due to the opportunity I had of participant observation in the Meeting related to the component one (NDO), I will focus on its activities throughout the analysis.

Cooperation for the New Development Cooperation Instrument (DCI)", available in: https://www.ecologic.eu/sites/files/project/2013/LOT5_27_Phasing-out.pdf
[76] http://copolad.eu/en/paginas/por-que-una-segunda-fase-de-copolad
[77] https://www.consilium.europa.eu/media/23757/eu-celac-action-plan.pdf. See page 15.

In the 1st Annual Meeting on NDO held in Jamaica (December 2016), Argentina and Uruguay presented a study called "The situation of the NDOs in Latin America (2011-2016), and initial mapping of the situation of NDOs in Caribe", which was the reference to set up four WGs: 1.3 Early Warning Systems; 1.4 Design of studies to evaluate and validate scales and indicators of problematic drug use; 1.5 Strengthening the capacity of NDOs to produce a national report; and 1.6 Developing methodologies for a better understanding of new problems or threats. Each WG has Spanish-speaking and English-speaking sub-groups, headed by at least one country from Latin America and Caribe, and one European referent country, respectively. Activities of the WGs are to define guidelines, strategies of dissemination and working methods, to discuss indicators and countries' situation, to construct regional networks of alert and information, to support countries with evaluation, monitoring and validation, to strengthen existing institutions.

So far, by looking at its visible features – balanced operational structure and delivered products such as guidelines ("The analysis of livelihoods and Alternative Development: manual for the analysis of subsistence bases and for the evaluation of results"), institutional strengthening of NDOs in CELAC, four on-line courses[78], data base for evaluating assistance programs, directory of services in Demand Reduction, among others –, it is plausible that COPOLAD shall be a successful example of NPE. Successful in the sense that it both achieves the foreign policy strategy based on the diffusion of EU norms and principles, and subsequently underpins EU's legitimacy and identity through CELAC's recognition of NPE. Thus, why COPOLAD is a significant case study for the present purpose of analyzing the path through which external recognition to NPE as identity was indeed refused?

My goal is to demonstrate that we know a process of diffusion when we see its categories, within which contestation and resistance are included; and that such process requires a dialogic approach to assess what lies under the surface of 'effective outcomes', answering broader questions of identity, legitimacy and power.

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[78] http://copolad.eu/en/herramientas/1

4.3.
From the typology to the analysis

To recap: drawing on the four categories of the typology to explain dilemma of NPE in dialogical processes of diffusion and resistance that start from NPE as foreign policy, I set causes for the equifinality amidst both cases that comprise the empirical part. In the present case of development cooperation, the categories are mechanisms of learning and localization, their respective interactive components (adaptation and rejection), conditions (EU institutions, interdependence and domestic structure of Others) and parameters that drive the Others' actions during the process, under such conditions – legality/ legitimacy of EU institutions, international constraints and national factors.

The condition of *interdependence* and the parameter of *international constraints* play a background role in the case: on the one side, the EU needs global causes and partners to promote itself as a model and leadership in development cooperation, at the same time that CELAC produces 60% of the cocaine that arrives in Europe. On the other side, CELAC countries need investment and capacity-building to tackle drugs problems, but CELAC is not a pool of sovereignties. Above all, there are international health and security concerns for both sides – the world drug problem is a transnational issue that cannot be dealt separately.

COPOLAD is a project that represents much of what the EU understands as diffusion: it comprises the instrument of strategic partnership, is fully funded by the European Commission, is demand-driven and consensus-based that allow for the design of specific approaches, and it is oriented by historical shared values and principles that should be better explored in the EU-CELAC partnership. COPOLAD communicates the EU normative message in a good manner, is efficient in forwarding EU objectives of external action stated in its documents, and boosts the promotion of EU leadership in development and support of regional integration.

The analysis consists in put into dialogue the most significant standpoints and perceptions of a broad range of CELAC stakeholders that take part in COPOLAD with the EU's ones in order to reconstruct the process through which non-recognition arises.

It tackles specific aspects of the interaction that drive the process, guided mainly by the conditions *EU institutions* and *domestic structure of Others*, and parameters *legality/ legitimacy of EU policies* and *national factors* of the typology. Conditions and parameters are indeed relational.

For instance, in section three, I map EU policy initiatives (NPE as foreign policy) for COPOLAD and discourses about it from both sides. In section four, I mostly explore the mechanism of *learning* and its component *rejection* and, in section five, the mechanism of *localization* and its component *adaptation*. The analysis understands therefore these mechanisms as an opportunity to show dialogicality through discourses of differences and contestation.

The quotes do not display official discourses, identity or national strategy of countries but, on the contrary, I aimed at uncovering individual impressions. As I previously detailed in Chapter 3, I accessed them through interviews, informal talks, official material produced by the parties and the Programme, and participant observation by means of an engagement (questions, dialogue, reflection, group dynamics, validation of information) with concrete issues familiar for each interviewee. Interviewees embraced experts, skilled technicians, advisors, statists and analysts, all part of the respective National Office, Secretary, Centre, Council, Minister or Commission on Drugs Policies and related issues like addiction, money laundering, public safety and health, demand reduction, abuse control, illicit trafficking, prevention.

Exactly because of the same reasons and features that likely lead us to assume COPOLAD as a successful case of NPE as both foreign policy and identity, it proves the requirement of thinking beyond outcomes, moving in to the level of cultural validation, implementation and local actors' mindsets. Cultural validation is the most invisible dimension of legitimate governance according to Antje Wiener, who explains that "cultural validation adds an individual perspective to the dimensions of formal validity and social recognition (…) the conceptual innovation of cultural validation highlights the importance of context", being what "enacts individually held associative connotations" (WIENER in KESSLER et. al. 2010:208). Moreover, she underlines the relevance of observing the encounters *per se*, as:

"due to the diversity of individual background experiences which come into play in an inter-cultural encounter, the shared recognition of norms becomes less likely and, accordingly, clashes about norms are to be expected. Whether these clashes culminate in conflict, or whether they form the basis of finding shared organizing principles (such as mutual recognition) depends on how these encounters are conducted" (WIENER 2017:5).

Deliberation and consensus are part of the kind of communication enacted in diffusion, which involves the contingency of sociocultural contexts and flanking measures within those contexts are required in order to implement norms and approaches. Overall, although the European Centre on Drugs exercises NPE through many instruments (indicators, reports, studies, methods) that frame the European priorities on drugs, it is each domestic structure of CELAC countries that conditions how such instruments impact on the effectiveness of COPOLAD's outcomes. By domestic structures I mean both material and of ideas, displaying CELAC's non-standardized profile. In the next section, I map the factors of the typology, giving materiality to different perceptions and representations crucial to reconstruct the process of diffusion.

4.4.
Divergent discourses about COPOLAD

In order to observe the NPE dilemma and substantiate some of its proposed causes, I start this section by exposing main thoughts and frames about COPOLAD in the words of central EU and CELAC participants, contextualizing and exploring the frames from their speech places. I confront the same concrete issues according to EU and CELAC representations, subsequently reflecting upon what we learn from those contrasting representations for the analysis itself, informed by the theoretical framework previously developed. The representations give materiality to CELAC's perceptions that the EU has a top-down understanding of diffusion that, in turn, might hinder some of its more fundamental objectives such as validity of its norms and recognition as a role model in drugs themes.

At first, I present the words of Ms. Teresa Salvador-Livina, Director of COPOLAD, who defines COPOLAD according to the European interpretation. Thereafter, I present statements of Mr. Alexis Goosdeel, Director of the EMCDDA – the European Monitoring Centre for Drugs and Drug Addiction; Mr. Andre Noor, Head of the sector Analytical Hub at the Centre, and Mr. Danilo Ballota, from the Scientific Division, about the role, methods and approaches of the Centre[79] that reflect how COPOLAD ought to be put into practice.

Contrasting, we have CELAC's interpretation of COPOLAD, impacted by the sharp differences of working methods and achievements between the EMCDDA and NDOs of CELAC countries. The voices are of longstanding participants and thorough experts on the drugs' situation in Latin America: Mr. Héctor Suárez, responsible for the NDO at the 'Junta Nacional de Drogas' of Uruguay[80], and Ms. Martha Paredes, Sub-director of the Strategy and Analysis Subdivision of the Ministry of Law and Justice of Colombia[81].

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[79] Speeches were held in Lisbon during the 2nd Annual Meeting on NDO. Mr. Alexis Goosdeel spoke at the visit to the Centre's headquarter that happened on 14th November 2017; Mr. Noor and Mr. Ballotta had presented the EMCDDA one day before, in the conference room of Altis Gran Hotel Lisbon.
[80] Interview granted by phone in 26th October 2017.
[81] Interview granted in 15th November 2017 in Lisbon, during the Meeting on NDOs.

As defined by Teresa Salvador-Livina, Director of COPOLAD, in an interview granted by e-mail in 20 October 2017:

"COPOLAD se basa en el enfoque de la UE en materia de políticas sobre drogas. Todas las iniciativas de la UE están lejos, podríamos decir que en el polo opuesto del concepto que está detrás de la denominada "guerra contra las drogas". Por lo tanto, COPOLAD es un programa regional para América Latina y el Caribe que funciona dentro del marco de las directrices de la política de drogas de la UE. Como Ud. probablemente sepa, los siguientes documentos destacan la posición de la UE con respecto a un enfoque de políticas sobre drogas, y cómo las mismas deben partir de un enfoque integral y equilibrado que es el que impulsa COPOLAD: 'Estrategia de drogas de la UE 2013 – 2020' [1] and 'Plan de acción de la UE sobre drogas 2013 – 2017'[1].

Además del refuerzo del diálogo político y el intercambio bi-regional de buenas prácticas en el marco ya mencionado, COPOLAD I dio la oportunidad de desarrollar instrumentos de planificación, implementación y evaluación de políticas públicas basadas en la evidencia de efectividad, de alto interés para los países beneficiarios (…). Cabe señalar que desde la adopción de la primera 'Estrategia Europea sobre Drogas 2000-2004', la UE define claramente los problemas relacionados con las drogas como problemas de salud pública. Este enfoque también fue respaldado recientemente por los países de la CELAC, integrándose en la 'Estrategia de Drogas Hemisférica de la OEA 2011-15' (…).

Sin embargo, y a pesar de las iniciativas promovidas por la OPS [Organización Panamericana de la Salud], la CICAD-OEA, la ONUDD y un número notable de ONG, el ámbito de las políticas de RDD [Reducción de Demanda de Drogas] sigue siendo el área con menos desarrollo institucional en la mayoría de los países de la CELAC, con pocos recursos asignados y con pocos recursos regionales. COPOLAD es el primer programa birregional que aborda el impulso y apoyo a las políticas de RDD. Es por ello que el desarrollo de instrumentos de apoyo a la planificación, implementación y evaluación constituyó un esfuerzo clave para COPOLAD I.

Las actividades desarrolladas se enmarcaron de un plan marco y plan de trabajo general organizado a través de los Componentes marcados por la Comisión Europea para el Programa. Y la definición específica de actividades y contenidos de las mismas dentro de cada Componente se fue definiendo a demanda de los países de América Latina (únicos beneficiarios de COPOLAD I). En la planificación de COPOLAD II, se respondió a dos aspectos troncales planteados por los países de la CELAC: La inclusión de los países del Caribe, no incluidos en la fase anterior; y La planificación de actividades partiendo de un plan de trabajo a desarrollar para cada componente, estableciéndose *Task-forces* (TF) para garantizar la implementación de Grupos de Trabajo (GT) centrados en el desarrollo de las actividades."

I believe that Teresa is a very welcoming Director among CELAC members, and the Spanish leadership through FIIAPP (Fundación Internacional y para Iberoamérica de Administración y Políticas Públicas, her institution of origin) is a factor of proximity that facilitates convergences between CELAC and EMCDDA's ideas. Teresa and her small team constituted by five to ten persons from FIIAPP (Task Force, technicians, translators and logistics) are responsible for translating the highly detailed presentations and contributions coming from the European Centre into easier terms, drawing on the 'Southern way of doing things' often mentioned by CELAC's representatives.

Two ideas are important at this point: in the specific case of COPOLAD, the colonial past and historical relations with Portugal and Spain act more as a facilitating condition to interaction than as a cause of refusal to engage in communication. Secondly, Portugal and Spain reflect the division North/South *within* the EU, breaking down the 'all-present sensation' that inequalities, asymmetries and power relations are exclusive credentials of EU-CELAC interaction.

Despite the fact that, among European countries taking part in COPOLAD since the first phase – Germany, Cyprus, Spain, Greece, Poland, Portugal, Czech Republic and Romania –, only Germany is truly economic and normatively 'powerful' within the EU, in my research I identified that the other countries are barely known by CELAC. Cyprus and Greece have a limited presence, and the Eastern countries are seen under the umbrella of the EMCDDA. The Centre is the concrete representation of all kinds of power emanating from the EU, with its arsenal of techniques, information, achievements, norms, methods, reports, data and so on.

Such role became even clearer in the Meeting held in Lisbon, during the visit to the Centre's headquarter that happened on 14th November 2017. I walked together with the delegations from Colombia, Honduras, Bolivia and Ecuador that were interested to know more about the city, until the beautiful Cais do *Sodré. We* arrived in front of an impressive building where the permanent staff counts with more than a hundred of people. After the huge security control at the main door, all I heard were comments denoting how the working conditions of the European Centre were even better than expected by CELAC's delegates. Expressions such as "envidia blanca"

(white envy) and "nós damos nó em pingo d'água" (we do something nearly impossible for the conditions we have) reflect first perceptions that, in order to meet feasibility in the second phase, CELAC would have to strength *localization* of COPOLAD's inputs.

There we listened to few words of Mr. Alexis Goosdeel, Director of the EMCDDA, about the role and mandate of the Centre. Together with presentations of Mr. Andre Noor and Mr. Danilo Ballota, respectively entitled *"EMCDDA: what we collect and why. Reflections on 10 years of monitoring"* and *"The role of the EMCDDA in the definition of EU drugs strategy and of MS national policies on drugs"* that took place in the day before, we see crucial differences between the EMCDDA and NDOs of CELAC countries that heavily impact on COPOLAD.

Mr. Goosdeel: "**EMCDDA depends on and work for Member States**, so it must be proactive, service provider, result-oriented based on evidences and analysis, **and neutral as we do not issue political opinion** and moderate recommendations. We establish a technical dialogue. **We do not do policy-making**. We must always reinforce the Centre's importance because drugs became of lower priority in Europe and governments are redirecting money to other organisms. The EMCDDA is pressured to **provide information for action, strategic analysis, and to support sound decisions**."

Mr. Noor: "How? **We depend on data issued by Member States**. This raises some constraints such as **we rely on secondary rather than primary data collection**; we aggregate data under indicators rather than case level. **The strength of our products is to generate an economy of scale, standards, best practices**, and we triangulate information in order to confirm results. We also provide qualitative information from the Reitox Network that assembles 30 national focal points. We have a Workbook for which countries provide answers on agreed questions about treatment, harm reduction, markets and crime, prisons, legal framework, prevention and so on, and **that is their regular exercising of doing National Reports**."

Mr. Ballotta: "**The EMCDDA works with the development of common European indicators at the technical scientific level.** The first visible effect is a network building at the EU and national levels. We develop definitions, standards, guidelines, best practices, common terminologies that **influence by example not imposition**, promoting scientific and not ideological knowledge… **no policy-making, no advocacy.** We produce scientific events, corporate publications and articles in addition to trainings towards the promotion of a scientific culture in the field of drugs. **We have a systematic budget that guarantees the sustainability of the Centre, as it is mandatory to Member States. The effect of EMCDDA is mainly through osmosis from the technical field into policy**, a subtle and gradual absorption of a certain philosophy and concepts. We set the terminology that most of the time is used in policy-making like the adoption of technical terms and a more neutral rhetoric far from the military one of the 1990s. We contribute to the EU position in UN negotiations based on evidences, give support to EU and national evaluations, run the European Early Warning System for like twenty years. It is a snowball effect of promoting objective, factual information."

The statements mean to illustrate targets of further criticism and contestation of CELAC that are raised concerning specific issues of the Programme. Moreover, those contesting discourses reveal an understanding of differences as a feature that could potentially be an added value. Nonetheless, the EU read such critiques as a very misconception of the Programme by CELAC: as explained by Ms. Teresa Salvador, COPOLAD is thought to evolve only CELAC's NDOs, since the EU sees its Centre as a world model for supporting actions against drugs proliferation and related problems. I summarize those three statements, highlighting such targets that will appear in CELAC's contestation ahead:

On the other side of the table, we have CELAC's interpretation on COPOLAD. My first contact even before the Meeting in Lisbon was with Mr. Héctor Suárez, the Head of the NDO at the Uruguayan 'Junta Nacional de Drogas'. In an interview granted by phone in 26th October 2017, he affirmed:

"Uruguay is part of COPOLAD since the beginning, in 2011, as it is Spain. Basically, within CELAC, there are partners, shareholders. But when it comes to the EU, there is a hierarchical question. COPOLAD gains other contours: the EU is leader; CELAC is follower. Asymmetry is huge. The state of the art is that EMCDDA had developed a lot with the support of EU legislation and Member States' funding.

We accept the EU leadership because products are intended to CELAC. COPOLAD does not fund individuals, companies or research teams for example, but products that are for the use of our Drugs Commissions. For instance, trainings of EWS [Early Warning System], National Reports, manuals of good practices based on evidences, scales of 'problematic use', besides several indicators. We have to find common demands within CELAC by ourselves, because the products are the same for all. The EU might have a 'justified paternalism', but when CPII came in 2016 we asked for more participation in formulating the agenda. We wanted to be more active because we see the Programme as an opportunity to address our problems, and those problems we do not have to negotiate! For example, we need more reliable methods of how to evaluate problematic drug users and identify threats. This concept of *threat* is highly controversial[1] and then we end up again and again around negotiations with European technicians."

Overall, Uruguay is well evaluated by the EU and CELAC's partners. How we manage our NDO [National Drugs Observatory] is an example for other countries in the region but we have the critique that COPOLAD does not see the fact of staff turnover. Our technical team is always changing, people has poor level of specialization. In this sense, we would like to have more investigation because knowledge we keep. In general, what makes us to develop is scientific knowledge, not only practical products. We live in a changing reality, so we need to understand the core of problems to adapt and apply solutions to our realities. But then it comes the EU reality, how they manage to control, to prevent… and how big is their staff, of well-paid people, specialized, used to work under the best conditions… I have the impression of a grey zone between what is the real tradeoff and what is the tradeoff that would be possible in COPOLAD. It is complicated because of course we benefit a lot from the products and they are sensitive to our needs, thus my point is perhaps about what would be possible and interesting for us but is beyond the Programme's mandate, according to the EU.

COPOLAD cannot set interests apart as the EU always seeks for common interests. It needs to find common grounds on which to show best practices and its role as a model. EU inputs are good but it still lacks awareness of context-driven differences. It is very hard for them to contextualize CELAC in our own terms. My impression is that it is so due to a lack of knowledge. They come to us with so distorted information, and always fully informed about our problems, our deficient practices. They come with the idea that here there are no technical issues but only politics. Big mistake…

Chile and Argentina for example have an enduring path on drugs fighting. Our national reports on drugs and the state of our NDOs are the sources and inputs for COPOLAD, so of course we have something, and we collect on the ground, facing all existing challenges and conditions. I even would say few points where we do better than EMCDDA but because of the purpose of mutual learning.

Teresa Salvador does a great effort with CELAC. She traces consultations and regular democratic practices to include everyone. She is really friendly and we have a lot of respect for her. Overall, our critique is that COPOLAD is a good space for technical exchange, but for CELAC this feature of the Programme makes its information so much vague, as our people may get lost with it. In this regard, the EU also has the critique that our drugs policies should be one of State and not Government, to avoid variation in personnel and administration. But well… this is another thing. Their EMCDDA is shared funding, it receives money from all Member States by law. We do not have this money. CICAD does not fund and, in the scope of COPOLAD, money has little influence for our NDOs. The EU would not suppose to work with, rather than to overlook those distinctions?"

Ms. Paredes from Colombia seems to think that COPOLAD is dependent to the Centre's ideas about how to work with drugs – ideas that are starkly different from

"The Director of EMCDDA spoke about privilege, responsibility, advantages of the Centre. He believes that EMCDDA benefits of Member States' coordinated information, that he receives in a standardized format and it is the source to their work. This does not happen in CELAC. We cannot know what is happening on the ground if we do not go there. Then, which kind of leadership the EU would have in COPOLAD if it does not know the reality of how we work in CELAC? If it does not know the limits and difficulties to work in this reality, let alone financial issues.

The EU does not have certain limitations and need to see that the institutional and legal framework of each country affects performance and demand. Communication with the EU is important to unveil how selling is conducted by dark net for example. Prevention is another point that the EU does well and we demand assistance. On the other hand, CELAC has good control of routes, logistics, substances, research in schools, university, chains of supply that are equally helpful for the Programme.

CPII needs more research because this is what we keep. Meetings and training are good, but people leave the job in our countries and then the knowledge goes."

CELAC's ones:

Reflecting upon those statements, we see sharp differences regards working methods and institutional structures between the EMCDDA and CELAC's NDOs that are reflected in COPOLAD's practices. Moreover, those differences generate broader

perceptions about the quality of EU leadership, sustained by its overmuch sense of coordination together with a lack of knowledge about CELAC. On the one side, the work of EMCDDA which relies solely on data received by Member States is seen by CELAC as a constraint to the interregional policy diffusion and not, interestingly, to EMCDDA's daily work. CELAC seems to understand the mandate of the Centre and its value for the EU, but cannot understand what the EU expects by presenting the Centre as a model of drugs observatory.

As mentioned in the typology, the EMCDDA's features shall give a sense of legality and strength of such EU institution within CELAC, confirmed by Mr. Suarez's expression of 'justified paternalism'. However, for structural reasons, the whole gear of EMCDDA cannot be compared to any NDO in CELAC, and those reasons would have been an asset of COPOLAD in the sense of potentially providing best practices under different conditions, according to CELAC.

Nonetheless, Mr. Suárez and Ms. Paredes do not express a perception that this is so. Through their critique that COPOLAD does not consider CELAC's staff turnover and the need for more research that is kept despite Government changes, they address a perception that it is difficult for the EU to embed in COPOLAD's mandate a positive potential of those differences and more deliberation upon agenda-setting that develops in the type of concrete products.

Mr. Suárez is also very clear regarding the perception of asymmetry reinforced by the EU. Seldom he displayed a perception of horizontal dialogue based on exchanging best practices, yet agreeing that COPOLAD's products are useful and adapted in CELAC's local realities. Ms. Paredes is more emphatic regards the EU insufficient knowledge about the enduring path of drugs fighting in CELAC, which is seen in the region as an underexplored asset of the Programme.

In turn, Ms. Teresa Salvador reiterates that, although it is the EU approach that drives COPOLAD, inputs from CELAC are highly considered. She does not see that such inputs go beyond organizational practices (inclusion of more countries, establishment of Task Forces) in order to enhance COPOLAD's impact on CELAC's sociocultural contexts. For her, adaptation and implementation of the products is one

of the most expected outcomes, which display the satisfaction of CELAC with the EU drugs paradigm.

On the other side, in a preliminary version of a study prepared by Uruguay and Argentina that was just launched in the scope of COPOLAD with the title "Situational analysis of National Drug Observatories in Latin America and the Caribbean"[82], we see that all twenty-eight NDOs (out of thirty-three participating countries of CELAC) are public entities within the Governments' structure, and twenty-four are entitled to set strategies and policies:

> "Of 28 NDOs, 25 manage information on drugs produced by them and by other institutions. 2 NDOs manage the information and one indicated that it manages information produced by other institutions only. Approximately half of the NDOs have no problem in relation to inter-agency collaboration. However, 15 NDOs indicated that they do have difficulties in accessing information generated by other institutions. The reasons given for these challenges were many and such as political, operational, and financial issues, work overload at the NDO and/or at other agencies, lack of financial incentives for inter-institutional collaboration, and the fact that data exists but is not available" (p.32).

This scenario displays an opposite reality than the one Mr. Goosdeel explained, about the non-political character of EMCDDA while functioning as a technical platform. It reaffirms Mr. Suárez's perception that the EU 'cannot contextualize us in our own terms' and, perhaps, there is something too about his 'few points where we do better'. That could be exemplified by the well-established Colombian NDO, which is specialized on data collection on the ground derived from the conflicting historic of drugs fighting, with methods and instruments to deal with the FARC. Overall,

> "This diversity of institutional arrangements for each NDO shows different ways of conceptualizing drug policy relative to institutional history, the situation in each country, and reflects different priorities and expertise, for example, in matters related to demand and supply reduction, drug consumption or trafficking, health, security or Human Rights issues" (p.26).

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http://sisco.copolad.eu/web/uploads/documentos/COPOLAD_Situational_Analysis_of_National_Drug_Observatories_in_Latin_America_and_the_Caribbean.pdf

Lastly, the mandate of EMCDDA as exposed by Mr. Ballotta seems not feasible for CELAC's NDOs, which accumulate all stages of information collection, production, systematization and dissemination, resulting that "Regarding the number of studies conducted between 2011 and 2016, 16 NDOs carried out 5 studies or less, 4 NDOs carried out between 6 and 12 studies, 1 NDO carried out 21 studies, another did 28 and another conducted 33 studies. 5 NDOs did not provide this information" (p.34). The EMCDDA carries out around fifteen types of publications – in 2017, it launched ninety-five studies.

COPOLAD is thus inspired by a sense of 'quantitative delivery' that is a weakness of CELAC, due to the conditions explained by Ms. Paredes and Mr. Suárez. Hence, it is evident that CELAC learns with EMCDDA's practices, specially on evaluation and prevention, but it is obscure if throughout seven years of the Programme, the EU grasped that 'no size fits all' exactly because those countries in Latin America do have different yet evolved identities and conceptions on drugs policies.

The most developed countries in the region had acquired technical and political capacities to deal with their specificities – among production, organized crime, transport and consume – through the exhaustive effort to generate notably answers to Government and population. Not paradoxically, those are the most benefited countries from EU lessons, and the drivers of South-South cooperation. On the contrary, Caribbean countries for instance have no stimulus to engage with the EU, as illustrated by Belize that does not have a NDO, or the Delegate from Haiti who presented in Lisbon that:

> "In addition to 1125 miles of unprotected coastline, uncontrolled or poorly controlled seaports, and numerous clandestine airstrips, the weakness of the judiciary, corruption, precarious means by law enforcement agencies and smuggling contribute to the prolific use of Haiti by drug traffickers as a privileged geostrategic transit point."[83]

Such disparity in the level of drugs policies' development among CELAC countries sounds like a problem for the EU "because it loses the ground of acting as an example and is called to act as an interlocutor" (Caribbean interviewee #1). For Caribbean countries, "COPOLAD's greatest value is to promote face-to-face

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[83] http://sisco.copolad.eu/web/uploads/documentos/Haiti_COPOLAD_II_20171114_EN_36sib8qyb7qc4.pdf

encounters and a space of dialogue with South American countries", as the EU is seen as "a very distant counterpart in this matter" (Caribbean interviewee #1, who asked for confidentiality 'due to the sensitivity of his position').

In this section, we saw that the condition of *EU institutions* is contested by CELAC's interpretation of COPOLAD, which is guided by *national factors* (parameter) of the countries, rather because of the EU's lack of knowledge about CELAC's conditions than because of an absence of perceptions of legality and legitimacy attributed to EU policies. In the next section, I examine how those contrasting discursive representations that frame COPOLAD from both sides impact on specific issues of the Programme, namely, the selective mode of interaction exercised by the EU in regard to the components, and the Alternative Development approach.

4.5.
Your voice with the EU depends on what you have been done in your country

> *"We use NDO to take decisions. EMCDDA is just to monitoring, it has no practical role in formulating drugs policies of member states. It is an advisor, a center to compile information. Ours is to generate input to the Ministry of Law and Justice. But anyway there is a supremacy of the European model, despite the fact that we have years of experience. We reproduce the process of drugs production in our NDO with the chemicals of cartels themselves, and had invited the EU to see.* We cooperate with Africa, Peru, Argentina, Bolivia in a longstanding basis, regarding predecessors, EWS, AD, technical assistance. We do not teach but present our experience. So far, we never received nobody from the EU in our NDO in Bogota" (Ms. Martha Paredes, Sub-director of the Strategy and Analysis Subdivision of the Ministry of Law and Justice, Colombia).

Different perspectives about COPOLAD warn that something in the EU understanding of norms diffusion might make it difficult to achieve recognition of NPE as identity. This section explores the mechanism of *learning* and its interactive

components (adaptation and rejection), at first assessing how the enforcement of EU's representations operates in COPOLAD upon CELAC countries. As we see in the typology, one condition of diffusion related to the learning mechanism is the *EU institutions*, the EMCDDA in this case, which provides the template for the externalization of EU policies. And one parameter related to learning is a perception of *legitimacy of EU policies* by CELAC.

Nonetheless, because *domestic structures* within CELAC differ, the EU orients its polices through interactions with the countries that it has greater chances to achieve more success in terms of diffusion. They are identified as "regional models", closer to the EU in terms of drugs policies' development. Yet, at the same time, such strategy that I name "selective interaction" produces other kinds of effects: learning is concentrated on specific issues instead of broadly conceived within CELAC; CELAC's "models" explicitly reject the EU teaching tone during the course of activities, as well as the hierarchy created by the EU within CELAC on behalf of 'more coordination'; South-South cooperation is strengthened.

Ms. Veronica Brasesco, Director of Argentinian NDO in SEDRONAR, explained to me in an interview in 16th November 2017, in the Lisbon Meeting, that:

> "Argentina sees COPOLAD as a space of collaboration. In terms of agenda-setting, certainly there is some possibility of voice but mostly we have to adapt what is decided to our necessities. We collaborate a lot within CELAC in the scope of CP, thinking together on how to move forward with the products. In terms of EU's inputs, they have applicability in CELAC but we have to see how. They don't come with this preoccupation.
>
> Metropolis as Buenos Aires focus more on market, and there we have a lot to learn with the EU. So yes, cooperation and communication with the EU depends on your own reality. On markets, dark net and prevention yes, we want to know what has been done in Europe.
>
> I think the process of learning – exchanging knowledge, better to say – is fluid. The Centre wants to set standards but standards need to be transversal, we cannot compare leverage and capacity. Argentina is very pragmatic in this sense. All of us have deep knowhow about demands, limits and possibilities of our countries, in terms of laws, resources and political will. The EU does not see this instantly, but each of us has to manage a way to impose itself.
>
> Interlocution improved a lot in CPII. In Bogota (1st EWS Meeting, September 2017), Europeans got rid off the translation, removing their earphones. We are not here to have class."

From the performance of Argentina, Uruguay and Colombia in COPOLAD, I claim that the very effort of the "models" is to strength the region, and to make feasible recommendations to each country. Although they see the EU selectivity, they learn with its experience in urban issues and act towards exchanging knowledge regards several other aspects with the less developed countries. As said by a Delegate from Costa Rica, "tenemos que construir capacidades sobre capacidades ya construidas", calling attention to the mutual benefit of intraregional dialogue.

Due to the particular framework within which drugs policies are arranged, greatly institutionalized with a strong legal design, Chile exercises a kind of leadership in CELAC that is closer to the EU's image of "an ideal type" of developing country to partner. During the Meeting in Lisbon, however, few situations brought my attention regards the Chilean reluctance to take over this role of "an ideal partner" for the EU. The Chilean Delegate raised critiques upon specific mechanisms, based on underlining structural distinctions that are supposed to be neglected in COPOLAD, as he sees it.

Among some informal talks, I interviewed Mr. Esteban Pizarro, Advisor at SENDA (Servicio Nacional para la Prevención y Rehabilitación del Consumo de Drogas y Alcohol), in 13th November 2017. Mr. Pizarro is responsible to formulate studies and evaluate better methods to support Chilean national policies on prevention,

"COPOLAD is a forum to learn new techniques, as how to conduct studies about obscure populations, frequency indicators, gender and so on. In the EU, they solve problems. For example, for EU technicians, synthetic drugs are not a topic, it is a problem that needs to be tackled in the most effective way. But we from CELAC, working in national countries, must do an effort to create policies up to be stretched as much as we can in regard to Governments, so they do not see the need to change personnel and methods every four years. We need to think about 'resilient strategies' that sound subjacent to the country and to our people, not connected to one or another political party or person, as well as not much dependent on one or another employee of the Secretary itself.

We have 3 people in our NDO in Chile. How can we have the same capacity of EMCDDA? I think that we actually have good technical capacity but not operative. Beyond the low number of personnel, priorities are chosen according to political interests. Our studies are chosen and funded by the Government so this is the limit of what we can do. It is an operational limit that does not mean we could not do more. And the EU must have this scenario in mind when it comes to us.

Even though, we do social measurement, samplings to see if our data is corresponding to that specific place and time. The EMCDDA does not do this. It does not go to local areas and just work on what it receives from Members.

treatment, rehabilitation and social reintegration of people affected by drugs. He started

> For us, it is a shortcoming although we know it is out of EMCDDA's mandate to validate the information they receive. But you see… we know their mandate, we are informed. We come here to catch up on what they are doing, not on what they could possibly do: we are here to exchange practices, not seeking for models.
>
> Chile is the leader of WG 1.4 Problematic Drugs Use. It has an evaluation mechanism and a measurement protocol that are supposed to compile information from all regional NDOs. But the viability of these mechanisms offered in COPOLAD is not optimal because NDOs provide information that cannot be paired. In 2011, Chile did not have measurement mechanisms. Today we are a leader but I would not use this word… there are expressions in COPOLAD just to facilitate the EU sense making. What I see is that the EU has a lack of knowledge about the CELAC's own reality and this is what impairs EU's action to be more effective in the sense of a reciprocal learning of good practices. Moreover, concerning cooperation with the EU on studies, for instance in school population, they do not share the mechanism, only

talking about COPOLAD, of which he had an overarching opinion based on two years

of participation:

Such EU mode of "selective interaction" is well understood by all CELAC as a EU strategy to enforce its way of cooperation with a non-institutionalized group. In some sense, it is also perceived as a weakness because those EU policies and approaches would have reached more acceptance among CELAC when truly opened to the vast majority of countries' target: exchanging practices, rather than seeking for models.

In this regard, Ms. Eugenia Mata Chavarría, from ICD Costa Rica, was willing to give me an interview by phone on 26th October 2017, when she expressed probably what is the common view among Central American countries:

> "COPOLAD is designed for the Southern Cone and leaders come from there, still the same in CPII. Participation of Caribe was opened in this second phase but this changed nothing in the overall design of the Programme. Caribbean countries have a way more reduced space to speak about decisions and proposals and, for sure, they have to present something altogether. To have a say in COPOLAD depends on your development in terms of national drugs policy."

Costa Rica is the current Spanish-speaking country leader of component two *Drug Demand Reduction* of COPOLAD. In this regard, Ms. Chavarría said:

As I said, your voice depends a lot on what you have been done in your country and, in the case of Central America, it is exactly because we did not do much so far that we joined CP.

In regard to south-south dialogue, we previously had through CICAD, CP did not establish it although it is unfolding important efforts in this direction, to connect Latin America. But it does in a top-down way that is not so productive for us. It has potential but it really needs to be participatory."

"In the case of demand reduction, we need better courses. We do have joint proposals for courses, but it is CP who decides tutors, the didactics and evaluative methods. To be honest, I do not know what the 'leadership of Costa Rica' means, as we give a kind of consultancy in standards of demand reduction but the leader of the Task Force in this component is Chile, who has much more impact on decisions. Everything comes to us 'pre-manufactured' by the Task Forces. And who decides TF's leaders? It is CP again, they are hired by the Programme. We do not help even in logistics. We have a say but an effective change in this direction is very slow.

Costa Rica is very embryonic in Early Warning System for example, Honduras cannot say anything because they are just jumping into the topic, they do not have established institutions or policies for drugs combating.

In the same direction, during the Meeting in Lisbon I talked to the Director of NDO in Bolivia, Mr. Marco Ayala, who underlined that:

> "Operationally speaking, however, we do not have reports nor a treatment protocol. Likewise, we do not have EWS. This is a 'point of irritation' in discussions with the EU in COPOLAD and in our bilateral relations. We use administrative reports and think they are efficient because they are converted into statistical profiles about users, micro-traffic, economic conditions, gender, detentions, re-incidence, vulnerable population. Those are our main source of information, in terms of viability and confidence, but the EU wants to increase the use of surveys. The EU works on validation but we do not have this institutional capacity, to measure and validate population surveys. The EU tends to respect our decisions, but they require fully compliance with indicators that are defined 'more or less' jointly. We have now 24 targets and 8 indicators to comply within 4 years[84]."

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[84] In a study requested by the European Commission's Service for Foreign Policy Instruments, we have an expert' s opinion that corroborates what was said by the Bolivian Official in the sense of EU indicators and standards: "The experts were also vocal about the local impact of EU standards and effectiveness: European standards are very important, as long as there is an application of these standards, *with consequences if you do not comply them*, and the opposite when you comply there are positive consequences" (PPMI/NCRE/NFG Consortium, Final Report 2015:165).

Notwithstanding recognized improvements in drugs policies, particularly by CICAD[85], Bolivia is not considered by the EU as a role model in COPOLAD, likely because of the flaws mentioned by Mr. Ayala. However, due to the strong bilateral relations between the EU and Bolivia in drugs issues, and because Bolivia is one of the main world producer of the raw material of cocaine (*hoja de coca*), I believe that their interaction within COPOLAD is pragmatic. It might be a case where the external condition *interdependence* and the parameter of *domestic structure* merge, resulting in a pragmatic albeit tied interaction.

As we see, the quest of participation in COPOLAD is odd: in theory, COPOLAD aims to generate common inputs for all, "to improve drugs policies in the CELAC countries" as a unified group yet represented by most developed countries in the region. In practice, however, participation derives from specific strands of the Programme designed by the EU, who targets few countries to be more active according to how much they can absorb EU lessons. It sounds natural for the EU to interact more with those countries and to take them as channels to reach the others, but within CELAC this attitude is all but natural.

They theorize COPOLAD as an opportunity to improve drugs policies exactly of those who are most deprived in institutional and financial structure. But now, after seven years, the design of the Programme seems to be clear and CELAC countries do not expect real changes from the EU in this sense. Instead, they act pragmatically, eager to meet themselves and to absorb the most of what is offered in terms of studies, products, trainings, evaluation and also EU indicators. It is false to think that CELAC does not recognize the EU achievements in the field of drugs policies, nor that the rift in relation to institutional development within CELAC hampers the interest of countries in participating in COPOLAD.

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85 For CICAD expert Adriana Henao, "las medidas de control social implementadas por Bolivia se deberían replicar en el resto del mundo para el desarrollo humano y social. Las reglas, la justicia comunitaria es algo de deberíamos aplicarlo. El registro biométrico es algo muy llamativo, la identificación de parcelas, la realidad de cada productor. En términos de cohesión comunitaria Bolivia ha avanzado muchísimo en los último años". Available at: http://conaltid.gob.bo/contenido/notas/488. By occasion of the 2nd Intra-regional Dialogue Forum on Alternative Development of COPOLAD, 20-23 November 2017, Santa Cruz, Bolivia.

In this first part of the section, I introduced critical views of CELAC countries, Chile and Costa Rica, that are in opposite poles regards the interaction with the EU and their place within COPOLAD, in terms of participation and leadership in specific issues (WG 1.4 and C2-DDR). Following this reasoning, the next sub-section approaches the aspect of political dialogue, reconstructing discourses about the CCM from Mexico and Germany's perceptions. After that, I analyze both sub-sections together willing to unveil to which extent NPE as foreign policy might jeopardize the mechanism of learning when seen from CELAC's eyes.

4.5.1.
The Coordination and Cooperation Mechanism (CCM) and political dialogue with the EU

Throughout the interviews, I pursued some similar questions to representatives of the EU and CELAC, to contrast answers that substantiate different representations. The quotes below tell us more about the impact of NPE as foreign policy in political negotiations with CELAC, and how NPE is interpreted by CELAC countries who are considered "model partners" by the EU.

Regarding the CCM, I talked to Mr. Klaas Grimmelmann, Expert of GIZ (the German Agency for International Cooperation and Sustainable Development) and to the only non-technician interviewee of my fieldwork, Mr. Luis Elizondo, a Mexican Diplomat responsible for Judicial Issues and Global Themes in the Mexican Delegation to the EU in Brussels. Currently, as Mexico holds the Presidency of the CCM[86] (component four of COPOLAD), Mr. Elizondo is entitled to take part in the Annual Meetings.

My question to both of them was: *"Which is your perception about the platform EU-CELAC Coordination and Cooperation Mechanism on Drugs and the Technical Committee of the Mechanism that COPOLAD has the mandate to reinforce, in order to facilitate and foster the interregional political dialogue?"*

In 2nd November 2017, Mr. Elizondo provided me a long and inspired talk by Skype, replying the question as follows:

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[86] *EU-CELAC Coordination and Cooperation Mechanism on Drugs – Annual Report July 2016 to May 2017* available at http://data.consilium.europa.eu/doc/document/ST-8030-2017-INIT/en/pdf

In 6th November 2017, Mr. Grimmelmann gently replied to the same question

"As we know, Latin America is a region with very different capacities and realities. Considered in more general terms, COPOLAD helps to pair such differences. From this perspective, CP is not a hub. DG DEVCO sees CP as a technical tool, as in political terms it has a limited space. We do not set the agenda, but CP is designed for CELAC, to raise our capacities to deal with drugs and enhance cooperation among ourselves. On the technical level, I consider the practice of 'calls' to lead task forces and courses a very good one.

Concerning the CCM, it has nineteen Annual Meetings and a political declaration was launched in May 2017 in Buenos Aires[1]. The declaration goes as far as consensus allows, and to facilitate consensus we keep the language of CICAD and CND. In the end, it lacks ambition and does not present innovations, although CCM is a bi-regional mechanism with great potential. It constitutes the interregional dialogue, assembling 40% of CND.

Besides the mosaic inside CELAC, CP deals with two very different blocs: the EU is an integrated actor, with more capacity to speedy reactions and with institutions that have "a life on their own". CELAC is a group of states, a space for consultation without institutions. This difference in nature is reflected in CP's mechanisms – the EU indeed had more power upon the negotiation of CCM's declaration. Such evidence reflects to which extent the relation is unbalanced. For example, in the Technical Committee of CCM, which meets 2-3 times a year in Brussels, we see a clear cut: CELAC is generic and the EU is functional. They have experts, technicians. We do not have deep knowledge on technics and methods, so we focus more on urgent and emergent issues.

The impulse of Mexico is to raise EU's awareness of CELAC's challenges, so the differences have a reduced impact upon the Programme's outcomes. We are two opposite realities but this does not mean that the EU can come to teach us, what might happen time to time, although CP is based on shared and common responsibilities. Teaching discourse does not work in Latin America, *'Este tono no nos ayuda'*. Latin America has a lot to say on drugs, we have a longstanding historic of aligning our policies with international standards.

CP must align also to the 2030 Agenda. As you see, CP is part of a wider dialogue on drugs. Overall, Mexico sees CP positively since it does not arrive in the region to impose but to add itself to national efforts already ongoing there. And CP sees Mexico as an important partner, with whom other countries can count on."

by e-mail:

> "The EU-CELAC CCM and the Technical Committee provide a useful forum for political exchange, especially in regards to current developments and upcoming issues and trends in global drug policy. Not all of the CELAC countries are represented for instance at the CND in Vienna. The inclusion of Caribbean countries in the second phase of COPOLAD is an important improvement in this regard: The mechanisms facilitated or supported by the COPOLAD Programme provide a platform for exchange which contributes to better understanding and coordination of drug policy in the region and exchange of information, especially for smaller countries with less resources available for drug policy."

Although Mr. Grimmelmann does not go into details, it is visible that he does not hold or was not willing to expose the asymmetry underlined by Mr. Elizondo with regard to negotiations of the political declaration, as well as the reduced participation of smaller countries. For him, as well as for the Portuguese representative I talked to in Lisbon, the CCM is "a forum to improve coordination among information systems of both regions, through programs and actions jointly set up". Certainly, I did not expect critical answers by EU Delegates to the CCM, as it would be contradictory with CP's agenda.

Nonetheless, we see that, at the same time that the Mexican Diplomat recognizes the potential of COPOLAD as a platform of learning new measures on drugs for CELAC, he emphasizes the constant need "to raise EU's awareness of CELAC's challenges, so the differences have a reduced impact upon the Programme's outcomes". In the perception of the Diplomat Elizondo, the EU mode of "selective interaction" is meaningful – he supports the idea that CP determines leaders most probably because he sees Mexico as a leader. Still, such high position Mexico holds amidst CELAC did not prevent him to mention that differences do affect power relations within COPOLAD, displaying a "time to time teaching discourse" from the EU.

On the other side, the statement of Mr. Pizarro indicates that Chile shares the broad concern of "exchanging practices instead of seeking for role models" in COPOLAD. The Advisor demonstrates know-how on what Chile can better take from EU lessons, on what Chile is ahead (even in relation to the EMCDDA) and, mainly, on how Chile is able to manage a joint action to support the region through the Programme. Ms. Chavarría, in turn, forwards the critique of having nearly no voice within the Programme although Costa Rica has evolved in DDR and is considered a 'leader' in the context of Central America.

Through these quotes, I argue that the mechanism of *learning* is largely oriented to most developed CELAC countries, as the EU has recognized advantage on issues that are of great interest for big metropolis such as Santiago, Bogota, and Cidade del Mexico. The "snowball effect" in the EMCDDA's strategy, as previously presented by Mr. Balotta, is reproduced in some way through the mode of selective interaction: the EU expects that Central American and Caribbean countries, who cannot take much of

what is offered by the EU through CP's products, learn with CELAC's leaders. This way, South-South cooperation thrives.

Besides that, the teaching tone often used by the EU, as CELAC sees it, is clearly rejected by the countries mentioned in this section. The Eurocentric, and often hierarchical character of NPE as identity might contribute to hinder a foreign policy exercised in a more horizontal and dialogic way with Southern partners. The selective interaction in COPOLAD displays who are the Others able to take part in deliberation with the EU – usually, the ones from who the EU expects a certain appreciation of its distinct way of doing things.

Nevertheless, different from what happens in processes of Europeanization – where the EU sets the boundaries and defines who are the Others – international encounters blur the borders Self-Other, increasing the chance of contestation. Critical engagement from its partners is read with hostile lenses, as a sort of miscommunication that will be remedied over time, or as a potential threat to its ontological security. In either of the two ways, the EU hence stucks and does not change its approach: either because it would not be needed (just a question of time for the Others to recognize its superiority) or because it would be threatening its identity discourse.

The parameter of *national factors* displays how those countries see themselves – exemplified by Mr. Elizondo's in "Latin America has a lot to say on drugs, we have a longstanding historic of aligning our policies with international standards" and Mr. Pizarro's "Our studies are chosen and funded by the Government so this is the limit of what we can do. It is an operational limit that does not mean we could not do more". They expect that COPOLAD pairs its products with their national policies, what is still below the potential due to the EU lack of knowledge about their domestic structures (condition).

CELAC is pretty well informed about what the EU does internally and "the rules of the game" in COPOLAD. Overall, participants do not systematically raise critiques upon the design of the Programme that will create unnecessary debates. Rather, they endorse the exported image of effectiveness that is pragmatically profiting for them, keeping their perception that the EU has much to learn in terms of learning, diffusion and reciprocal recognition of the positive side of differences. In the next

section, I tackle an issue of COPOLAD that reveals to be very controversial when CELAC's voices are empowered. I explore how contested discourses recreate the diffusion of the Alternative Development approach, as well as how the mechanism of *localization* has embarked on.

4.6.
The Alternative Development approach

As we can see through the exposition of CELAC's views, in the context of COPOLAD, which is oriented under EU guidelines largely defined by the EMCDDA, the space for conciliation of meanings and different normative representations is short. Applicatory discourses of contestation raised by CELAC upon either an aspect of the Centre's approach, or methodology, or instrument are likely to denote an expression of critical engagement seeking to adjust coherence between what is being diffused and the respective national contexts. However, it is difficult for the EU not to understand contestation as an anomaly, or a sign of resistance.

In this section, I demonstrate that, for the EU, contested discourses in COPOLAD is seen as an anomaly due to its understanding of diffusion does not allow it to grasp problems that have to do with coherence and local conditions that policies or approaches meet in other parts of the world. That is the case of the well-established Alternative Developed approach in COPOLAD.

The AD approach is a Task Force of component three "capacity building in drug supply reduction". It is under the leadership of Peru, Colombia and Germany, who

"Development oriented drug policy and AD have recently gained a lot of interest among countries from the region. While in the beginning, the COPOLAD AD activities started out with four participant countries from the Andean region, today, eleven countries, including four Caribbean countries, participate in activities of the AD subcomponent. Furthermore, the participation of small-scale farmer representatives since COPOLAD I is valuable to include the perspective of affected communities and beneficiaries of policies and programmes themselves.

The open-minded discussions for me personally demonstrate a high level of trust among the participants – their evaluations of the activities and instruments provided have usually been very positive. Furthermore, in a series of capacity building measures, participants are gaining a deeper understanding of value chain development

adopts a rural development perspective mainly oriented by the German Agency for International Cooperation and Sustainable Development (GIZ). Mr. Klaas Grimmelmann is the representative of GIZ and Germany as the referent European country in AD Task Force. In the same reply by e-mail in 6th November 2017, Mr. Grimmelmann reflected that:

Participants are encouraged to use the methodology or some of its tools in their daily working context. Between the different consecutive workshops they receive guidance from an online tutor to develop their work. While this process is still under way, some countries already picked up the methodology in the framework of own measures, see for instance Ecuador.

From my personal point of view, the Programme is certainly beneficial for being up-to-date on what is currently happening in the field of AD in the region and for sharing experiences and tested instruments and methodologies in the region. Based on the principle of shared responsibility in the context of the world drug problem, the Programme provides the opportunity to disseminate best practices and lessons learned from a long-standing experience of GIZ in the field of Alternative Development."

Contrasting, I set forth standpoints of Ecuador, Colombia, Peru and Bolivia to subsequently analyse both sides. I highlight in what consists their distinct conceptions regarding AD and how they forward them, representing their contested discourses to the German frame adopted in COPOLAD. At first, we find the following information in the Ecuadorian media report *El Tiempo*:

"Diego Tipán, Subsecretario de Políticas de Prevención de Drogas, manifestó que la SETED ve la necesidad de trabajar, no solo en el ámbito rural, para cambiar las dinámicas de lo que sucede en el campo y la producción de drogas, sino también en las urbes, y así fortalecer el desarrollo económico de estas personas, a fin de evitar que se involucren en actividades ilícitas, como es la venta de estupefacientes."[87]

Ms. Jenny Fágua, responsible for the EWS at the NDO of Colombia, expressed in an interview in Lisbon, in 15th November 2017, that:

"Alternative Development, it is a complex topic, we think that it must enlarge its perspective. We have *Rural and Integrated Development*,

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[87]   http://www.eltiempo.com.ec/noticias/ecuador/4/412675/ecuador-fortalece-estrategias-a-escala-internacional-para-enfrentar-el-problema-de-las-drogas

it is an approach after the Peace Agreements that looks beyond assistencialism. Drugs affect and is affected by a multidimensional range of factors. GIZ focuses on fair legislature, environment. It sounds narrow for our reality."

On COPOLAD's web site, we find an appealing interview with Ms. Carmen Masías Claux, Executive President of the National Commission for Development and Life Without Drugs (DEVIDA) in Peru[88]. For the question "*You have just mentioned the Integrated and Sustainable Alternative Development. What does it mean a comprehensive prevention approach in Sustainable Alternative Development for Peru?",* Ms. Claux replied:

> "The EU is already demonstrating in Peru a concern that leads to specific support towards a greater "balance" between supply reduction and demand reduction. However, this "harmony" could be greater. (…) *Comprehensive Prevention in Sustainable Alternative Development* is understood as a set of policies, programs and actions that promote change and the improvement in the quality of life of the most vulnerable populations in relation to drug trafficking. This development should not develop alone or necessarily as "crop substitution" although this is a very important component. It is essential to promote the presence of the state and all its sectors as well as to work on security (…). Alternative Development must be understood as a tool that focuses on personal change (from illegality to legality) and is producing an ethical, communitarian transformation."

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[88] Published on 18th September 2017, available in http://copolad.eu/en/entrevista/carmen-masias-claux-presidenta-ejecutiva-de-la-comision-nacional-para-el-desarrollo-y-vida-sin-drogas-devida-peru

Laslty, I also interviewed Mr. Marco Ayala, Director of the NDO in CONALTID Bolivia, in 15th November 2017 also in Lisbon, regarding AD. He contextualized how is the implementation of the AD approach in Bolivia, as proposed

"Bolivia had gone through hard times with DEA (USA) that culminated with its expulsion from our territory by President Morales in 2008. Since then, the EU gained more presence in our drugs policies. The EU has an interest to be in Bolivia - and to work together with the UNODC towards alternative development and eradication in non-authorized areas - because the Andean coca is responsible for 60% of Europe's cocaine. The EU gave 60 million Euros in investment so far. On Alternative Development we adopt an approach different from what is proposed by GIZ because we need to add another product to the coca growing in order to diversify farmers' options, not to prohibit coca, so we call it *Desarollo Integral*, for what we have 40 million Euros to implement.

GIZ proposed zero coca and substitution, but as I said: heavy-handed eradication programs do not work in Bolivia because we have a millenary tradition to use *hoja de coca* to various purposes, it is a millenary culture of what we are talking about. We do not want to prohibit, criminalize, militarize or use violence, and the EU is aware of options to criminalization and militarization. We want a controlled growing. Years before, the EU managed the money and established norms but it has a lot of legislation, it is difficult to follow everything. Now we have more autonomy, but need to fulfill indicators. COPOLAD is in this sense with a great methodological benefit for us. Bolivia is an example to Peru, Colombia and Ecuador, we work on a culture-basis of respecting farmers and establishing policies of inclusion to those families. So far, with few mismatches, bilateral relations with the EU have been smooth."

by Germany and the EU:

I also would like to mention that, facing the Ecuadorian media report and the interview with Ms. Claux available at COPOLAD's website, I set the following question to Mr. Grimmelmann:

"In public statements from representatives of Peru and Ecuador, for example, we see the request to give attention not only to rural areas and their dynamics of drugs production, but also to cities, incorporating dynamics of economic development within AD's practices. What is your opinion about such request?

"There is a trend that more countries are turning towards health and development oriented drug policies (especially in the CELAC, but also in other regions). One can notice an increasing demand of countries that do not have significant drug crop cultivation or rather prioritize issues around drug-trafficking or urban drugs issues, who search for development oriented solutions to drug policy issues. The

UNGASS outcome document of 2016, comprising a chapter only on socio-economic development and alternative development (chapter VII), can be seen as an indicator of this development. While this is a very positive trend, at the same time it requires that the international community provides more evidence and best practices on how to tackle these specific issues in the framework of comprehensive and balanced drug policy", he said.

To conclude, I asked which is his opinion about the COPOLAD's process of agenda-setting regards AD Task Force. Mr. Grimmelmann said:

"In the context of AD activities we have generally experienced increasing coherence among the participating countries. While there are certainly different thematic interests to address them all, participants generally demonstrate to respect the different national positions and contexts in which drug policy unfolds. The content of the AD activities of CPII are mainly based on participants' interests and priorities stemming from the evaluation of COPOLAD I, current global drug policy trends, and the specific issues which are currently of interest for the participating countries and raised by them during the activities.

The fact that participating countries are usually those which have an interest in sharing experiences provides a very constructive working and learning atmosphere and a high level of ownership among participants. The participation of countries which are newly interested in AD and come from very specific and diverging contexts of drug policy issues is very enriching. While this provides a new and broader perspective on development issues in regards to drug policy which is challenging, at the same time it is a very positive development from my point of view."

Mr. Grimmelmann's view coincides with Ms. Teresa Salvador's one, who said:

"The activities of exchanging good practices in the scope of AD and alternative strategies to incarceration are being highly valued by CELAC. In both cases, we work with countries on the basis of their interests in each theme. CP functions as a platform for exchanging experiences and mutual learning. (…) Although there are differences in national perspectives, degree of development, different backgrounds / experience, countries are actively using the experiences exchanged in the framework of our activities to identify best practices and lessons learned. Several CELAC countries (and the EU's ones) that have more experience act as references for those who are interested in these issues for the first time."

Hence, what can we grasp by contrasting such perceptions of Germany, Spain, Peru, Ecuador, Colombia and Bolivia about conceptualization and implementation of AD? How can we know applicatory contestation when we see it? The first point I wish

to underline is the fact that, taking the example of the AD approach, we can say that the mechanism of *localization* is largely driven by local conditions of CELAC countries and how they seek to adapt EU ideas into their domestic necessities.

We see *localization* in each quote abovementioned of CELAC countries: they present different names for their concept of AD that, in turn, represent attributed meanings to local conditions. Colombia uses *Rural and Integrated Development*, Peru uses *Comprehensive Prevention in Sustainable Alternative Development*, and Bolivia uses *Comprehensive Development* (*Desarollo Integral).* Through those concepts we can grasp the kind of possible critical engagement in COPOLAD: it is not a direct confrontation nor entire disagreement with the EU (represented by Germany) approach to AD. Instead, it is an attempt to enhance coherence.

Peru, Bolivia, Colombia and Ecuador expressed high interest in AD activities of COPOLAD and undoubtedly provided positive evaluations. In parallel, those countries clearly add the aspects of drugs trafficking, economic development, urban security and personal change to be embodied in AD, in order to meet current necessities of their countries. Such ideas however do not find much room in COPOLAD perhaps because they go beyond 'instruments provided, capacity-building measures or tools of value chains methodology' that constitute the EU frame.

An interesting observation is on the ideas exposed by Mr. Grimmelmann and Ms. Salvador that: "the content of the AD activities in CPII is mainly based on participants' interests and priorities stemming from the evaluation of CPI", echoed by the awareness that "the Programme is a platform of exchanging experiences and mutual learning", and in AD approach, it is "increasing coherence among participants". As I argued before, CELAC countries do not seek to transform the products of COPOLAD as they are aware of such impossibility. Rather, they address their interpretations in a comprehensive manner, demonstrating their conditions for the fulfillment of AD in its entire capacities. The EU, for its side, understands that their participation in its frame represents compliance with it in the way that it is offered, probably reading their critical engagement that happens in parallel as miscommunication that will be solved over time.

For instance, the German position seems to be that to include urban drugs issues in AD approach "is a positive trend that requires the international community to

provide more evidence and best practices" on how to tackle them. In Lisbon, an Ecuadorian participant that asked for confidentiality said that an expressive talk was conducted in Quito, for the occasion of the *1st Peer-to-peer workshop: Alternative development and value chains* (May 2017), on ideas and suggestions to improve and adjust the AD Task Force yet without much hope that they will be considered. Equally, the Bolivian Official made a clear case for applicatory contestation regarding the implementation of AD as it is forwarded by GIZ, stating cultural reasons and local conditions that justify the 'hoja de coca' crop cultivation.

The positive potential of applicatory discourses of contestation like the examples raised in this section, towards upgrading coherence between a norm, policy, approach or method and particularisms of cases at hand, are not very much visible in COPOLAD. Yet, it seems not to be surprisingly for CELAC, as those countries see that COPOLAD produces norm-takers and acts through the model sender-receivers that is proper of the EU.

In this regard, another programme manager[89] of the EU-LAC Foundation with whom I had an informal talk in 6th October 2017, at the Foundations's headquarters in Hamburg, reflected that:

> "EU is an asymmetrical power in relation to LAC, instead of an influence or a counterweight to the US. Its asymmetry lies basically in its status 'take or leave it', without much negotiation when it comes to terms and normative provisions of either trade agreements or common projects. (…) Nonetheless, the EU needs global causes to promote its interests. And for global causes, it needs partners. But it always looks for partners in 'groups' format, not individually. LAC are not always a cohesive group."

COPOLAD gives the possibility to look at the politics of norm reception to enlarge our understanding of diffusion and contestation in global encounters. It is therefore a fruitful case to recreate the path of diffusion through the mechanisms of *learning* and *localization* that, in this chapter, I set apart for the sake of better analyzing contingencies and especially CELAC's standpoints. Naturally, mechanisms, conditions and parameters are relational. The endeavor of conducting a dialogic analysis was pursued by shedding light on how differences, contestation and power asymmetries are

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[89] EU-LAC Foundation, Programme Manager - Activities with Economic & Business Partners.

handle through interactions, guided by the categories of the typology. They are the starting point and inform how I understand mechanisms that endogeneize the Other from the onset. In the conclusion, I explain how those mechanisms, parameters and conditions comprise a certain causal pathway that leads to the ontological NPE dilemma.

4.7.
The Cooperation Program between Latin America, the Caribbean and the European Union on Drugs Policies: mutuality[90] over the world drug problem?

> "The 'journey of self-reflexivity' is the ability to reflect critically and openly upon both discourse and practice, the systematic questioning of the assumptions behind one's methods, and the capacity to draw lessons from outside one's world – whether from the past or from the perceptions of others" (NICOLAIDIS in NICOLAIDIS et.al. 2015:297).

This chapter undertook the effort to uncover meanings of common expressions found in the EU-CELAC development cooperation such as 'asymmetrical relationship', 'common values', 'Western legacy' and 'global governance' through a perception-oriented analysis over a Programme that is considered effective by both parties. I presented evidences that the EU sees COPOLAD as a case of successful NPE as foreign policy, and CELAC sees COPOLAD as an opportunity to revamp resources and know-how through the EU's funding to capacity-building, as well as to strength intra-regional dialogue and strategies to combat drug trafficking already ongoing within the scope of CICAD/OAS. The security field that includes the fight against drug trafficking and organized crime is also promising to boost the partnership, as "Latin America and Europe are a group of producers and consumers countries larger enough to greatly impact the international level with a more coordinated action" (AYUSO, GRATIUS 2016:277; see also GRABENDORFF 2012:31).

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[90] "Mutuality implies institutionalized symmetry between actors – if not equality per se given structural asymmetries of power. It can be obtained at many levels. At its most structural, it refers to mutual recognition both in diplomatic and ethical terms, or the idea that processes of recognition ought necessarily to be reciprocal" (NICOLAIDIS in NICOLAIDIS et.al. 2015:298).

Nonetheless, this chapter focused on what lies under the surface of effective outcomes, looking at the way instruments and mechanisms of NPE as foreign policy are put into practice in the eyes of CELAC participants. The aim is to trace the path of CELAC's non-recognition of a EU superior identity, even in a Programme where policy convergence is there. Doing so, I substantiate my hypothesis developed in Chapter 2 that the EU has an insufficient understanding of diffusion mechanisms – diffusion entails something different than convergence and transfer – with every explicit or transversal claim made by CELAC of asymmetry, hierarchy, teaching without enough knowledge and negative potential of differences, either material or in ideas.

Convergence and transfer are thus effective mechanisms for the NPE foreign policy but how it is conducted – towards offering a model rather than exchanging practices – does not change CELAC's conditions and parameters of interaction. It is each domestic structure of CELAC countries that conditions how NPE as foreign policy impacts on the effectiveness of COPOLAD's outcomes, instead of NPE as foreign policy *per se*. This way, "visible diffusion" of EU norms and policies keeps on the organisational level: CELAC countries engage in the type of activities set forth by the EU, driven by their parameter of pragmatism regarding national factors. They seek to adapt instruments offered by the EMCDDA and, overall, the products of COPOLAD which, as they say, are the same for all and do not come with attention to few specificities. Adaptation is thus a central interactive component of mechanisms to understand COPOLAD's effectiveness.

Such adaptation is in turn superficial to make CELAC countries recognising NPE as identity project: they see that the EU misses opportunities to carefully listen to their interpretations and arguments in order to enhance the Programme and the bi-regional partnership. Rather, the EU underlines its strengths, reinforcing its superiority especially upon those countries with less developed drugs policies who perceive its mode of selective interaction. The EU has troubles changing policies, but I argue that it is so rather due to a more systematic reason related to ontological security than to simply mismanagement.

The mechanism of localization is the most suitable for the vast majority of CELAC countries in COPOLAD because, as expressed by Ms. Brasesco, learning is just possible for the most evolved countries in terms of drugs policies and urban issues, as Europe has a recognized advantage on these matters like dark net and prevention. Therefore, I discussed the AD approach exactly because it does not tackle any of the EU "hot topics" in terms of knowhow yet it is led by Germany. AD is the topic that represents the largest gap between CELAC and the EU in terms of diffusion and perceptions in the scope of COPOLAD. In this matter, those countries pressure more and more Northern ones to steer discussions on AD activities within international organisms, and to accept their basic proposition to include an integrated development that encompasses urban issues, security, economic and communitarian transformation.

To observe non-recognition of NPE as identity in this case is *only* possible through the employment of dialogicality shedding light on the process, as the interpretation of differences, contestation and power asymmetries by both parties starkly diverges. Throughout the chapter, such interpretations are crucial and appear in their discursive representations on concrete issues of the Programme. That is why I extensively transcribed interviews and perceptions, to give the precise words used by actors who interact on the ground about their daily communication. As I argued in Chapter 3, it would be necessary to scrutinize the argument of NPE dilemma in a process where resistance to NPE as foreign policy is not the case. In COPOLAD, we have the more profound dilemma of NPE, the ontological one. Because of policies' convergence, consensus and some level of transfer, the EU denies non-recognition and its insufficient understanding of diffusion, reading them as yet another demonstration of its uniqueness, i.e. recognition will come over time, while CELAC evolves. And then, a vicious circle of non-recognition and denial ensues.

The EU is not up to seriously confront with external non-recognition as it would require to question its own project, for which NPE as identity provides the anchor. This way, either tending to see itself recognized when meeting the Other or reading non-recognition as proof of its exceptionalism, NPE as identity may run into the risk of undermining its ontological security. even when NPE as foreign policy is not resisted.

It is a more difficult dilemma for the EU than the next, political one, which shows in cases where NPE as foreign policy is indeed resisted.

By no means I would suggest that COPOLAD fails. In its multidimensionality, it is a Programme that supports and boosts CELAC's capacity to tackle a transnational problem. In a foreign policy perspective, it is an example of mechanisms that reflect the kind of network COPOLAD allows between the two regions. In terms of EU mode of interaction, there is still a wide perception of hierarchy regarding the place of CELAC in such network. I stressed the argument of the ontological dilemma of NPE by developing its leading points that I also called *causes* in the typology: a non-handling of differences and the positive potential of contestation. In a wider sense, the critical engagement of CELAC in all levels of the Programme is not well received by the EU both because of its insufficient knowledge about the region and its self-confidence of superiority.

The EU's difficulty to handle with differences is clear, for instance, in its mode of selective interaction, broadly perceived in CELAC. The level of development in drugs policies determines regional role models, and the EU expects that those countries channel the communication in COPOLAD. Those ones, in turn, reject the hierarchy created by the EU among CELAC countries themselves on behalf of 'more coordination', as well as the teaching tone that is time to time used in the political dialogue.

Lastly, I would like to mention the evident absence of Brazil in this chapter. Before Lisbon, I tried several times to contact the only person from SENAD (Brazilian National Secretary on Drugs) who had participated in COPOLAD, Ms. Cejana Passos. With no reply, later on I was informed that she was suddenly removed from SENAD because of political issues related to changes of parties in the Ministry of Justice. In Lisbon, I heard from few participants, specially from Mercosur countries, that *"you have to see that there is a change of power taking place in your country"*, mentioning also the difficulties to move on with established joint policies in the scope of the bloc.

In Lisbon, I met with Ms. Natalia Gurgel and Ms. Daniela Porto, who had very recently joined SENAD. Ms. Gurgel is the current responsible for the Brazilian NDO however this was her first contact with COPOLAD. Both employees are under the

Coordination of Mr. Leonardo Moreira and, ultimately, Mr. Humberto Viana (National Secretary of Drugs Policies), yet none of them had attended personally to the last meetings of COPOLAD. Despite the very good will of Ms. Gurgel and Ms. Porto, I decide to not go into much detail about what happened in Lisbon in relation to my own country. Unfortunately, at the moment of this research and writing, Brazil is not assessable due to questionable changes of power and political instability that is affecting in a detrimental way the international engagement of the country.

5
Inquiry of NPE by Brazil in the field of human rights

5.1.
Background of EU-Brazil relation regarding human rights

Specifically with respect to Brazil, the first sign from the EU of a deeper dialogue with the country was revealed in 1992 through the *Framework Agreement for Cooperation* between the EEC and Brazil. In 1995, the establishment of the *EU-Mercosur Cooperation Framework Agreement* was a significant achievement to advance EU relations with Latin America. However, given systemic and internal challenges faced by the EU (economic (in)stability, end of Cold War, enlargement, review of Treaties), the dialogue with Brazil kept trifling for two decades[91]. During the 1st EU-Brazil Summit (2007, Lisbon), the Parties signed the Strategic Partnership (SP), recognizing cultural ties and mutual interests in all levels (bilateral, regional, international)[92].

Despite optimistic views from both sides regarding the potential of the SP, in practice its success is highly issue-specific. The set of 'shared history, culture and values' (SILVA 2011:80) does not assure common views in several topics of multilateral forums, specially in which Brazilian policy-makers perceive 'miscalculation' of the non-intervention norm by the EU (like the French intervention in Mali in 2013). Brazil's multidimensional profile is a continuous feature of its international identity, which has been strongly reinvigorated by President Lula da Silva (FERREIRA-PEREIRA 2015:8-9), and boosted the EU impetus to bring the relation closer and strengthened. This feature is also responsible for shaping the Brazilian view that the EU is *one* significant partner among others (ZNOJEK 2012:8), keeping its foreign policy away of any trace of dependency or neo-colonialism.

The field of human rights (HR) between the EU and Brazil is addressed both within the SP launched in 2007, and the UN Human Rights Council (HRC, created in 2006). In both instances the rhetoric indicates 'great space for cooperation', although,

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[91] In 2004, they signed the *Agreement for Scientific and Technological Cooperation*.
[92] The SP grounded on the following documents produced by the European Commission in 2005: "Brazil: country strategy paper 2007-2013" and "A stronger partnership between the EU and Latin America".

in practice, joint proposals and voting convergence demonstrate low proximity. On the one hand, democracy and HR are core values of the integration process since the 1950s, when the European Convention on Human Rights was ratified. On the other hand, the redemocratization of Brazil that started in 1985 is grounded on the successful inclusion of the HR grammar in the National Congress[93]. Therefore, it remains the question of which are the reasons or main factors that hamper the construction of a common position on this central matter for the EU-Brazil SP.

Despite positive discourses in regard to the need to strength cooperation on HR regimes, the 'strategic HR partnership has not yet emerged' (PAVESE, WOUTERS & MEUWISSEN 2014). It is an example of the clash between approaches and priorities that takes place in the scope of the EU-Brazil SP, "notably in terms of the implementation of international norms and rules, the framing of debates, and the choice of language" (FERREIRA-PEREIRA 2015:11), which has imposed practical constrains in further topics such as protectionist measures in trade and reform of international institutions. Reviewing the academic literature since 2007, the volume of analysis about the EU-Brazil relation on HR is conspicously lower when compared to other topics on which they have a consistent set of normative agreements and strategic interests, such as environment, climate change, energy, cooperation (research & innovation), foreign aid, trade and peaceful conflict prevention.

Within the HRC, the EU-Brazil SP is also below expectations. Poor record of cooperation can be observed in formal sessions and informal events, reflecting different perspectives mainly about their roles in shaping a global HR regime. By looking at their voting positions in the HRC Annual Report of 2015, out of 59 approved resolutions within the 28th and 29th Sessions, 18 were by votes in which Brazil and the EU converged in only 8 polls[94], respectively: resolutions 28/14 HR democracy and the rule of law, 28/22 Situation of HR in the Democratic People's Republic of Korea, 28/25 Right of the Palestinian people to self-determination, 28/26 Israeli settlements in the

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[93] It is crucial to mention the creation of the *National Truth Commission* in 2012, to investigate HR crimes during the Military Regime (1964-1984). The Commission highlights Rousseff Government's concern to accountability and trial of the perpetrators.
[94] Brazil had its mandate expired in 2015 and did not vote in HRC Resolutions of 2016. See Annual Reports of the HRC in http://www.ohchr.org/EN/HRBodies/HRC/Pages/Documents.aspx. For EU-Brazil voting convergence between 2006-2013, see PAVESE et al. 2014:17.

Occupied Palestinian Territory including East Jerusalem and the occupied Syrian Golan, 28/27 HR situation in Occupied Palestinian Territory, including East Jerusalem; resolutions 29/10 HR and the regulation of civilian acquisition, possession, and use of fire arms, 29/16 The graving and deteriorating HR and humanitarian situation in the Syrian Arab Republic, 29/17 Situation of HR in Belarus. Certainly, this criterion is illustrative but not determining of their differences, as among the other 41 approved resolutions without vote it might be the case that the EU and Brazil agree, disagree or abstain.

The EU is committed to its goal of projection as an international actor through the promotion of 'universal HR' (Article 21, TEU). "In light of this, the EU supports a strong multilateral HR regime that make states accountable for their violations with impartiality and autonomy", driving its partnerships according to its own values and instruments. "Nevertheless, believing in the importance of a strong multilateral system to promote human rights globally does not imply a common understanding on the rules and norms that define multilateral cooperation" (PAVESE 2013:248). EU member states usually vote *against* the resolutions under consideration, displaying selectiveness and discrimination upon the proposals taken to the HRC. Moreover, the EU defends intervention and sanctions 'when it is necessary'.

Brazil, in turn, repositioned HR in the forefront of its identity through the Federal Constitution of 1988 and, since then, has adopted a 'positive agenda' (AMORIM 2009) that refers to a non-confrontational behavior in the HRC. The country usually votes *in favor* of the resolutions, following its principles of non-interference, self-determination and *non-indifference* for each issue of the sessions. Oriented by these three main principles, particularly under the administration of President Lula da Silva and Chancellor Celso Amorim (2003-2010), Brazil adopted a dialogue strategy based on the 'solidarity engagement when it was requested, seeking the democratic consolidation of other countries' (AMORIM, C., *Discourse in the XXXVI General Assembly of OAS*, Dominican Republic, 2005).

Overall, incompatibilities between the EU and Brazil within the HRC are found in terms of *approaches*, such as damning report *vs.* 'positive agenda'; *instruments*, such as country-resolution, sanctions, intervention *vs.* non-interference; and *meanings of*

norms, such as accountability, impartiality *vs.* specificity of issues, non-confrontation, non-indifference (PAVESE 2013:259). An example of such incompatibilities can be found with respect to the topic of inclusion of binding human rights norms upon transnational companies and business. The EU takes the side of its enterprises in detriment of huge damages documented by countries predominantly from the Global South[95], and does not support the UN Working Group with the mandate of elaborating an international legally binding instrument (IGWG). On the other side, consistently with the principle of non-indifference, Brazilian government and civil society support the IGWG, recognizing its importance for most developing countries in which transnational corporations conduct their activities, such as the oil producer Chevron in the Ecuadorian Amazon.

Although this topic has a longstanding path of grievances addressed by Brazilian local actors including academics, civil society groups, NGOs and public research foundations, it was within the UNHRC that it became more visible. Discussions about HR and business were brought to the HRC in 2011, with the adoption of the "UN Guiding Principles on Business and HR"[96] (UNGPs), which "provide the first globally agreed framework for promoting responsible business conduct and corporate respect for human rights"[97] and has a voluntary character. Considering the insufficiency of the Guiding Principles claimed by Southern countries due to it recognizes Governments' responsibilities but does not explicitly tackle enterprises' accountability, in the 26th Session of the HRC in July 2014, the Resolution 26/9 on the "Elaboration of an internationally legally binding instrument on transnational corporations and other business enterprises with respect to human rights"[98] was adopted, without the EU vote. The Resolution "decides to establish an open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (IGWG); whose mandate shall be to elaborate an international legally binding instrument to regulate, in international human

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[95] See, for instance, the publication of CETIM "Transnational corporations' impunity" (March 2016) that gives three examples of TNCs' HR violations in developing and underdeveloped countries' territories.
[96] http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf
[97] https://business-humanrights.org/en/event-report-organizations-discuss-proposed-binding-treaty-on-business-human-rights-from-an-eu-perspective
[98] https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement

rights law, the activities of transnational corporations and other business enterprises", under the Head of the Ambassador of Ecuador Maria Fernanda Espinosa.

With the purpose to demonstrate divergences between the EU and Brazil in mind sets, approaches, measures and interests regarding the protection of companies *vs.* people, unfolding their continuous opposing perceptions, I exemplify by their positions in the 1st session of the IGWG (July 2015)[99]. The Brazilian Ambassador Regina Dunlop stated:

> "Brazil welcomes the first session of the IGWG. (…) Brazil is committed to engaging constructively in the discussions to take place within the working group. We believe this is an important opportunity to exchange views on a key issue of the international agenda, with a view to elaborating a legally binding instrument. To this effect, interministerial consultations are being held in Brasilia to coordinate a national position and promote dialogue with relevant stakeholders, from government and civil society alike."

The EU only engaged in the opening and did not participate in the rest of the session. In its intervention, the EU stated:

> "For the reasons outlined above, the *process as currently set out towards an international legally binding instrument raises several concerns*. It is unclear how a possible treaty would relate to the policy framework already created by the UNGPs and what a legally binding instrument would involve, or how it would function in operational terms. *In addition, pushing for a legally binding document at this stage unnecessarily polarizes the debate*. The absence of an international legally binding treaty does not prevent the imposition of binding commitments for businesses at national level/regional level in accordance with existing international obligations. Against this background, at HRC 26 the EU and its Member States expressed the view that the then imminent establishment of an *Inter-Governmental Working Group for the preparation of an international legally-binding instrument on Business and Human Rights was not the most effective response* and that the use of existing UN fora would have been more appropriate." (my emphasis)

In the scope of the EU-Brazil SP, HR is not a priority. The second Country Strategy Paper (2007-2013) did not address the issue and it is argued that the EU prefers other instruments and partnerships among the Brazilian civil society and NGOs to set

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[99] The statements presented above were gathered during my internship at Delbrasgen (September-December 2016), when I participated in the 2nd session of the IGWG and the 5th UN Forum on Business and Human Rights *"Leadership and leverage: embedding human rights in the rules and relationships that drive the global economy"*, respectively held in 24-28 October 2016 and 14-16 November 2016 at the *Palais des Nations*, Geneva.

the bilateral dialogue on HR. "From the Brazilian perspective, the decrease in emphasis given to HR in the framework of its cooperation with the EU responds to the country's understanding that *internal problems in this area are essentially domestic affairs*. (…) *a bilateral dialogue would have to include HR problems within Europe as well. Since that has not been the case*, dialogue has focused on the few issues in which there is reciprocal interest" (PAVESE 2013:222-223). Similarly, among the documents signed at the VII Brazil-European Summit (February 2014, Brussels), 'economic themes focusing in investment and competitiveness' prevailed. For instance, HR does not figure amidst the fifteen topics of the Plan of Action on Investment and Competitiveness EU-Brazil[100]. In the most recent VI EU-Brazil High Level Dialogue in HR (April 2017, Brussels), despite the parties underlined areas of particular interests[101], no plan of action was established.

5.1.1.
The Human Right to Health: the EU-Brazil dispute over global access to medicines

5.2.
From the typology to the analysis:

In light of these differences, *the case study examines what and how mechanisms and instruments of norms contestation/ resistance were resorted by Brazil and the EU related to the global access to medicines in order to enforce their opposing interpretation at the multilateral level.* It is important to note that the case embraces India and, in some instances, other Southern countries; yet I focus on Brazil to allow for a more detailed analysis. It deals with two fundamental human rights, i.e. the right to development and the right to health, giving a clear picture of why such fields remain frictional and entail effects for the special partnership between the EU and Brazil. I

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[100]Available in: http://www.itamaraty.gov.br/en/press-releases/3577-documents-signed-at-the-vii-brazil-european-summit-brussels-february-24th-2014. Access in 27 October 2017.

[101] Those areas are mentioned in paragraph 28 of the Joint Statement of the VI Brazil-EU Summit (January 2013, Brasilia). Available in http://europa.eu/rapid/press-release_PRES-13-29_en.htm

stress context specificities (conditions) as well as the roles of interpretation and internal factors (parameters) in explaining Brazil's non-recognition of NPE as identity.

I highlight specific aspects of the event that strengthen the argument that Brazil does not hold a perception of legality and legitimacy of EU norms regarding access to medicines, resisting to the EU's interpretation of the right to development. To conclude, I indicate a possible counterfactual to the EU legal adaptation (value of the mechanism 'persuasion'), as well as alternative explanations to the outcome related to the causes of non-recognition of NPE as identity seen from the others. Those causes are suggested here as findings of the cases, aiming to provide a suited understanding of the research puzzle.

On the issue of global access to medicines, Brazil strongly resorts to the mechanism of persuasion supported by international norms that uphold its National Health System, steering its position at the bilateral and multilateral levels (WTO/ WHO). Brazil also acted through subsidiarity against EU Regulations that allow customs to 'temporarily detain' shipments of medicines in transit, engaging with EU claims that its legislation is legitimate due to it being in line with international treaties such as the TRIPS Agreement of 1994, and that it holds a legitimate aim/ duty to prevent the transit of counterfeit medicines that would jeopardize the life of 'vulnerable populations'.

Overall, Brazil sees the EU drawing on its bargaining power through trade and political leverage to validate its own Regulations above multilateral ones at stake, such as the Doha Declaration on the TRIPS Agreement Public Health (2001), as well as intentionally mixing sanitary with commercial arguments in order to cause misunderstandings regards the nature of generics and to safeguard patents holders. The case shows the EU economic capacity vis-à-vis Brazil oriented to speak up for its pharma companies' interests rather than for global norms and values such as the SDG #3. Until here, this would be another case of EU leverage over Southern countries through trade pressures and geopolitical enforcement of its normative interpretations, leading to few acts of contestation from the South yet without further serious measures to actually undertake such resistance. As explained by Rosina and Shaver, international trade and human rights obligations are of equal standing in the law,

"in practice, however, the two legal regimes are deeply incommensurate. (…) Because the substance of international trade law is determined through a deeply political process, its enforcement stage is relatively less complicated. (…) Human rights law, in contrast, is fundamentally concerned with the dignity of individual. When interests conflict, this regime generally seeks its solutions through principled interpretation (…) the international institutions for human rights enforcement are relatively weak. (…) The WTO system does not, however, treat access to medicines as a human right. Promotion of health is considered as a domestic policy aim, rather than as an international legal obligation" (ROSINA & SHAVER 2012:202).

Nonetheless, as we shall see below, what makes the case particularly interesting is the reflected change of EU Regulation for which constant persuasion exercised *from Southern countries, especially Brazil and India, over the EU* was a contributing condition. In a counterfactual perspective, I would argue that it might have had other reasons within the EU institutional apparatus concurring for such Regulation change, nonetheless there are several textual indicators in discourses and official documents that allow me to trace the following causal pathway. In the same line, the resistance exercised by Brazil and India through subsidiarity and persuasion impacted on EU identity politics by means of non-recognition of NPE yet this is not the only possible outcome. Moreover, the analysis of the process allows me to uncover idiosyncratic causes to explain non-recognition that were so far omitted variables, which might be generalizable in specific scope or domains.

Among Southern countries, I will concentrate on Brazil due to the aim of conducting discourse and content analysis of a restricted yet significant number of documents. As I said before, on the issue of global access to medicines, India was also in the forefront of the battle against the EU Regulation 1383/ 2003 and European customs, especially of The Netherlands. In addition, during the process of contestation, many other Southern countries joined Brazil and India either within the scope of the WTO dispute settlement and the complaint submitted to the Permanent Peoples Tribunal, both on May 2010.

In an overview, the EU-Brazil dispute over global access to medicines formally lasted from 2008-2013, reaching multilateral forums such as WTO, WHO/ UNAIDS

and encompassing related areas like the Intellectual Property regime, combatting counterfeit and the South-South trade of generics. However, the cluttered litigation is still on going, particularly in the scope of recent negotiation rounds of the EU-Mercosur FTA. I resort on the methodologies of critical discourse analysis of interviews and statements, as well as content analysis of official documents and media press produced by and about the EU and Brazil mainly under the authorship of NGOs and organized civil society groups. In the Conclusion, I fill the typology with relevant information of the case that explains the political dilemma of NPE when facing the Brazilian resistance of NPE as foreign policy in the field of HR.

5.3.
Divergent normative interpretations at stake

> "Eu acho que essas diferenças de perspectivas são normais. Agora, *nós* não vamos renunciar a primazia de poder tratar dos nossos doentes havendo formas de fazê-lo" (Interview with Chanceler Celso Amorim to *Swissinfo*, 3 September 2010)[102].

As one of the main producers of pharmaceutical drugs (together with the US), strategically located in-between three continents of underdeveloped and developing countries (Asia, Africa and Latin America), and responsible for a great amount of the world trade[103], the EU enforces its interpretation of the "human right to development" articulated in opposition to the "human right to health", which is the motor of the Brazilian standpoint. This interpretation is twofold: to protect patents within the Intellectual Property Rights (IPR), and to combat counterfeit. The EU strongly advocates that the defense of IPR and patents law are conditions to the right to development, i.e. investment in research and technology of medicines conducted in developed countries, which guarantees global health by exporting 'safe' medicines worldwide. This normative interpretation reflects the *EU power vis-à-vis those*

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[102] "I think that those differences in perspectives are normal. But, we will not renounce the primacy of being able to treat our patients with ways to do it" in *"Resenha de Politica Exterior do Brasil"*, no.107, 2º semester 2010, year 37, pp.425-426 (MRE).

[103] "(…) with 18.5% of the world market for high-tech products, the EU has become the principal exporter (…) In the field of exchange of services, the EU is the leading exporter with 26.9% of the world market" in *Global Europe: EU performance in the global economy* 2008:2-3.

underdeveloped populations, supporting the fight against counterfeit that is strategically associated with the alleged suspicion of bad quality of generic drugs produced in some developing countries such as India and China.

On the other side, without huge technological capacity to manufacture drugs and held patents, largely dependent on generics trade to uphold its National Health System, Brazilian Government faces the IP regime and the campaign of combatting counterfeit undertaken by rights holders as *international constrains* to its normative interpretation of the human right to health concerning global access to medicines. "India and China are also the world's main suppliers of active ingredients – the raw material for drug production – that support the generic drug industries of several other countries, including Brazil" (ROSINA & SHAVER 2012:197).

When the patent term expires, the drug becomes available for generic production. Between 2003-2008, India was accounted for 80% of generics supply for HIV/AIDS treatment in 115 of middle and low-income countries (including Brazil), for example, becoming the "pharmacy of the developing world" according to *Médecins* Sans *Frontières (MSF)*[104]. "Accessibility has been the 'driving force' of health policy, and reducing costs a priority for India, with initiatives for the distribution of free drugs and promotion of generic production", said Shri C. K. Mishra, additional secretary of the Ministry of Health of India[105].

The first clarification is therefore with respect to both rights claimed by the parties, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR) in its series of publication "Human Rights Fact Sheets". I use the framework proposed by the OHCHR as a template to further analysis of interpretations and approaches due to it is based on Declarations and Conventions signed by the EU and Brazil. The *Declaration on the Right to Development* was adopted in the UNGA

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[104] *"Europa de olho nos nossos medicamentos"*, in Folha de São Paulo, 26 November 2010, by Gabriela Costa Chaves and Amanda Mey. Available at: http://www1.folha.uol.com.br/fsp/opiniao/fz2611201007.htm. And *"Presidente de MSF clama para que a Índia resista à pressão europeia"*, published in 21 January 2011, by MSF. Available: http://deolhonaspatentes.org/presidente_de_msf_clama_para_que_a_india_resista_a_pressao_europei a/. Access: October 2017.

[105] *"BRICS Ministers join forces for access to medicines"*, 20 May 2014, by Julia Fraser for Intellectual Property Watch. Available at: https://www.ip-watch.org/2014/05/20/brics-ministers-join-forces-for-access-to-medicines/. Access: October 2017.

on 4 December 1986[106], although "the promise of the right to development has remained unfulfilled. In fact, over the years, progress in translating the Declaration into practice has been undermined by misunderstanding, criticism and even rejection" (Fact Sheet no.37 2016:1).

There are six key elements that summarize the right to development:

"People-centred development. The Declaration identifies "the human person" as the central subject, participant and beneficiary of development (art. 2).

A human rights-based approach. The Declaration requires that development be carried out in a manner "in which all human rights and fundamental freedoms can be fully realized" (art. 1). Such an approach "focuses on ensuring participation, accountability, non-discrimination, equity and consistency with international human rights standards, including the right to development, in all development processes[107]" (p.11)

Participation. The Declaration insists on the "active, free and meaningful participation" of individuals and populations in development (art. 2).

Equity. The Declaration highlights the importance of "fair distribution of the benefits" of development (art. 2).

Non-discrimination. The Declaration allows no "distinction as to race, sex, language or religion" (art. 6).

Self-determination. The Declaration requires the full realization of the right of peoples to self-determination, including full sovereignty over their natural wealth and resources (art. 1)" (op.cit.:2).

In light of these elements, the OHCHR explains that, despite States have the primary responsibilities of duties,

> "The responsibility for development and the duties towards the community which the Declaration places on all human beings entail that *such responsibilities are shared by all relevant actors and organs of society, including the private sector and civil society*. (…) The right to development articulates a vision for transformative development founded on the principles of international law and anchored in *international solidarity*, the *equal participation of all stakeholders*, and the *fair distribution of income and resources*, so that truly sustainable, *people-centred development* can be achieved. (…) the Declaration's mandate for international cooperation and *equitable distribution* also requires that *technology and scientific innovation* (…) should be equitably shared in a manner that *takes into account the needs of the most vulnerable. In practice, this requires a system of intellectual property protection that encourages innovation while ensuring that live-*

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[106] "The Declaration was adopted in 1986 with a recorded vote of 146 Member States in favour, 1 against and 8 abstentions (against: United States of America; abstentions: Denmark, Finland, Federal Republic of Germany, Iceland, Israel, Japan, Sweden and United Kingdom). In 1993 the World Conference on Human Rights adopted the Vienna Declaration and Programme of Action, in which **all** Member States reaffirmed "the right to development, as established in the Declaration on the Right to Development, as a universal and inalienable right and an integral part of fundamental human rights" (para. 10) (…) in 1998, the United Nations established the Working Group to monitor and review progress in the promotion and implementation of the right to development at the national and international levels" (Fact Sheet no.37 2016:19/21).

[107] See the statement issued by UN agencies, funds and programmes *"The human rights-based approach to development cooperation: towards a common understanding among the United Nations Agencies"*, 2003.

saving technologies are not withheld from the poor, vulnerable, marginalized and excluded" (op.cit.:4/13/16, my emphasis).

Despite that the Declaration does not explicitly mention health promotion, it remains clear that the system of IPR must ensure live saving particularly of the most vulnerable. Moreover, the right to development is people-centred and there is no mention that trade, investment and finance ought to supersede people's needs in any circumstance. On the other side, *"the right to the enjoyment of the highest attainable standard of physical and mental health"* was first articulated in the 1946 Constitution of the World Health Organization (WHO). Five key aspects define the right to health: it is an inclusive right (with several 'underlying determinants of health'); it contains freedoms (for example, from non-consensual medical treatment); it contains entitlements, which include the access to essential medicines; health services, goods and facilities must be provided to all without any discrimination; and all services, goods and facilities must be available, accessible, acceptable and of good quality (Fact Sheet no.31 2008:3-4). Moreover,

> "The Committee on Economic, Social and Cultural Rights has underlined that *States should, at a minimum, adopt a national strategy to ensure to all the enjoyment of the right to health*, based on human rights principles which define the objectives of that strategy (p.24). (…) *Companies marketing pharmaceutical products or medical equipment* may contribute positively to the enjoyment of the right to health but may also *make health care more difficult to access or afford, for instance by keeping the price of medicines, such as those for HIV/AIDS treatment, high.* (…) Businesses are considered to have some responsibilities with respect to human rights, although the exact nature and scope of these are *unclear*. Nevertheless, States are, ultimately, accountable for any violation of human rights. *Increased attention has been paid to businesses recently.* Some initiatives have attempted to define specific human rights standards applicable to them. The Commission on Human Rights has discussed the role of the private sector in relation to access to medication in the context of pandemics such as HIV/AIDS (…) (p.30, my emphasis)".

Successive international treaties, declarations, resolutions, norms and standards[108] have emphasized the role of States to ensure the right to health to all without any discrimination. Thereby, equity and non-discrimination regards the provision of

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[108] See Annex 'Selected international instruments and other documents related to the right to health' (Fact Sheet no.31 2008:41-44).

services, goods and facilities go hand in hand with the six elements of the right to development that, under a human rights-based approach, ought to contribute to the right to health's fulfillment.

In light of OHCHR's understanding, Brazil claims that its national strategy of providing public health, i.e. universal access to medicines and medical services at no charge to the patient, is threatened by the *"Council Regulation (EC) No. 1383/2003 of 22 July 2003 concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against good found to have infringed such rights"*[109]. Both the national strategy and the international constraints abovementioned comprise Brazilian parameters to undertake steps of resistance to EU conditions that support its interpretation of the right to development. On the other side, the EU claims that "the EC and their Member States consider that intellectual property rights provide an essential stimulus for creativity and innovation. These rights need to be adequately protected in order to encourage, for example, investment in research and development of new medicines, and particularly those targeted at the major communicable diseases" (paragraph 7, paper submitted by the EU to the TRIPS Council, for the special discussion on intellectual property and access to medicines, 20 June 2001[110]).

5.4.
What did actually happen?

Under the EC Regulation 1383/2003 and in response to patent rights owner's complaints, Dutch customs authorities systematically confiscated in transit medicines between 2008-2009 at the Rotterdam port and Schiphol airport in Amsterdam, mainly from India to Africa and Latin America[111], alleging counterfeit and the violation of IPR contained in the WTO TRIPS Agreement (*Trade-related Aspects of Intellectual Property Rights*, 1994). For the first time, in early December 2008, Brazil and the EU faced the limit of their divergent perspectives about the right to health *vs.* intellectual property rights as a central part of the right to development.

On 3 February 2009, the Permanent Representative of Brazil to the WTO Ambassador Roberto Azevedo made the following intervention at the WTO General Council Meeting, on the seizure by Dutch authorities of a cargo of 570 kilos of *losartan*

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[109] Available: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:196:0007:0014:EN:PDF. Access: October 2017.

[110] Available: https://www.wto.org/english/tratop_e/trips_e/paper_eu_w280_e.htm. Access: October 2017.

[111] See DE FARIA 2011:25. The author gives a complete explanation about drug's confiscations in European routes.

potassium docked in Rotterdam while in transit from India to Brazil. An informed source notes that India and 16 other members of WTO supported Brazil's intervention:

> "(…) The decision to impede the transit of a cargo of generic medicines – which was not headed for the Dutch market – is unacceptable and sets a dangerous precedent. Worse still, there are indications that this is not an isolated case.
>
> Trade in generic medicines is perfectly legal from the intellectual property point of view. Nevertheless, as we understand it, the EC Regulation empowers customs authorities to interfere with the transit of generic medicines. *The concept of generic must not be mistaken with counterfeit or pirated. Generic medicines are not substandard or illegal.* They simply do not enjoy patent protection in the relevant market. In Brazil, the falsification of medicines is typified as heinous crime.
>
> Under TRIPS, the medicines seized are generic under the law of the market in which they were meant to be commercialized. (…) *Whether or not the medicines were generic under the law of the country of transit is an irrelevant question.* What is not irrelevant is the decision taken by Dutch customs authorities to block the transit and thus impede the access of Brazilian hypertension patients to safe and price-competitive generic medicines. (…) *Irrespective of the value or volume of the cargo involved, Brazil is gravely concerned with the setting of a precedent for extraterritorial enforcement of IP rights.* (…) [which affront] in particular the well-established principle of territoriality, a fundamental pillar of the international intellectual property regime.
>
> Extraterritorial enforcement of patent rights cannot be reconciled with the terms of the *Doha Declaration on TRIPS and Public Health.* That Declaration, adopted by the Ministerial Conference on November 14, 2001, states that the TRIPS Agreement "can and should be interpreted and implemented in a manner supportive of WTO Members' right to *protect public health* and (…) to *promote access to medicines for all*". (…) Brazil is fully committed to intellectual property protection. (…) *The protection of intellectual property cannot supersede the protection of more fundamental values, such as the protection of life and the right to promote public health.* (…)
>
> In light of the above, *Brazil would appreciate if the Netherlands and/or the European Communities could clarify the circumstances and legal basis of the decision taken by Dutch authorities*, which led to the refusal of transit for generic intellectual property-free medicines. *Brazil also expects that the Netherlands and the EC bring their legislation into conformity with multilateral trade disciplines* so that episodes such as this one no longer happen."[112](my emphasis)

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[112] https://www.keionline.org/blogs/2009/02/03/intervention-by-brazil-at-wto-general-council-on-seizure-of-500-kilos-of-generic-medicines-by-dutch-customs-aut

On the same 3 February 2009, Ambassador Eckart Guth of the European Communities to the WTO made the following intervention at the WTO General Council on the subject of the seizure of losartan by the Dutch customs authorities:

> "While we appreciate the right of Brazil and India to raise this issue in this forum, I would have liked that it would have first been raised bilaterally to clarify together the facts and figures, before triggering a highly emotional debate. Also, we would prefer that members refrain from jumping into incorrect conclusions. I assume that none of the countries that have intervened would wish the EC to allow the flow of counterfeit goods to their populations. The issue at stake should not be blown out of proportion. (…)
>
> Let me make it very clear that the EU has absolutely no intention to hamper any legitimate trade in generic medicines or to create legal barriers to prevent movement of drugs to developing countries, nor have our measures had this effect. We are absolutely committed to all the efforts that are being made to facilitate access to medicines.
>
> In the present case, it appears that, following a request by a company which has patent rights over the medicine in question in the Netherlands, the Dutch authorities temporarily detained (which does not mean seize, confiscate or destroy) a small shipment of drugs worth 55.000 euros in a Dutch airport, in order to control it. This action is allowed by TRIPS and is based on provisions in EU customs law that allow customs to temporarily detain any goods if they suspect that these goods infringe an intellectual property right.
>
> The goods were not intended for the EC market and the medicines were finally released by the authorities, leaving their (Indian) owner the right to do with these goods as he pleases. There was certainly no legal obligation to send these goods back to their country of origin (i.e. India). We are still not clear as to why the company decided to proceed that way, but this is in any event beyond our authority once the goods were safely returned to their owner. We have no indication that there is a systemic problem in this respect. (…)
>
> It goes without saying that IP enforcement law should not create any undue barriers to access to medicines, and we are confident that this is not the case. Nevertheless, we will cooperate with India and Brazil to look into this matter further. We are also willing to provide full information about the legal grounds on which the decision was taken."[113] (my emphasis)

In the WTO General Meeting, Ambassador Azevedo makes one of the main points of Brazilian argumentation: the distinction between generics and counterfeit related to the IPR and its legal applicability, reaffirming the irrelevance of patents law of the country of transit, i.e. the principle of territoriality as a basis of the IPR regime. He

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[113] https://www.keionline.org/blogs/2009/02/05/ec-intervention-at-wto

recalls the public health dimension of the TRIPS, citing the Doha Declaration of 2001 – the main international agreement on which Brazil constructs its role concerning access to medicines up to the present –, and clearly makes use of terms from the OHCHR's definitions to support Brazil's value-oriented position. To conclude, the EU was called up to behave illegally in Brazil's perspective.

Ambassador Guth of the EC starts his reply discontent with the fact that Brazil forwarded its message within the WTO, showing some effect of this forum as an instrument of Brazilian foreign policy to strength its message and to use the "naming and shaming" approach towards the EU. Than, he tries to weaken the fact by calling the debate "emotional" and "blown out of proportion", making the central point of EU argumentation: Dutch customs authorities *temporarily detained* a shipment suspected of infringe an IP right, in accordance with TRIPS and EU provisions.

According to Ambassador Guth, as the cargo was finally released to Indian authorities, it was the case that *they* prevented the cargo to arrive in Brazil, *not* the EU. He feels insulted and needed to agree to cooperate with Brazil and India on the matter. Mr. Guth does not touch upon the Doha Declaration nor gave any concrete mention to values and principles (including the application of OHCHR's definitions). His focus kept on using language to reduce the importance of the detainment and its consequences, affirming the legal character of customs control into the EU territory.

The right to public health including global access to medicines is at the core of developing countries' policies, as well as of activists and international NGOs' statements like from MSF, Oxfam and Health Action International, which are articulated in opposition to such strong market-oriented view held by the EU. For instance, MSF Secretary General Mrs. Kris Torgeson sent a letter to the EU Commissioner for Trade Mrs. Catherine Ashton, and the EU Commissioner for Taxation and Customs Union Mr. László Kovács in 12 February 2009, "following the seizure of medicines in transit in the EU to developing countries for alleged patent infringement:

(…) It was not for use within the EU. (…) MSF is concerned that the establishment of a precedent in EU countries to use such provisions to intercept legitimate trade between generic manufacturers and developing countries could severely impact the affordability and availability of medicines in developing countries. (…)

Many countries do not have manufacturing capacity to produce medicines, or rely on importing more affordable generic medicines from abroad in order to treat their population. As such, the trade in legitimate medicines between countries is fundamental to ensuring access to medicines for millions. Provisions to ensure such countries can access medicines, enshrined in the Doha Declaration and the WTO August 30th decision, cannot be implemented effectively if on key transit routes the risk exists that supplies can be regularly subject to interception based on assertion of patent infringement in the transit country. (…) We, therefore, call on the European Commission to:

Clarify its position regarding the implementation of the EC Regulation No 1383/2003 *with regard to pharmaceutical products*;

Review the effect of the EC Regulation No 1383/2003 on the supply of legitimate medicines, *given the EU stated commitment to the full implementation of the Doha Declaration on TRIPS and Public Health and the WTO August 30th decision*;

Clarify whether such provisions are proposed for *inclusion in European Partnership Agreements [EPA] and in the current negotiations of the EU Free Trade Agreements [FTA].*"[114] (my emphasis)

Mrs. Torgeson drawn on Azevedo's concerns regards the illegal use of IPR by the EU, adding MSF's experiences with low-income countries that are not part of the IPR regime due to their manufacturing incapacity to produce medicines. Moreover, Mrs. Torgeson launches what became a general apprehension: whether EU provisions are proposed for inclusion in EPA and FTA under negotiation between the EU and many low/middle-income countries, underpinning her perception that NPE as foreign policy exercises power through trade.

In the meanwhile, Brazil conducted inquires about other cases of seizure and detainment of pharmaceutical goods from India to South America and Africa, while increased its support from the Global South to take over the topic at multilateral instances. One month later, Brazil brought the issue to the TRIPS Council. On 3 March

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[114] https://www.msfaccess.org/content/msf-letter-ec-over-dutch-generics-seizure

2009, Ambassador Roberto Azevedo delivered the following intervention, on "Public Health dimension of TRIPS Agreement":

> "(…) Today we also bring this issue to the attention of the TRIPS Council. (…) *The EC delegation at the WTO General Council [GC] provided clarifications suggesting that we were before a minor, exceptional and inconsequential incident. That could have been reassuring but Brazil is now in a position to assert that such incident was neither minor, nor exceptional, nor without consequences.*
>
> *At the GC, the EC pointed out that the cargo was – and I quote – "a small shipment of drugs worth 55,000 Euros". First, let me note that the size of the shipment is in no way relevant in ascertaining the egregious nature of the action of the Dutch authorities vis-à-vis the WTO disciplines. Furthermore, despite its low monetary value, that shipment of 570kg was enough to treat 300,000 Brazilian patients for a full month. That's 300,000 people who suffer of hypertension, a deadly disease if not treated properly. It was not, as we can see, a minor incident. Let me recall that one of the benefits of generic medicines is precisely the fact that they are less costly than those that enjoy patent protection. Therefore one should, in fact, expect lower than usual monetary values when dealing with such shipments and this in no way mitigates or justifies the action of the customs authorities.*
>
> *I also regret to say that the incident at issue was not exceptional. In fact, such incidents occur rather frequently.* In letters addressed to the DGs of the WTO, Pascal Lamy, and of the WHO, Dr. Margaret Chan, *sixteen NGOs expressed their grave concern with public health implications* of the episode (…) Our own inquiries led to the identification of *more than a dozen other instances of consignments of generic drugs in transit on Dutch territory in 2008 alone*. They were directed to at least 7 different developing countries in South America and Africa. (…)
>
> *First, the shipment did not follow its original course to Brazil due to an autonomous decision of the exporter to bring it back to India. Such action by the exporter was a result of negotiations with the holder of the patent in the Netherlands, who actually threatened to request the destruction of the apprehended goods. Second, we have evidence indicating that around half of last year's Dutch seizures resulted in the destruction of the goods in transit.* (…)
>
> *Trade in generic medicines is not only perfectly legal under international IP law, it is also desirable from a development and public health perspective. The transit of generic medicines cannot possibly be construed as a violation of patent rights in the country of transit. The TRIPS Agreement does not allow such interpretation.* (…) *TRIPS flexibilities are so vital that the WTO Ministerial Conference decided to strengthen them by adopting the Doha Declaration on TRIPS and Public Health.* This Ministerial Declaration also paved the way to the so-called "paragraph 6 system", a much needed and long awaited response to the specific situation of countries with insufficient or no manufacturing capacity in the pharmaceutical sector. (…)

The losartan episode and all the other incidents I mentioned earlier are a major source of concern for developing countries *because they essentially imperil the public health dimension of the TRIPS Agreement*. (…) Since our first statement in the last GC Meeting, our apprehensions have increased considerably due to the preliminary results of our still ongoing inquiries. I would therefore seek guidance and clarifications from the EC on:
(a) How the Dutch authorities' actions can be reconciled with WTO disciplines;
(b) Whether EC Council Regulation 1383/2003 requires or justifies such actions from the customs authorities of the Communities; and, above all,
(c) How will the Communities ensure that such actions will not reoccur."[115] (my emphasis)

Different from Ambassador Guth's reply, Ambassador Azevedo strictly draws on EC clarifications to formulate his second intervention on the matter, clarifying the meanings of the Brazilian frame of the fact. That way, he challenges Mr. Guth's discursive representations, giving materiality to his interpretation of *minor* (irrelevant size of the shipment and its obvious low monetary value *vs.* the amount of patients with hypertension), *exceptional* (more than a dozen other instances of consignments of generics) and *inconsequential* (the shipment was brought back to India as a result of negotiations with Dutch rights holder who threatened to request the destruction of the apprehended goods). To conclude, Azevedo recalls the importance of TRIPS flexibilities and the Doha Declaration, as well as the public health dimension of TRIPS. On 3 March 2009, India[116] also delivered an intervention at the TRIPS Council on the issue of the public health dimension of the TRIPS Agreement in the context of the Dutch seizures, supporting legal points expressed by Brazil while also clarifying about Indian consignments:

"(…) I will like to mention that my government has taken up the issue bilaterally with the EC and the Dutch Government to urgently review the relevant regulations and the actions of the national authorities based on such regulations, and bring them in conformity with the letter and spirit of the TRIPS Agreement, the rules based

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[115] https://www.keionline.org/blogs/2009/03/04/brazilian-intervention-at-trips-council.

[116] India also made an intervention on this issue in the WTO GC in 3 February 2009. Its statement centred on the public health aspect of the detentions, holding a strong normative emphasis: "In addition to going against the spirit of a rule based trading system and impeding free trade, such acts represent a distorted use of the international IP system and circumscribe TRIPS flexibilities. Repeat of such actions may have an impact on exporters' choice of transit routes (…)" in MERCURIO 2012:400.

WTO system and the DMD [Doha Ministerial Declaration] on Public Health. We are still awaiting a response.

(…) Dutch customs authorities have 'confiscated' these consignments on grounds of alleged violations of domestic patents and trademarks. This is not a case of 'temporary detention' since some consignments continue to be held for over months. Moreover, procedures for their destruction were also initiated. Four such instances have come to the notice of my Government and all these four instances have been reported from the Netherlands. These consignments were headed for Brazil, Peru and Colombia. While one consignment has been returned to the exporter after being held for over a month, the fate of the other three is still unclear. (…)

The action of the Netherlands customs authorities to seize generic drugs, traded between developing countries in full conformity with international disciplines, runs counter to the spirit of the TRIPS Agreement and the resolution 2002/31 of the Commission on Human Rights on the right to enjoy the highest standards of physical and mental health. Measures of this nature have an adverse systemic impact on legitimate trade of generic medicines, South-South commerce, national public health policies and the principle of universal access to medicines. The importance of generic drugs to public health in developing countries and particularly in the LDCs [Least Developed Countries] is obvious.

(…) The WTO rules based system provides for freedom of transit by the most economical and convenient routes and without unnecessary delays and restrictions. (…) Repeat of such actions may have an impact on exporters' choice of transit routes, which may affect the economics of trade of pharmaceutical products and consequently, have a deleterious effect on access to essential drugs and public health budgets of recipient countries. (…) We also note with dismay efforts by some Members to link safe and efficacious but low cost generics with counterfeit medicines, which is essentially an IPR issue. (…)"[117]

5.5.
The engagement of NGOs, media and civil society around the world

During the year of 2009, other NGOs and the media did not cease to report the case. For instance, in October 2009, Oxfam International and Health Action International (HAI-Europe) launched a twenty-two pages report entitled *"Trading away access to medicines. How the EU's trade agenda has taken a wrong turn"*[118] and, together with

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[117] https://www.keionline.org/node/309

[118] https://www.oxfam.org/en/research/trading-away-access-medicines

In 2014, Oxfam and HAI launched a Joint Agency Briefing Paper entitled *"Trading away access to medicines – revisited. How the European trade agenda continues to undermine access to medicines"*, available in:

MSF, they launched a joint Declaration[119] with the same title, in which the first paragraphs and recommendations state:

> "European Union trade policies *consistently threaten access to affordable essential medicines* by seeking to entrench overreaching intellectual property (IP) rules. (…) The EU's IP demands restrict competition from generic medicines and discourage medical innovation for 'neglected diseases'; thereby sustaining high prices for branded medicines and leaving a research gap for medicines to treat diseases that predominantly affect developing countries. (…)
>
> Oxfam International, HAI-Europe and MSF therefore make the following recommendations:
>
> (…) 2. The EU should ensure its trade policy is in line with its development objectives, including specifically enhancing access to health care and access to medicines. EU Member States must act to hold the EC accountable when the EC fails to uphold these principles. (…)
>
> *With respect to IP:* (…) b. The EC should stop exerting pressure on governments that attempt to introduce safeguards and flexibilities to protect and promote public health. (…)
>
> *With respect to R&D:* a. European donors, including the Commission, should scale up their financial contribution to R&D to address diseases that disproportionately affect people living in developing countries, especially through alternative funding mechanisms that *delink the R&D cost from the end-cost of products* to thereby promote access and therapeutic innovation." (my emphasis)

Moreover, the Head of Oxfam International EU Advocacy Office Elise Ford published that "*EU double standards threaten to leave poor countries without medicines:*

> (…) The EU is also insisting on tough new intellectual property rules in bilateral free trade deals that go beyond the WTO's existing TRIPS agreement. The EU is pushing these measures that **will result in higher medicine prices in developing countries** *at the same time it is trying to reduce domestic medicine prices. Twenty-four out of 27 EU Member States have taken steps to implement price controls for medicines. (…) The EU is guilty of double standards. One rule for the rich and another for the poor. A crackdown on European pharmaceutical prices is happening alongside a concerted effort to further push intellectual property rules that prevent poor countries from buying affordable medicines.* The EU's policies are increasing the cost of medicines. **This is hitting the poorest people in developing countries**

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https://www.oxfam.org/sites/www.oxfam.org/files/file_attachments/bp-trading-away-access-medicines-290914-en.pdf

[119] https://www.msfaccess.org/content/trading-away-access-medicines-european-union%E2%80%99s-trade-agenda-has-taken-wrong-turn.

disproportionately hard, as 20-60% of their health budgets are spent on medicines. (…)
*While the EU is increasing funding to improve health care for European citizens, **it is denying developing countries the affordable medicines they need to ensure good health.***"[120] (my emphasis)

The evidence of "double standards" became one strong asset for Brazil's action through subsidiarity, under its parameters to contest EU interpretations. It is an idiosyncratic aspect of the case that, together with the weight of the Doha Declaration and TRIPS flexibilities, and the distinction between generics/ counterfeit, comprises the three main representations of the Brazilian framing. The causes of the NPE political dilemma might be seen in light of such frame, which is built also on the perception that the EU does not handle essential differences with regard to both regions' capacity to manufacture new medicines. The German *Deutsche Welle* took the lead among broadcasters in announcing the likely next step, which would be the opening of a Brazil-India WTO dispute settlement against the EU. The report's headline was *"Brasil e Índia querem apresentar recurso sobre genéricos contra a UE"*[121], presenting quotes of the European Commissioner Lutz Guellner, as well as of Oxfam and HAI's joint declaration and Ms. Elise Ford's statement (that I suppress for the sake of avoiding repetition):

> "Brasil e Índia querem apresentar à OMC queixa conjunta contra a UE, devido à política do bloco sobre patentes de remédios. Entidades humanitárias acusam europeus de dificultar acesso de países pobres a medicamentos. (...) *Diplomatas dos dois países junto à OMC afirmaram que seus governos decidiram encaminhar um pedido para realização de consultas com a UE, primeira etapa para lançar uma disputa comercial formal.* (...) O dilema é: como conciliar o fornecimento de remédios acessíveis à população de países pobres com a necessidade de se promover a pesquisa médica com o dinheiro arrecadado através das patentes dos medicamentos. (...) *"A Comissão concorda que ações contra falsificações e contra drogas perigosas não deveriam ser realizadas às custas do comércio de medicamentos genéricos genuínos",* contemporizou **Lutz Guellner**, *porta-voz da Comissária Europeia para o Comércio*. (...)
> *"Decidimos lançar a realização de consultas",* afirmou o embaixador da Índia junto à OMC, Ujal Singh Bhatia. "Só estamos finalizando os procedimentos", observou. *"No momento, a decisão*

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[120] Available in https://www.oxfam.org/en/pressroom/pressreleases/2009-10-20/eu-double-standards-threaten-leave-poor-countries-without.Published: 20 October 2009. Access: October 2017.
[121] *"Brazil and India want to appeal on generics against the EU"*, available at http://www.dw.com/pt-br/brasil-e-%C3%ADndia-querem-apresentar-recurso-sobre-gen%C3%A9ricos-contra-a-ue/a-4820447

de Brasília é de seguir adiante", confirmou o representante brasileiro na OMC, embaixador Roberto Azevedo." (my emphasis)

The right to universal health via public access to medicines and treatments grounds the Brazilian National Health System, which bear hundred percent of the costs of essential medicines and pharmaceutical treatments for HIV/AIDS, for example. Brazil still has a leading role within UNAIDS and UNITAID in pursuing better conditions for patients (fight against discrimination and test-free, for ex.) and better management of sources, via NGOs and funding institutions. Nearly all content of Brazilian contestation against the EU is also part of the UNAIDS Strategy 2016-2021[122], which includes the free use of TRIPS flexibilities, transparency and human rights-based assessments for IPR, removal of barriers for south-south trade and strengthening of generics database within the WHO.

Brazil is not against investments on research and technology of new drugs neither the justifiable rights to investors yet recognizing its insufficient capacity to manufacture the volume of medicines necessary to cover its health system. The solution traced by developing countries like Brazil in order to keep its national strategy – that is in line with OHCHR's norms – is to resort on the production and South-South trade of generic drugs that, in opposition to what is claimed by the EU, have nothing to do with counterfeit or bad quality[123]. At first, Brazil wishes to make this point very clear, which can be widely elucidated by pharmaceutical scientists of Fiocruz in accordance with WHO parameters. At second, and consequently, the IPR and EC Regulation 1383/2003, equally, have nothing to do with the quality of medicines. The last has the exclusive aim to enforce the former. Combined, the argument of combatting counterfeit and protecting IPR is the reason why Brazil sees the EU as taking advantage of its localization to interfere in the legal transit of goods that are not intended to EU consumers, with the ultimate aim to protect its companies' profit. To illustrate such context that polarizes investment capacity and accessibility of medicines, below is a graphic used in 2016 within the scope of the UN:

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[122] http://www.unaids.org/sites/default/files/media_asset/20151027_UNAIDS_PCB37_15_18_EN_rev1.pdf

[123] According to the WHO, 'generics' are medicines distributed under the official name of the pharmacological substance, following the International Common Denomination; they are identified as 'multiorigin' due to the production by more than one manufacturer. See http://gabionline.net/Generics/General/WHO-definitions-of-generics (access 15 May 2017).

Figure 6 - "Investments in R&D (2009/2010)"
UN High-Level Panel on Access to Medicines, Final Report 2016:4.

The concern expressed by MSF with regard to "whether such provisions [Doha Declaration and WTO August 30th decision] are proposed for inclusion in European Partnership and Free Trade Agreements" is largely shared by civil society, academics and researchers of public health's national institutions in Brazil. In interview conducted in December 2016 with Dra. Gabriela Costa Chaves[124], pharmaceutical, longstanding activist, currently Head of the research on EU-Mercosur Free Trade Agreement and its impact on access to medicines[125] of the Department of Drug Policy and Pharmaceutical Assistance in Fiocruz, among other concerns, she expressed apprehension on what was already published six years ago in the Brazilian newspaper *Folha de São Paulo*, of her authorship, regarding the contradiction between TRIPS and FTAs negotiated by the EU. Hence, below I quote the newspaper and then, the related concerns expressed by Dra. Chaves in the interview:

> " (...) A crise econômica, no entanto, provocou um recuo no financiamento da saúde global. A tendência, com a política de comércio da CE, é piorar esse cenário, afetando drasticamente o preço dos medicamentos por situações de monopólio. Uma perfeita contradição, já que países europeus são doadores de iniciativas que fornecem acesso a antirretrovirais em países em desenvolvimento. Se o principal acordo internacional que rege a PI - o acordo Trips da OMC - prevê flexibilidades que facilitam a entrada de medicamentos genéricos a preços acessíveis, os tratados de livre comércio buscam justamente o contrário e fortalecem o monopólio com exigências que vão além desse acordo. Cláusulas de exclusividade de dados da prova (referentes a resultados de ensaios clínicos) são preocupantes, pois dificultam a oferta de medicamentos genéricos, mesmo quando não há patente. O argumento de combate aos medicamentos falsificados, por sua vez,

tornou-se justificativa infundada para impor medidas de fronteira que afetam o trânsito de medicamentos legítimos e de qualidade. (...)"[126]

Interview (revised to English):

"TRIPS was never enough. The EU came with ACTA in 2012 and tried everything to strength IP in its FTA with Mercosur in Brussels[127], as it was with India since 2011. The EU has trade power and it aims to ensure investments and IP at any cost. To ensure TRIPS+ is to undermine flexibilities like the compulsory license that is under Article 31 and is of utmost importance for introducing generics in the market. But Brazil has resisting since 2004! Lula said 'no' also to ALCA, and REBRIP (Brazilian Network for the Integration of Peoples) born in opposition to ALCA in 2001. Thus, the alert that remains is that Brazil can be the brake of the EU in its aspirations regarding Mercosur. With the Law of Generics in 2001[128], we understand that the Brazilian Health System is against economic neoliberalism, it is pro-human rights, pro-public health priorities. The EU has another health system, how to reconcile?

Counterfeit is a topic of the WHO, it is about sanitary measures… it has nothing to do with IP, this is profit-driven, but what we have now is an exhaustion of instruments to regulate companies via human rights and to address the issue of monopoly. There is a discursive dispute about research and development of new drugs. The Resolution WHA 61.21[129], one more, upholds Brazil. We have SUS (*Single Health System*) that enables clinical trials, it is a research platform. We have the Brazilian System for Science, Technology and Innovation to Health (CTIS, in Portuguese), created by the Health Ministry with the S&T Ministry, which National Policy was approved in 2004. In Brazil, almost all research is conducted in public universities, with public money, while the EC mostly supports pharmaceutical industries for biomedical research. (…)"

In accordance with Dra. Chaves' explanations, Brazilian Officials claim that the confusion generated by the interplay of commercial and sanitary arguments raised

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[126] *"Europe looking at our medicines"*, published in 26 November 2010, available in: http://www1.folha.uol.com.br/fsp/opiniao/fz2611201007.htm

[127] Report of the XXVI negotiation round on the trade part of the EU-Mercosur Association Agreement, Brussels, 10-14 October 2016, available in http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155069.pdf (IP on page 4).

[128] http://www.crf-pr.org.br/uploads/pagina/29587/acrMp6IlkpRkiP3D0eMseWmrmR6GKPfl.pdf

[129] WHO Global Strategy on Public Health, Innovation and IP (2008), element 2 "promoting research and development", 2.1 "supporting governments to develop or improve national health research programmes (…)" in http://www.who.int/phi/publications/Global_Strategy_Plan_Action.pdf

by the EU only benefits the pharmaceutical industry against the vast majority of population in developing and under-developed countries that suffer with chronical diseases. One year later, without concrete measures taken by the EU, Brazil and India appealed to international instruments to enforce their understanding of the human right to health, and the *subsidiarity* towards the EU normative position. On 12 May 2010, the countries officially launched a WTO Dispute Settlement against the EU and The Netherlands, as documented by the Brazilian larger newspaper *O Globo*:

Figure 7 - SOURCES: O Globo | Economia | Página 27 | Edição 13 Maio 2010. O Globo | O País | Página 3 | Edição 14 Novembro 2010.

Below is the official version of the WTO DS409, launched by Brazil:

DISPUTE SETTLEMENT

DS409: European Union and a Member State — Seizure of Generic Drugs in Transit
This summary has been prepared by the Secretariat under its own responsibility. The summary is for general information only and is not intended to affect the rights and obligations of Members.
Current status: In consultations on 12 May 2010.

Key facts:

Complainant:	Brazil
Respondent:	European Union; Netherlands
Third Parties:	
Agreements cited: (as cited in request for consultations)	GATT 1994: Art. V: 1, V:2, V:4, V:5, V:7, X:3, V:3 Intellectual Property (TRIPS): Art. 1.1, 2, 28, 31, 41.1, 41.2, 42, 49, 50.3, 50.7, 50.8, 51, 52, 53.1, 53.2, 54, 55, 58, Agreement Establishing the WTO: Art. XVI:4
Request for Consultations received:	12 May 2010

Latest document

European Union and a Member State - Seizure of Generic Drugs in Transit - Acceptance by the European Union of the Requests to Join Consultations WT/DS409/8 | **18 June 2010**

Summary of the dispute to date: The summary below was up-to-date at **22 June 2010**

Complaint by Brazil. (See also DS408)

On 12 May 2010, Brazil requested consultations with the European Union and the Netherlands regarding repeated seizures on patent infringement grounds of generic drugs originating in India and other third countries but transiting through ports and airports in the Netherlands to Brazil and other third country destinations.

Brazil alleges that the various European Union and Dutch measures at issue are inconsistent with the obligations of the European Union and the Netherlands under Articles V and X of GATT 1994, various provisions of the TRIPs Agreement, and Article XVI:4 of the WTO Agreement. On 28 May 2010, Canada, Ecuador and India requested to join the consultations. On 31 May 2010, China, Japan and Turkey requested to join the consultations. Subsequently, the European Union informed the DSB that it had accepted the requests of Canada, China, Ecuador, India, Japan and Turkey to join the consultations.

The Brazilian ABIA (Associação Brasileira Interdisciplinar de AIDS) sent a contribution resorting to an accusative tone: "the scope of this manifestation is to demonstrate the prejudices that the Regulation CE n° 1383/2003 triggered for the international trade relations, and mainly for the peoples of countries that had medicines apprehended due to the application of such Regulation" (*II.Razões do documento* p.2, revised to English), underlining all irregularities already mentioned by Ambassador Roberto Azevedo, as well as international instruments, declarations and agreements

violated by the EU[130]. Recalling what is written in the Consultation Paper Annex 1 that "the application of the Regulation by customs should never unduly hinder legitimate trade of goods through the territory of the EU", ABIA "understands that the measure [of apprehend medicines in transit due to requirements of companies] transforms the European customs institutions – public organisms financed by taxpayers – in a *longa manus* of transnationals corporations, acting on behalf of the EU to defend the interests of private companies" (p.6).

And adds that "the EU wrongly uses the argument that its legislation contributes to preserve public health, when the truth is that its legislation promotes a huge conceptual confusion that only creates barriers to the access of good-quality medicines under affordable prices" (p.9). The quality of medicines is, thereby, controlled by the national sanitary agencies, and the customs authorities have no kind of influence or access upon the decision of what is counterfeit, bad-quality or generic drugs. Since then, Brazil has consistently raising the issue within the UNHRC and WTO TRIPS Council[131].

Figure 8 - http://www.healthreflections.com/generic-medicines-in-transit/

In 24 May 2011, the European Parliament and the Council proposed a Regulation concerning customs enforcement of IPR[132] to replace EC 1383/2003. Despite reports that India did not consider the proposal strong enough to satisfy the

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[130] GATT, TRIPS-WTO, Doha Declaration-WTO, SDG-UN, Global Strategy and Action Plan on Public Health, Innovation and IPR-WHO, Universal Declaration of Human Rights, and the International Covenant on Economic, Social and Cultural Rights (DE FARIA 2011:33).

[131] 7 November 2012, WTO TRIPS Council "Intervention of Brazil on Intellectual Property and Innovation"; 13 June 2013, HRC "Intervention of Brazil on resolution on access to medicines in the context of the right to health".

[132] COM (2011) 285 in http://eur-lex.europa.eu/procedure/EN/2011_137

requirements raised in the WTO dispute settlements, on 28 July 2011 the Ministry of Commerce and Industry of the Indian Government announced an 'understanding' with the EU on the matter, closing the WTO dispute settlement. The EU Trade Chief declared that "generic drugs transports in transit will no longer be checked, except for counterfeiting"[133]. The Indian professor Brook Baker, from Northeastern University, explained that "This Understanding between the EU and India does not directly impact the parallel WTO dispute filed by Brazil, but as a practical matter, Brazil's dispute is likely to be suspended pending final enactment of the new Regulation" (BAKER 2012:4). In parallel, another round of negotiations towards the EU-India FTA was planned to take place within the 12th EU-India Summit in February 2012, New Delhi.

This scenario raised serious concerns in Brazil and among NGOs, as the EU was seen as "the spokesperson of transnational pharmaceuticals" pressuring India to accept the clause of data exclusivity protection measures. The alternative strategy adopted by the EU was to move the focus from the patents to the data exclusivity in regard to Indian norms of IPR. Below, I quote the explanation of MSF reproduced in the Brazilian *Grupo de Trabalho sobre Propriedade Intelectual* (GTPI)'s web site (translated to English):

> "With the clause of data exclusivity protection measures, India would be agreeing to grant an exclusivity period on clinical trial data submitted by a pharmaceutical company. This would prevent India's Comptroller-General of Medicines - the body responsible for approving medicines for the market - from register a generic drug until time runs out. The multinational pharmaceutical industry has asked for the time to be 10 years. Data exclusivity is a gateway to monopoly protection. It also runs away from attempts by lawmakers in India to balance health and profits. It ignores the work of India's patent offices to enforce stringent standards and ensure that only innovative medicines receive a monopoly. Now a pharmaceutical company would only have to submit data from clinical trials to obtain several years of monopoly (…)"[134].

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[133] http://www.bbc.com/news/world-europe-11971568

[134] 21 January 2011, in
http://deolhonaspatentes.org/presidente_de_msf_clama_para_que_a_india_resista_a_pressao_europeia/

The MSF campaign *"Europe, hands off our medicines!"*[135], launched in October 2010[136], gained new boost, strongly echoing in Brazil among several civil society activists, doctors and NGOs like ABIA.

1)

2)

3)

Figure 9 - SOURCES: Advocates of global access to medicines in various parts of the world, 1) https://www.msfaccess.org/hands-off-our-medicine-campaign | 2) https://handsoff.msf.org/ | 3) http://www.policialbr.com/2013/01/europa-tire-as-maos-de-nossos.html

The final outcome of the EU Open Public Consultation on the review of Regulation 1383/2003 came about in 2013, with the *"Regulation (EU) 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of IPR and repealing Council Regulation (EC) 1383/2003"*[137] which immediately raised negative reactions from MSF and HAI, and civil society actors like Act-Up Paris and Prof. Book Baker[138], as we see below.

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[135] Official web site: https://handsoff.msf.org/

[136] https://www.msf.org.br/noticias/uniao-europeia-tire-maos-dos-nossos-medicamentos

[137] http://www.wipo.int/wipolex/en/text.jsp?file_id=312508

[138] From the Northeastern University School of Law (USA), Senior Policy Analyst for Health GAP (Global Access Project).

Helle Aagaard, EU Policy and Advocacy Advisor, MSF Access Campaign:

"If the EU decides to strengthen in-transit scrutiny of legitimate generic medicines under the banner of trademark infringement (…). *If this measure is adopted, it will show that the European Parliament favours the interests of intellectual property rights holders over public health interests, and will send the message that the EU is a 'no-go' zone for generic medicines intended for poor countries.* (…) MSF *strongly urges European Union Member States to stand strong against both the Parliament and the Commission in upcoming negotiations*, to exclude any in-transit provisions under the trademark proposal and ensure that generic medicines can safely pass through Europe to developing countries in need in the future."[139]

Act-Up Paris to *Intellectual Property Watch*:

"The group deplores that the EU did not take into account the December 2011 Court of Justice of the European Communities' decision [140] (…). This jurisprudence clearly shows that customs should first verify whether a shipment is not simply in transit before checking that any 'intellectual property' rights might have been infringed. (…) By allowing the checking and seizing of medicines in transit, and widening the span of controls to patent-related medicines, the EU is not only going further than what the TRIPS Agreement provides for, but also impedes the use of the flexibilities the South countries were granted. This legislation goes against the commitments taken by the EU regarding access to treatments".

Prof. Book Baker to *Intellectual Property Watch*:

"The EU regulation continues to cover alleged patent and also civil trademark disputes (…). The introductory paragraph 11 of the new regulation [(EU) 608/2013] refers to the 2001 Doha Declaration on TRIPS and Public Health, but the regulatory language of the directive does not. In those cases [Philips and Nokia cases, 1 December 2011, joined cases C-446/09 and C495/09], the ECJ provided explicit and clear rules on the scope of enforcement of EU IPRs by customs authorities on goods passing in transit: seizure or suspension is not allowed without a preliminary finding based on 'clear and convincing evidence of a substantial risk of diversion'. The burden is on the right holder to provide clear and convincing evidence of a substantial risk of diversion".

Tessel Mellema, Policy Advisor for HAI to *Intellectual Property Watch*:

Paragraph 11 "seems to imply that this 'risk of diversion' is only one but not necessarily a key factor, where instead it should be a precondition before any decision about detention of medicines in-transit can be made". That pre-condition should have been included clearly in the body of the new regulation, and not merely in a Recital [introductory paragraph] because without it, the regulation fails to

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[139]   https://www.msfaccess.org/content/msf-response-european-parliament-proposals-eu-enforcement-european-trademarks-goods-transit

[140] http://curia.europa.eu/juris/liste.jsf?language=en&num=C-446/09#. See particularly paragraphs 49 and 50.

adequately deal with the risk of illegitimate seizure of generic medicines at the EU borders".

The Intellectual Property Watch, a non-profit independent news service, also published the EU answer to such broad criticism:

> "**EU Says New Regulation Meets the Needs:**
> The EU is standing by its new regulation. "The EU fully respects its international commitments on access to medicines. Every effort has been made through the new legislation to ensure that generic medicines in transit to travel smoothly on to their final destination," an EU official said. "*When developing and agreeing the new Regulation, particular attention was given to addressing the concerns of developing countries with regard to generic medicines in transit. Provisions which had previously created uncertainty and led to detentions of generic medicines in transit, have been removed from the EU rules and new provisions have been included to allow medicines in transit to flow smoothly to their final destination and to identify, and report on, any unexpected adverse effect that those rules might have on transit of legitimate medicines across the EU territory*". "Over the past 4 years, no cases of EU customs detaining generic medicines in transit have been reported," he said.
> **A Brazilian official told *Intellectual Property Watch* that the country had acknowledged the new regulation and was waiting and watching to see how it would be implemented**."[141]

Despite reactions like those, in 4 December 2013, the Commission implemented *"Regulation (EU) 1352/2013 establishing the forms provided for in Regulation (EU) 608/2013 of the European Parliament and of the Council concerning customs enforcement of IPR"* [142]. On the one hand, drawing on EU Officials' declarations like the one quoted above, we can say that the persuasion of Brazil in particular and the Global South in general had some effect on the EU normative standpoint. The changing in its legislation – which, in the EU perspective, successfully adapts provisions to developing countries' concerns – is an evidence of some recognition from the EU regards the illegality of its previous Regulation. Although there is not much internalization of Brazilian arguments themselves in the new Regulation 1352/2013, as we see in the critiques quoted above, it represents the outcome for which Brazil strongly contributed.

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[141] https://www.ip-watch.org/2013/10/17/new-eu-custom-regulation-might-allow-wrongful-seizures-of-generic-drugs-in-transit-ngos-say/. Published in 17/10/2013 by Catherine Saez, Intellectual Property Watch. Access in October 2017.

[142] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:341:0010:0031:EN:PDF

On the other hand, I do not argue with the changing normative standpoint that Brazilian persuasion and subsidiarity were the exclusive mechanisms leading to such EU adaptation. Other alternative explanations might arise within the headquarters of EU Parliament and Commission. My claim, however, is that the path traced here among factors and categories of the diffusion/ resistance framework developed in Chapter 2 to analyze NPE as foreign policy raises some counterfactual conditions for recognition of NPE as identity that were not met in the case.

In 2016, the EC (Taxation and Customs Union) published in its web site that:

> From **1 January 2014**, Regulation (EU) No 608/2013 concerning customs enforcement of intellectual property rights (IPR) **replaces** Council Regulation (EC) No 1383/2003. (…) The European Commission has published a Commission notice[143] (5 July 2016) on customs enforcement of IPR concerning goods brought into the customs territory of the Union without being released for free circulation (see page 4) **to provide clarifications on the application of Regulation (EU) No 608/2013** and the trade mark package (Regulation (EU) 2015/2424) with regard to goods coming from third countries without being released for free circulation, including goods in transit, through the territory of the EU. **The Commission notice replaces** the 'Guidelines of the European Commission concerning the enforcement by EU customs authorities of intellectual property rights with regards to goods, in particular medicines, in transit through the EU' (1 February 2012). **These guidelines addressed the specific concerns raised by India and Brazil on medicines in genuine transit through the EU which are covered by a patent right in the EU.** They also take account of the findings of the Court of Justice of the EU in its judgment of 1 December 2011 related to joined cases C-446/09 and C-495/09 (Philips/Nokia).

The text of the Commission Notice is the current active legislation on the matter of generics in transit, and more research is needed with Brazilian stakeholders to check what are their positions regarding the implementation of measures that address Brazil's specific concerns. Moreover, in the web site of the WTO, it appears that the DS409 is still under consultation. In an interview with Ambassador Guilherme Patriota of DELBRASGEN (December 2016, Geneva), that represents Brazil at the WHO and UNAIDS since the 1990s, it seems that the Brazilian and European perspectives are irreconcilable. The Ambassador said:

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[143] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2016:244:FULL&from=EN.

"The conflict is natural. The EU has headquarters of important pharmaceutical companies on which we depend, but we also want to control the battle for our public health on the ground. The EU had projected beyond its territory its solid system of social protection, which dismantled in 2008. Since then, the interests of transnational actors are the EU position. For Brazil, the EU is an array of actors plus companies. The EU position is very severe. Brazil has a strong legal identity, and the political evolution of our historical relations with Europe has been always different in regard to social policies and health. *Intellectual property is a problem from the Government perspective, because we do not have capacity for innovation, patents are of multinationals. The [IPR] regime is asymmetric and the EU does not recognize this problem… it cannot make use of the flexibilities. Brazil could apply compulsory licenses to bargain but we face political pressures. There is cross-retaliation in other sectors like legal, technical, political. The regime favors the stronger.*

The argument of the EU is about attracting the market through property rights and patents. *The relation with the EU is very difficult. It has double standards, what they admit for inside is different to the outside. Brazil resists a lot in the normative level, in bilateral and multilateral negotiations.* For example, Brazil does not accept TRIPS-plus. The 'multilateralization' of these issues follows the developed countries' law, also corporations' rights are now part of the multilateral system. When the EU 'charges' a company, it pays, it does not challenge Member States. In Brazil it does not happen, authority is questioned.

Brazil and India make explicit the greedy and corporatist nature of the EU. The EU answers with economic strength. Medicines are object of disputes. Brazil is a big market, the Government buys a lot, and it could be more profiting for the EU. In parallel, flexibilities of the system have been changing. Countries are favored according to their level of development. The Global Found started to exclude middle-income countries, Brazil is in a vacuum now. Our narrative is actively against asymmetric concessions: is it fair that Brazil is excluded from poverty groups? We fight in negotiations with the EU, but Brazil is a big market, we have a substantial demand, and they do not want to make concessions. We threat within the technical space, but in practice it is different because the Brazilian Government does not threat the EU. Well, Lula destabilized European companies, so it really depends on the Government's capacity.

Intellectual property, technology, development, in addition to agriculture are the most difficult areas to sign agreements with the EU. Now, the EU opened another 'liberalizing front' at the WHO, that health goods must be in the technological vanguard. It now focuses on goods, development, tariffs, not touching upon intellectual property. *The EU is scared by the possibility that the 'right to health' argument is used to produce more rules or to open exceptions to these goods, what is not acceptable because they represent a lot of money.* Humanitarian questions is what set the limits to negotiations. China is kind of afraid of the EU, the Chinese argument about the regime of IPR is weak. The WTO is leading the barriers.

That is why Human Rights do not go beyond the Council. It creates a permanent conflict. IMF does not care. The US works for keeping HR apart from the WTO. But Brazil is still defending the human right to

health in the UNHRC, it is our reaction to the predatory and corporatist view of the EU. We open many fronts, explore all forums; we connect the right to health as part of the right to development. Then we make reference at the WHO, trying to get something in different areas. In their corporatist view, they are afraid that the HR regime takes place in trade agreements. Brazil reacts with multilateral resources. With [Michel] Temer, this is not explicitly changing, just less confidence in keeping our prominence."

5.6.
Latest developments

In November 2015, the UN Secretary-General Ban Ki-Moon convened a High-Level Panel on Access to Medicines in which two Brazilian representatives took part: Mr. Jorge Bermudez (Vice President of Production and Innovation in Health of Fiocruz) and Ambassador Celso Amorim (currently Chair of UNITAID and the main negotiator from Brazil to the Doha Declaration on TRIPS and Public Health). UN Secretary-General and Co-Chairs of the High-Level Panel launched the Final Report entitled *"Promoting innovation and access to health technologies"* in 14 September 2016[144]. Several topics mentioned by Ambassador Patriota were referred in publicly available interviews with Mr. Bermudez[145] and Mr. Amorim conducted in 2017, displaying central concerns for Brazil regarding the IPR regime, the polarization between innovation and access, the use of TRIPS flexibilities, *delinkage* (decoupling between research investment and the cost of the drug price), and the EU attitude upon global access to medicines.

Figure 10 -www.unsgaccessmeds.org/homepage-1/

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[144] http://www.unsgaccessmeds.org/final-report/
[145] https://portal.fiocruz.br/pt-br/content/atual-sistema-de-acesso-medicamentos-fracassou-diz-jorge-bermudez

Below, I briefly reproduce interviews' highlights with Mr. Amorim on these concerns:

> Celso Amorim: "(…) Then, as the WTO moved into the Doha Round of negotiations, the issue [patents law] became big again, and many developing countries were worried. To make a long story short, **I saw that there was a big danger that instead – because the Europeans said, 'Let us spell out the regulations how this will be applied'. And then I thought, 'No, that will be against us', as the regulation will be for subtract from the flexibilities.** Developing countries sought to make them clear, so it did not happen. The result was Paragraph 4 of the Doha Declaration on TRIPS and Public Health. (…) And if you go to the history, it was the only paragraph that went with two formulations to Doha. That was really because of Brazil. (…) [In Doha] The chair said at some point that he wanted only the US and Brazil in the room. **The European Union wasn't happy to be left out.** And I said no, I wanted to have an African negotiator with me. Then the African who was there, who was **from Cameroon, said no, 'if Brazil is there we feel represented'**, "That was one of the best moments I had."[146]
>
> "(…) I don't want to mention the name of countries here, but we know that, **in South East Asia and in South America, countries suffered quite a lot of pressure from the laboratories and from governments, including … that went much beyond trade … not to apply compulsory license or not to apply other TRIPS flexibilities.** So that's why I want to mention that in my opinion, the most important – and the language is very strong – the most important paragraph in the recommendations of the High-Level Panel, is in 2.6 of the recommendations that relate to IP, the Chapeau actually, when it says, "World Trade Organization – WTO – members should commit themselves at the highest political level" – so that would not be anyone, not just a Trade Minister, not the delegate in the Human Rights Council, but the highest political level – "to respect the letter and the spirit of the Doha Declaration on TRIPS and Public Health, refraining from any action that will limit their implementation and use in order to promote access to health technology."
>
> [*Update:*] asked after the interview if Brazil is "against IP", Amorim vigorously stated, "No, no, not at all. We have a very important IP system, one of the most developed IP institutes in the developing world, which gives expertise to other countries. **So no, we're not against IP at all. But we have to see that life is above profit, and health is above patents.**" [147]

Between 2-6 October 2017, it was held in Brasilia the negotiation round about the chapter concerning IPR of the EU-Mercosur FTA. A research conducted in

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146 Interview in 16 March 2017, available in https://www.ip-watch.org/2017/03/16/brazilian-legend-celso-amorim-recounts-negotiation-trips-flexibilities/

147 Interview in 28 April 2017, available in https://www.nakedcapitalism.com/2017/04/un-panel-strives-improve-access-medicines.html

Fiocruz[148], coordinated by Dra. Gabriela Costa Chaves reveals that Brazil will have an increase of almost R$ 2 billion per year only with medicines to treat HIV and hepatitis C, in case Mercosur countries accept EU's proposals. In a report to IPW, Marcela Fogaça Vieira and Gabriela Costa Chaves wrote:

> "For almost two decades, the negotiation of bilateral trade agreements (FTAs), outside of the multilateral international institutions, has been part of the strategy of high income countries to extend the monopolies of major pharmaceutical companies, through intellectual property and regulatory measures. *Will the Mercosur/EU FTA have consequences on access to medicines in Latin American countries?* After the release of the draft agreement by the European Commission [149], and through projections made on HIV/AIDS, hepatitis C and cancer medicines, *we tried to evaluate the impact of one of the TRIPS-plus measures of the Mercosur/EU FTA on the prices of medicines in Brazil. Per our calculations, **an additional USD 444 million would be necessary to be spent by the public health system for the purchase of 6 medicines alone!*** (…) An analysis based on the draft proposal of the chapter on IPRs released by the EU shows that some of the main TRIPS-plus measures historically pushed for by countries such as the United States or the EU are being again proposed at the EU-Mercosur FTA. (…) *In short, the main worrisome provisions to watch out for in the EU proposal for the FTA with Mercosur from an access to medicines perspective are: i) exhaustion of IPR (limitation of parallel imports), ii) patent term extension due to regulatory delay and iii) data exclusivity.*"[150]

Those interviews and Fiocruz's research also support my inductive methodological attempt to draw three possible causes of the non-recognition of NPE as identity by Brazil in the field of HR: *negative potential of contestation*, *need of new understanding of diffusion*, and *non-handling of differences*. They are in light of Brazilian elucidation of the facts and concrete examples I exhibited in the chapter that comprise Brazil's frame, which was exercised through subsidiarity and persuasion. To illustrate the causes drawn from the before, I take some examples: the expenditure increase found in Fiocruz's research on the impact of EU provisions when accepted for the EU-Mercosur FTA upon the Brazilian National Health System is directly connected to the reason why the EU is so inflexible regards such provisions: Brazil is a strong market, 'the Government buys a lot, it could be a more profiting for the EU'. When they have different but legitimate normative standpoints yet the EU does not

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[148] http://www.ensp.fiocruz.br/portal-ensp/informe/site/arquivos/anexos/01abfe4ae54f0d6efd743fe6eea6abe259bdb702.PDF
[149] http://trade.ec.europa.eu/doclib/docs/2016/november/tradoc_155070.pdf
[150] https://www.ip-watch.org/2017/03/22/watch-eu-mercosur-fta-negotiations-consequences-access-medicines/

acknowledge Brazilian contested claims against such provisions, Brazil sees that the EU is raising the *negative potential of contestation*. Moreover, Brazil never stood up against IP, as mentioned by Mr. Amorim.

On the one hand, the EU strategy of making use of property rights and patents to attract pharma companies is inconsistent with the incorporation of the HR regime into its trade agreements or the WTO. On the other hand, Brazil sees itself as target of asymmetries both of the IPR regime and flexibilities that currently favor countries according to their level of development. Brazil has little capacity of innovation but it builds on its historical and widely well-know profile of multilateral activism for the right to health to strength Global South's demands. An example is paragraph 2.6 of the High-Level Panel Final Report, as mentioned by Mr. Amorim. When Brazil and the EU have different but legitimate interests yet the EU does not recognize the reasons and conditions that ground the Brazilian self-identification and consequently position within multilateral forums, Brazil sees that the EU is *non-handling of differences*.

This is a strong case of successful international persuasion 'from below', through the voices of Brazilians (people, patients, organized society, Government) but not only. Through the voice of Brazil representing three continents and billions of persons, engaging in deliberative communication with others. Brazil did not pressure or impose a given norm or perspective upon the EU, neither Brazil developed an isolated normative position. On the contrary, the Brazilian persuasion built on NPE as identity to point out the inconsistency of such EU position in regard to access to medicines, also underlining its 'double standards'. It was a dialogical process between Brazil and the EU, and Brazil among other Southern countries. Thereby, we cannot say that the right to health was diffused in itself, but that some change had occurred over related topics in the EU mindset like 'customs enforcement of IPR with regard to goods coming from third countries without being released for free circulation, including goods in transit, through the territory of the EU'. It was indeed a *new understanding of diffusion* 'from below', so to speak.

And it was successful because over the years the EU has been systematically recognizing the need to adapt and 'provide clarifications' to its Regulation on customs enforcement of IPR. Moreover, according to the last 2016 Commission Notice, "these

guidelines addressed the specific concerns raised by India and Brazil on medicines in genuine transit through the EU which are covered by a patent right in the EU" (quote abovementioned). It seems obvious that a case of contestation and resistance ends up in non-recognition, but through the reconstruction of the present case I aimed at inductively raising common causes of such outcome for EU identity politics that might be verified also in cases of diffusion.

Conclusion

The research puzzle of the thesis indicates that the EU is aware of the fact that its policies meet with problems in some situations, but its entanglement with NPE ontological statement hampers to find a remedy. In the present case, we saw that the Brazilian resistance to NPE as foreign policy stressed precisely the EU market-oriented action *vs.* its value and normative-based[151] discourses in defense of human rights, designing the deadlock at hand: how to make new drugs manufactured in developed countries available for the broad range of patients in developing and under-developed ones and, at the same time, source of legitimate profit of pharma companies and investors through the patents law.

Such resistance, in turn, put the EU before either standing for its norms but not succeeding in its policies, or it overrides resistance, thereby undermining its distinctiveness. My aim was not to provide a general theory of NPE's success but to observe specific junctures when Brazil displayed the three proposed causes of NPE dilemma in the typology, related to the EU market and hierarchical modes of interaction. Brazil acted through *subsidiarity,* contesting several aspects of EU policies – the illegality of EC Regulations in relation to international norms and agreements; the arbitration of customs authorities on behalf of 'vulnerable populations'; the alleged suspicion of fake medicines and counterfeit to justify detainment and seizure of consignments. At first, the EU denied such contestation, until the Open Consultation in 2010.

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[151] I say that the normative perspective is also overcome because, although the EU defends its interpretation of the situation on the basis of the right to development, both Brazil and NGOs argue that the product of such interpretation reflected in EU Regulations is unlawful and illegal. That is, the Regulation 1383/2003 for ex. is illegal in conferring to EU customs certain power to act beyond what is foreseen by the TRIPS.

In parallel, Brazil acted through *persuasion*, arguing that i) IPR raise medicines' prices, constraining the access of developing countries that, in turn, need to resort on south-south generics trade to fulfill the right to health, and ii) less than 3% of low and middle-income countries are responsible for investment in research and development of new drugs (as shown in the graphic of page 64), what means that they have less than 3% of patents and therefore are entitled to use TRIPS flexibilities without bilateral pressures. Other examples of North-South disparities were cited by Dra. Gabriela Chaves and Ambassador Patriota.

The EU could not easily handle with these facts, as well as with the very role of Doha Declaration in trying to alleviate the unbalance between North and South regarding capability of investments. Seeking to keep its market-oriented policies, the EU has difficulties to see that this unbalance does not represent that Southern countries like Brazil and India are against IPR, but that they seek to give treatment to their patients faster than they can improve their manufacture capacity. There are fundamental *differences* between the EU and Brazil (representing the Global South) that, if recognized by the EU, would attest to its powerlessness, i.e. being not normatively effective, it would need other means to export its policies, which would be a self-contradiction.

Lastly, I believe that such resistance exercised by Brazil had a positive effect upon the EU. This is a side-story that speaks back to the policy puzzle. Despite that the last outcome of changing EC Regulations did not entirely internalize Brazilian arguments, it shows some reflection from the EU regarding a *new understanding of diffusion.* Brazil does not have power through trade nor economic capacity to threat the EU, so it played normatively, at multilateral forums. With claims such as illegality and double standards of policies (which is well known, hence the political dilemma is not reduced to it), Brazil put into question the EU search for ontological security *through* NPE. How to change policies that are resisted in order to diffuse?

To be constructed as a remedy, however, it is necessary that those causes of the political dilemma would be placed within the EU self-identification as NPE, and subsequently translated to foreign policy. What the EU calls its 'civilizing mission' is received as a hegemonic project of imposition of norms and values, what "suggests that

even if the EU's civilizing identity is anchored in healthy basic trust among member states, there is no reason to expect that this identity could be exported. (…) Europe's routines are among separate states, they cannot help but keep salient Europe's own conflictual history" (MITZEN 2006:281/283).

The self-identification of NPE anchored in a conflictual history and 'a little bit of anarchy going on' finds ontological security in norms and internal routines that accommodate diverse public and private interests. That is, its 'positive potential of difference', to quote Landfried (2006) and Raube (2011), is explored for the inside, leaving for the outside relations marked by 'the problem of difference', to quote Inayatullah and Blaney (2004), or EU norms operating in a top-down model. As precisely indicated by James Tully (2007), the dialogical step[152] is thus necessary to unveil what is at stake in struggles for recognition of identity claims: power inequalities and asymmetries, as we saw in this case.

Overall, through treaties and representatives' speeches, the EU assumes the responsibility to promote and safeguard human rights on a global scale, stemming from its identity as a 'community of values' "which tends to be presented in broad, universalist terms, as the ultimate republican polity, founded on democratic principles, human rights, cultural diversity and a commitment to the peaceful resolution of disputes" (JURADO in MAYER and VOGT 2006:122). Jurado concludes that, besides other principles that "serve to highlight important normative sources of EU responsibility in the field of human rights" (beneficiary, contribution and community), it is the *capacity principle* (economic resources and political leverage) that distinguishes the EU in this matter.

In practice, I agree with Jurado that the EU is failing to "induce meaningful and enduring change in human rights practices of third countries" (op.cit.:126), especially beyond Europe. How the EU means of action are employed and their effects contradict the NPE identity discourse, in Southern countries' perceptions, as extensively indicated in the PPT's verdict for example. As investigated by Jurado and supported by the present case, in order to uphold its discourse of a promoter of human rights, the EU

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[152] The dialogical step is the most prominent feature of what I propose to be a 'new understanding of diffusion', employed by Brazil in this case on HR.

needs to strive for 'moral consciousness-raising' in Others' mind maps through its foreign policy, rather to distinguish itself by politico-economic capacities. So far, in Brazil's perceptions, EU policies concerning global access to medicines do reflect an identity project, yet not the one that the EU foresees.

6
Conclusion

6.1.
The Politics of Norm Reception

Having mobilized four main strands of literature – NPE and identity politics; problems of NPE as a foreign policy strategy; diffusion mechanisms; and external perceptions of the EU – in two distinguished fields encompassing EU-Latin American interactions seen in a dialogic perspective, I pursued both a theoretical and an empirical ambitions. I spell them out, respectively. Theoretically, I demonstrated that the interplay enacted by Normative Power Europe between identity and foreign policy is constituted throughout the EU relations with the outside. Being an ontological statement referring to its self-perceived political identity, and based on a strategy of diffusion of norms and principles beyond its borders, NPE success understood in terms of a positive nexus identity-foreign policy is intrinsically contingent to Others recognition of its alleged exceptionalism and unique way of acting in global politics.

Empirically, I applied a dialogical approach that means to look at the relation in itself focusing on how 'difference' and 'recognition' are negotiated between EU-Latin Americans through their instruments and mechanisms of foreign policy, previously defined in the diffusion framework. The approach discloses to what extent the EU foreign policy is coherent to NPE as identity project, observing the impact of mechanisms and instruments on Latin American's parameters and system of meanings. The way that the EU and Latin Americans negotiate their representations in foreign policy loops back to the laters' recognition of NPE as an identity, what I called an external 'inducement' of identity maintenance, or NPE fulfilment.

The relevance of the effort conducted in this work is twofold: politically, it shows the narrow understanding we have about diffusion and pushes for an enlargement that has the potential to produce fruitful narratives for interregional relations and strategic partnerships. It also shows the difficulty for the EU to dialogue more horizontally with Others beyond its borders, and proposes reasons for problems EU policies meet in some parts of the world derived from its way of exercising NPE. Finally, it makes Others' voices audible in discourses about the EU, contributing to the

knowledge of what those Others know and how they articulate the EU in their mind maps. For the EU, it is relevant to make NPE as a strategy coincide with its norms and principles, and to undermine stereotypes from the other side. In light of EU instruments and mechanisms of foreign policy as well as Others system of meanings, the external world can reconsider its recognition, which is the very aim of NPE.

Scholarly, this work sets the argument that, if NPE as foreign policy is not recognized – even if there is policy convergence – the EU would get into either of the two dilemma: one political and another one, more thorough, related to ontological security. Instead of working only with cases of resistance to NPE as foreign policy, I expanded the scope to embody a case where policy convergence has happened but no recognition ensued. This way, I argued, the EU search for ontological security *through* NPE makes it harder to be more dialogical. Non-recognition produces a dilemma for ontological security: the EU either questions that very identity that was to provide an anchor for its project, or denies the non-recognition reading it as yet another proof of its superiority, engendering a vicious circle of further non-recognition and denial.

In addition, the argument leads to a research puzzle: NPE ontological statement is making the EU difficult to find a way out of the dilemma it knows, i.e. it has troubles changing policies. It is an indicator of my general thesis of the vicious circle abovementioned: the fact that the EU policy has troubles changing is not just mismanagement but something more systematic. In what follows, I conduct the cross-case comparison in order to empirically see the internal tensions of NPE, from where the dilemma derive. I articulate those three causes or leading points to the NPE dilemma – this time with concrete information of the cases, filled in the typology that is reproduced before the comparison – with the problems of NPE as a foreign policy strategy connected to identity issues, exposed in Chapter 1.

Thereafter, I think the puzzle in light of theoretical propositions that help us to better grasp questions of recognition and legitimacy of EU identity politics. As I said elsewhere in the thesis, my goal was not to offer a general theory of NPE's success, but to develop a framework to study NPE as foreign policy that reveal some problems connected to identity issues that we could not see otherwise. Hence, those propositions do not reveal a way out of the dilemma, so to speak. Instead, I merge ideas from

political philosophy and IR with my theoretical framework to open new venues of empirical research in the EU external governance agenda.

6.1.1.
Cross-case comparison to empirically observe the dilemma

At first, to recapitulate: I have mentioned in Chapter 1 four distinct problems of NPE as foreign policy related to NPE as an identity that configure the origins of the dilemma. They are: **i)** the EU mode of accommodate differences inside its borders and of differentiate itself from Others at the outside, practicing Othering and double-standards in foreign policy; **ii)** the positive potential of Eurocentrism to articulate the EU political identity and how Eurocentrism harms NPE with a sense of superiority and universality embedded in foreign policy that reinforces asymmetrical relationships with Others; **iii)** the post-colonial voice to report demonstrations of power by imposition, securitizing acts, bordering, racialization and marginalization of immigrants from former colonies in NPE as foreign policy; and **iv)** the hegemonic character of consent and coercion constructed to sell the EU, which is central to EU's self-legitimation, exercised by the disciplining power of norms over Others in NPE foreign policy.

The three proposed causes stem from these problems, whose connection I also preliminarily exposed in Chapter 1, when I explained the two dilemma. In a nutshell, it was argued that: **cause 1. how the EU manages applicatory discourses of contestation** in its relations with Others beyond Europe contradicts the very process of identity construction internally, which is broadly based on struggles to set the grounds of 'we-feeling' within the EU borders, among twenty-eight different national sociocultural contexts.

Cause 2. how the EU handles with differences in its encounters, i.e. either distinct interpretations to the norms promoted by the EU derived from national factors, or resistance to the way those norms are exported, is perceived by Others as largely top-down, teaching and patronizing. The Eurocentric character of NPE as identity makes the EU difficult to dialogue more horizontally, reinforcing asymmetrical and hierarchical relationships with Others abroad that hold distinct cultural and normative backgrounds. Such perceptions in turn become highly problematic to the achievement of legitimacy and recognition to NPE as a superior identity by the Others, who see an

authoritative way of acting globally covered by the NPE discourse of exceptionalism. It potentially entails a vicious circle of non-recognition and denial.

Lastly, **cause 3. how the EU understands diffusion** is insufficient for it to access Others perceptions of neo-colonialism and hierarchy. Diffusion is understood by the EU in a model sender-receiver, upon effective outcomes on the level of facticity, or organizational practices. It is hence read out of convergence and transfer, missing awareness that diffusion is a dialogical process where mechanisms account for changes in Others' preferences and system of meanings. The EU often does not reach the Others' third level of cultural validation, for it would be necessary to carry out conversations about its own identity project.

Drawing on those problems stated in Chapter 1, at first I argued that we must enlarge our understanding of norm diffusion that is actually narrow to explain reasons for NPE policy's shortcomings. Subsequently, in Chapter 2 I developed a diffusion framework to analyze NPE as foreign policy, defining diffusion properties in contrast to other phenomenon like transfer and convergence. Such discussion gave origin to the typology, with five categories to analyze the cases. In the last category, "EU modes of interaction", I have merge the abovementioned causes.

Filling those five categories with principal information from the cases in the upcoming typology, I end up at the research puzzle that is a general indicator of my thesis: the EU is unable to remedy the dilemma even if it wants. After the following cross-case comparison, I discuss theoretical propositions to the puzzle that enrich the reflection already ongoing within the EU external governance and public diplomacy research agendas on how to improve EU actorness and legitimacy internationally.

Both agendas had identified problems related to how the EU behaves in encounters with systems of rules and causal beliefs of Others abroad, and how the EU communicates itself to them, respectively. To conclude, in contribution to those research agendas, I add up Antje Wiener's Theory of Contestation and *Jürgen* Habermas' Theory of Communicative Action to my theoretical framework developed in the thesis, opening room to analyze other case studies in light of such enlarged reasoning.

Table 5: Typology to reconstruct processes of diffusion and resistance, explaining NPE dilemma:

Colour code:

Green: case of development cooperation;

Black: case of human rights;

Red: common factors for both cases.

CATEGORIES	TYPE 1: DIFFUSION		TYPE 2: RESISTANCE	
MECHANISMS OF THE TYPES	**EMULA-TION** (EU as a presence)	**LEARNING** EU indicators and the content of capacity-building trainings are learned by CELAC SSC is also a strong instrument of learning	**LOCALIZATION/ SUBSIDIARITY** CELAC localize EU approaches and methodologies according to their local conditions, addressing their interpretations to the EU in a comprehensive manner Brazil norm of HR to health vis-`a-vis the EU norm of HR to development	Socialization by **PERSUASION** (Type II internalization) From Brazil towards the EU, with respect to enable the transit of medicines. Brazil built on NPE as identity to make claims against the "Europe of economic interests"
INTERACTIVE COMPONENTS OF MECHANISMS CELAC adapts the products of COPOLAD into their national realities and explicitly rejects the EU teaching tone during the course of activities and political dialogue	Adoption; Adaptation	Adaptation; Rejection Metropolis in CELAC learn about market, prevention and dark net with the EU. CELAC countries with most evolved drugs policies reject the hierarchy created by the EU within	Adaptation/ Resistance Andean countries localize the EU Alternative Development approach, raising discourses of contestation regards the separation between rural and urban drugs issues	Adoption; **Adaptation** The EU legally adapted its Regulation 1398/2003 concerning free circulation of medicines brought into the EU customs territory, and had reviewed it over time (positive side-story).

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		CELAC on behalf of 'more coordination' and effective policy convergence.	Brazil made its frame of public health 'louder' through the very engagement with EU normative interpretations and arguments	
CONDITIONS OF DIFFUSION AND RESISTANCE The weight of Others' domestic structures in both cases is represented in the importance attributed by Latin American countries to ensure sovereign capacities even in complex interdependence situations like the world drug problem and the global access to medicines	EU institutions and Domestic structure of Others	EU institutions and Domestic structure of Others EMCDDA emanates the NPE through many instruments (indicators, reports, studies, methods) and COPOLAD is framed according to the European vision and priorities mostly set by its Centre. However, it is each domestic structure of CELAC countries that *conditions* how such NPE impacts on the effectiveness of products.	Interdependence and Domestic structure of Others The EU needs global causes and partners to promote itself as a model, at the same time that CELAC produces 60% of the cocaine that arrives in Europe. CELAC needs investment and capacity-building to tackle drugs problems, but it is not a pool of sovereignties The EU has pharmaceutical companies, strategic geographical localization and trade power. Brazil is a great global market of medicines and actively influences standpoints of the Global South on this topic.	EU power vis-à-vis the Others and Domestic structure of Others The EU power is seen with suspicion regards its IPR provisions in EPA/ FTA negotiations with Southern countries and organizations. In addition, the EU is seen as representing the power of its private pharma companies. In order to protect its public health structure, Brazil makes use mainly of multilateral resources like the Doha Declaration, WTO DS and the PPT as a civil society instrument.
PARAMETERS OF OTHERS	Legality/ Legitimacy and	Legality/ Legitimacy and National factors	National factors and International constraints	National factors and

CELAC perceives that the EU establishes 'selective interaction' and reinforces asymmetries. Brazil claims the EU has double standards and does not stand for its own normative catalogue when private economic interests are at stake	National factors	Instruments of EMCDDA are legitimate for CELAC but those countries reject 'lessons' stemming from the lack of information about their conditions	CELAC diversity (metropolis and producer). International health and security concerns Brazilian National Health System and the public health dimension of TRIPS (IPR regime)	International constraints Brazilian national technological development is minimal. Brazil resorts mainly on south-south trade of generics to keep its national health system
CAUSES OF NPE DILEMMA: related to the EU MODES OF INTERACTION	Hierarchy or Market	Non-handling of differences Network or Hierarchy	Need new understanding of diffusion Negative potential of contestation Network/ Hierarchy	Non-handling of differences Need new understanding of diffusion **Market** or Network

6.1.Cross-case comparison

Both cases here represent transnational issues with which neither the EU nor other country or organization are able to tackle alone: the world drug problem and the global access to medicines. For this reason, transnational issues are the target of EU impetus to set common interests, and to exercise its self-perceived role model. In both cases we see the EU mode of interaction named 'hierarchy' in the literature: formal and precise rules, norms and approaches that are non-negotiable and enforced upon actors, characterizing vertical relations and a compulsory impact. At the same time, we see the mode named 'network', meaning density of interactions and communication –

relationships in which actors are formally equal despite the possibility of power asymmetries. How do these modes coexist?

Looked from CELAC and Brazil's eyes, respectively, the institutional weight of EMCDDA vis-à-vis the lack of resources to invest in capacity-building in CELAC countries; and the EU trade power, strategic geographical localization and defense of its pharmaceutical companies are conditions that entrench asymmetries, inequalities and power relations based on EU economic capacities and political leverage. This way, according to CELAC's parameters, in the first case 'network' is guided by a lack of knowledge about CELAC, a teaching tone in the political dialogue and during the course of activities in COPOLAD, and a EU mode of selective interaction expecting more coordination in order to effectively converge its approaches and methods with a non-institutionalized group. A critical engagement from CELAC – in the form of contested discourses towards upgrading coherence between a norm, policy, approach or method offered by the EU and particularisms of countries – is not regarded by the EU. COPOLAD intends to transfer policies and to produce norm-takers.

In the second case, network is guided by Brazil on the multilateral level, among media and civil society, engaging with EU normative interpretations and arguments during persuasion. Brazil also draw on international bodies such as the Doha Declaration and multilateral mechanisms such as the WTO dispute settlement, what ended up persuading the EU in the medium term to open public consultation regards its Regulation on free circulation of medicines brought into the EU customs territory. The EU, in turn, insists in its market-oriented standpoint, bypassing fundamental differences between North-South conditions to manufacture and hold patents over medicines. In addition, the overlapping of sanitary and commercial arguments also creates a confusion concerning generics that just benefits pharma companies, rather than patients.

In both cases we also see the weight of domestic structures and national factors to determine 'visible' outcomes. National institutions and the diversity regarding priorities of national drugs policies of CELAC countries condition the effectiveness of COPOLAD's products. The minimal technological development combined with the size of Brazil's market of medicines, as well as its influential role upon the Global

South on the topic of public health make the country an Other that matters to the EU. In addition, the role of South-South cooperation is prominent in both cases, as a 'side effect' of the interaction with the EU.

In COPOLAD, the EU 'selective interaction' makes the network within CELAC stronger as the EU interacts more with South American countries willing to make them the channel to diffusion towards the others. Moreover, localization comprises contestation as a way to adapt the Alternative Development approach to CELAC's necessities, cultural justifications and local conditions. Among EU countries and the EMCDDA, there is no evidence that such standpoints reverberate in a constructive way to impact on COPOLAD, which still adopts a rural development orientation in its AD activities.

Europe has a recognized advantage on urban drugs issues like dark net and prevention. I discussed the AD approach precisely because it does not tackle any of the EMCDDA 'hot topics' in terms of know-how, yet it is leaded by Germany in COPOLAD. It is hence a topic that represents large space for applicatory discourses of contestation from CELAC, as demonstrated in the chapter. The positive potential of contestation, in a wider sense of critical engagement in all levels of the Programme, is difficult for the EU to manage because it holds a feeling of non-coordination in CELAC derived from its insufficient knowledge about the region. And, more important, to recognize such contestation would represent a threat to its ontological security.

Subsidiarity through contestation, and persuasion through "diffusion from below" are exercised by Brazil regarding the access to medicines *vs.* EU provisions concerning IPR. In a constant communication with the EU, Brazilian arguments contributed to the public consultation process the EU opened in order to re-evaluated its regulation at stake. Brazil, on its side, actively engaged in the process, as well as with EU representatives within the WTO during the course of DS 409. Both frames of contestation represent critical engagements with EU approaches and normative interpretations, however, despite the types of diffusion and resistance, in both cases the EU sees contestation as an anomaly connected to divergence and, hence, difficult to reconcile.

In order to converge policies, in the first case the EU does not handle with such contestation neither intrinsic differences between it and CELAC, turning to its disciplining power of indicators and methods stemmed from the EMCDDA. In the second case, the changing regulation, the large engagement of the international community in the public consultation pressuring for constant answers from the EU, and the current deadlock upon the EU-Mercosur FTA demonstrate that NPE did not diffuse, i.e. it did not succeed to enforce its normative interpretation to the right to development through its foreign policy.

Lastly, what can we say about the EU understanding of diffusion through the cases? In COPOLAD, products are sensitive to CELAC needs and there is some degree of communication over activities within the four components proposed by the EU for the Programme. By the completion of its first phase, continuity of cooperation with the EU was demand-driven by CELAC in 2016, so as the inclusion of Caribbean countries. The EU understanding of diffusion is lead by those and other visible effects of COPOLAD detailed in Chapter 4.

The Programme forwards EU norms and interests of external action, and promotes the EU leadership in development and support to regional integration. Nonetheless, by the dialogical approach I employ, we see perceptions of hierarchy, asymmetry, patronizing, excessive impetus to coordinate without knowledge neither about CELAC nor about how COPOLAD's products might be localized in different contexts.

Although it seems to be a counter intuitive case because CELAC chimes with the EU foreign policy instruments of development cooperation, I choose to work with "apparent diffusion" to highlight complexities and contingent aspects that constitute the ontological dilemma. Contestation does not necessarily represent resistance, and diffusion does not necessarily represent 'take or leave it'. As exposed in Figure 3 of Chapter 3, the impact of NPE as foreign policy may change in some way the system of meanings and preference formation of Others (validity). To give materiality to the level of cultural validation, I represented it by the handling with differences and contestation.

The case of global access to medicines is most likely to have non-recognition of NPE as identity as the outcome, but my aim was to show how Brazil, being the less-

powerful party, employed instruments and mechanisms of diffusion of its normative interpretation. We could perhaps call it a case of 'diffusion from below', considering the concrete effect of EU changing regulation and other measures that lead to this point. Moreover, I had seek to compare top-down to bottom-up diffusion (what in this case I called 'resistance'), showing that the EU mode of interaction in COPOLAD mixes hierarchy with network, while Brazil could only rest on network through contestation and subsidiarity, engaging with EU positions.

In this case of medicines, the EU interacts on behalf of its pharmaceutical companies and private interests, favoring norms that uphold them, instead of ones that are coherent with its Treaties and discourse of human rights' promoter. However, more positively, the EU chose not to diffuse, so to speak, and gave initial steps to overcome resistance. By opening public consultation regarding its regulation at stake, taking part in discussions with the WTO DS mechanism, and eventually adapting Brazil's legal recommendations concerning free circulation of medicines brought into the Union's customs territory, we see some reflection about its sense of superiority.

Focusing on the causes that were combined to the EU modes of interaction, previously spelled out and empirically substantiated in the comparison, thereafter I present theoretical propositions to the puzzle that enlarge possibilities to further empirical research on NPE dilemma.

6.2.
The EU's inability to remedy the dilemma even if it wants: three theoretical propositions

The empirical discussion of proposed causes of NPE dilemma conducted above through the cross-case comparison led me to think theoretical propositions that could add up to my framework, in order to understand the puzzle, i.e. how those causes that start from policy's shortcomings help us to perceive the EU difficulty to change policies. The EU knows that it must listen to the Others in a more dialogical way, not

only communicating its message[153]. Hence, to change policies does not touch upon its interests and intentions well known by the Others, neither the way they are internally negotiated.

The change wished by the Others is towards pushing the EU to embrace the politics of norm reception in its diffusion strategy, as indeed, as long as we do not know the reception of mechanisms, we cannot even know whether the diffusion was due to NPE as a foreign policy or feeds back into the recognition of NPE as an identity project. In what follows, I enhance my framework called "the politics of norm reception" with theoretical propositions to better understand the puzzle, drawing mainly on Antje Wiener and Jürgen Habermas.

6.2.1.
Reasserting the value of the dialogic approach in the politics of norm reception

In the comparative analysis, we saw that the enactment of difference and contestation in a way that generates a positive impact over actors and outcomes within processes of diffusion depends on how the later is understood by actors. In this work, I applied a dialogic perspective that goes beyond both policy assessments and questions of effectiveness/ failure, and a linear view of norms makers-takers or senders-receivers. On the one hand, the dialogic approach empowers Others perceptions in analysis about the EU modes of external governance, raising inconsistencies with regard to the EU identity project of being recognized as NPE.

The EU is what it does because its way of doing is part of its identity discourse. Thus, policy efficiency does not shed light on questions of identity. The interaction with Others throughout the course of diffusion reveals an unintended effect of weakening NPE identity discourse, creating a self-defeating process. The dialogic

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[153] Between January-March 2016, the Special Adviser to EU HR/VP Federica Mogherini, Mrs. Nathalie Tocci visited Brazil aiming to meet and listen to Brazilian experts in order to gather their ideas about which and how to address key priorities for the forthcoming "Global Strategy for the EU's Foreign and Security Policy". Altogether, the EU Institute for Security Studies in close collaboration with the EEAS "has carried out a wide-ranging outreach and consultation process involving the broader expert community represented by think tankers and academics from across Europe (and beyond)" (2016:5).

approach discloses contingencies of diffusion that confront power relations informed by asymmetry and hierarchy.

I do not suggest that effectiveness and asymmetry are not relevant to understand diffusion, but rather that they are centralized in a linear logic that focuses on the receiving side to investigate the conditions under which a norm or regime matters. For instance, there are studies about how an international norm can be diffused domestically; how to implement a specific regime considering national identities and interests; which is the place of sanctions and violence to enforce a norm [154]. Effectiveness is definitely relevant in empirical analysis to observe facticity and appropriateness, but the politics of norm reception points to other research directions such as unintended effects of policies and external constitution of identities. And they are fundamental for an understanding of NPE not just as a foreign policy, but also as an identity process.

On the other hand, the traditional linear model of thinking diffusion (based on senders-receivers) ultimately disregards the main assumption that norms-followers are often reluctant to proceed as expected (WIENER 2009b:9). By contrast, the dialogic approach takes contestation as a legitimate feature of diffusion processes. Antje Wiener explains that the achievement of legitimacy depends directly on meaning generation of what is being diffused, which entails a 'diversity ontology': "the 'diversity' issue as a central condition [for meaning generation], which IR theories need to incorporate in a productive manner. For contestations are often ignited by hidden diversity positions" (WIENER 2014:40).

It represents a shift from the interest upon looking at norm effectiveness indicated by behavioral changes to degrees of empowerment indicated by access to discourses of contestation. In addition, the dialogic approach discloses silenced voices and dominant discourses that emerge in diffusion processes, uncovering the hegemonic pattern of meanings that has the 'loudest' influence over outcomes (ACKERLY 2007).

More than a 'hearing problem', the EU performs a 'meaning problem', as it does not understand Others' justifications as well as does not perceive the lack of validity/ legitimacy to its own. The way how the EU interacts with Others also

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[154] KATZENSTEIN (ed.), 1996; FINNEMORE & SIKKINK, 1998; RISSE, ROPP, SIKKINK (eds.), 1999.

dismisses the value of contestation and the 'fundamentally relational' nature that characterize its own process of identity formation, "and this is why we have to study not only the EU´s self-understanding as an actor, but also how the discursive messages that it sends out about itself are picked up, dismissed, or accepted by outside actors" (HELLQUIST, 2012:23-24). Central to this discussion are the roles of recognition, difference and contestation, as well as how to address their discursive manifestations. That is what I outline thereafter, connecting to the EU impossibility to remedy the dilemma.

6.2.2.
Recognition through the discursive manifestation of difference and contestation

Antje Wiener (2009) summarizes three dimensions of norm implementation that vary along the range of most invisible to visible. Those dimensions are related to more or less democratic legitimacy of such a norm. They are: formal validity, social recognition and cultural validation. The last one, cultural validation, would be the most invisible dimension and the one that accounts for more democratic legitimacy for the norm. Cultural validation lies within individual expectations, experiences and background knowledge, where the meaning and, therefore, contestation arise.

Any process of contestation will reflect a (re-)enacting of meaning-in-use. She says that "once norm interpretation and implementation occur in various different contexts, the meaning attached to a norm is likely to differ according to the respective experience with norm-use" (WIENER 2009b:9). Assuming patterns of diversity in how individuals relate to norms, Wiener concludes that norms have an inherently contested quality, and that contestation is a necessary component to increase democratic legitimacy.

From Wiener's reasoning, we can say that contestation, as it was practiced by CELAC and Brazil, both contributed to the legitimacy of the situation at hand – COPOLAD and the international legislation regarding access to medicines – and the legitimacy of the interaction with the EU. When reaching the individual level, meaning

is re-enacted according to the experience of norm-use, such as in the case of local practitioners of drugs policies in CELAC, and Brazilian external delegations, as well as pharmacists, patients and activists of public health.

The EU, in turn, read contestation to its standpoints as potential threats to its ontological security. In the case of human rights, the EU overcame the Southern resistance to its normative interpretation of the right to development, changing the Regulation 1383/2003 – what resulted in an appearance of NPE powerlessness. Such political dilemma is a contradiction that entails a reconfiguration of the very understanding of diffusion and success of NPE as foreign policy.

Indeed, it is not easy to know diffusion when we see it. It is an exercise that requires attention and a medium-term observation of a specific interaction. I do not suggest that it would be feasible for the EU to conduct such observation with all actors, including all policies that it is involved with, on the ground. Instead, I more fundamentally suggest that the EU is not yet clear about this impossibility to combine NPE as foreign policy and as identity process with the established means, because it practices diffusion based on visible effectiveness, linear models, and even through instruments that I excluded from the diffusion framework.

It understands contestation as an anomaly and often reinforces stratification and hierarchies upon and among actors of the South. With such 'personality' of how it exercises NPE, it becomes difficult for the EU to remedy the dilemma when its policies meet problems overseas. The remedy requires an alignment between its identity discourse and a way of exercising NPE that is oriented by validity/ legitimacy. Jürgen Habermas' philosophy enlightens why such alignment would be crucial for the EU.

Habermas emphasizes the difference between norm facticity and validity: *validity* (*Geltung*) is a matter of interpretation and must be understood in *epistemic terms* "as validity proven for us" (HABERMAS 1996:14). It has a transcendent character not bounded in specific contexts: "the universalistic meaning of the claimed validity [for statements, norms, utterances and practices of justification] exceeds all contexts, but only the local, binding act of acceptance enables validity claims to bear the burden of social integration for a context-bound everyday practice" (HABERMAS 1996:21). The *real*, too, becomes a contingent conception, involving the necessary

presence of an unlimited community and its asserting propositions of true. In claiming validity for their propositions, individuals seek for resonance among one another about something in the objective world.

Practically speaking, *facticity* refers to concrete established bodies of accepted claims and norms among a community, like institutions, treaties, agreements and conventions that enable the set up of rules, alliances, deals and negotiations. These *bodies* are always scrutinized by the subjects affected, in processes of deliberation that Habermas better explains through his idea of *discourse ethics*[155]. This distinction clarifies Wierner's concern about how to know the validity of a norm, which is beyond institutional practices of normative formalization. She connects the dimension of cultural validation, embracing diversity and contestation, to Habermas' epistemic terms. In accordance, I demonstrated how contestation is a valuable explanatory variable to understand what goes wrong with NPE as foreign policy: it overlooks the link between diversity and contestation to its norms, and democratic legitimacy or normative validity.

Normative validity develops throughout socialization, community-based behavior, individual expectations, experiences and background knowledge, along social recognition and cultural validation (WIENER 2009b:6). In practical terms, we saw in the cases that the EU is less concerned with the validity of its norms in Others' interpretations than with effectiveness, what is situated in the objective reality (facticity).

"As a philosophical practice, contestation means critically engaging with leading assumptions, concepts and theories" (WIENER 2014:51). It is crucial to extract from Habermas and Wiener the re-consideration of the importance of mutual recognition in IR, as well as the recognition of possible forms of Otherness that do not infringe on one's identity. Contestation would be the expression of multiculturalism and discourses of power activated by communication towards the construction of meanings accepted by all involved *throughout* encounters. Lastly, I briefly mention how such communicative rationale would contribute to the external legitimation of EU identity project, drawing on Habermas' Theory of Communicative Action.

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[155] HABERMAS, 1994, 2003, "Discourse Ethics: notes on a program of philosophical justification" in BENHABIB, S., DALLMAYR, F. (eds.), 1995.

6.2.3.
Theory of Communicative Action (TCA) towards the legitimation of EU identity politics

The TCA is a rational practice that can redefine goals, interests and self-understandings among participants due to the constitutive character of interactions. Different from strategic action that highlights instrumental processes of decision-making towards particular policy outcomes, TCA focuses on constitutive processes of interaction towards the development of common understandings. It is a theoretical framework that also reveals who is excluded from a given deliberation, as well as the range of arguments invoked in order to claim a right to speak, as "deliberative spaces are by definition exclusionary. (…) Organizing a deliberative opportunity is an exercise of power" (ACKERLY 2007:51).

TCA is a theoretical construction that bolsters my account of the politics of norm reception, developed through the diffusion framework in Chapter 2 and the operationalization of dialogicality in Chapter 3. TCA represents how to conduct 'an ideal type' of deliberation that confers legitimacy to the outcome, as illustrated in the figure:
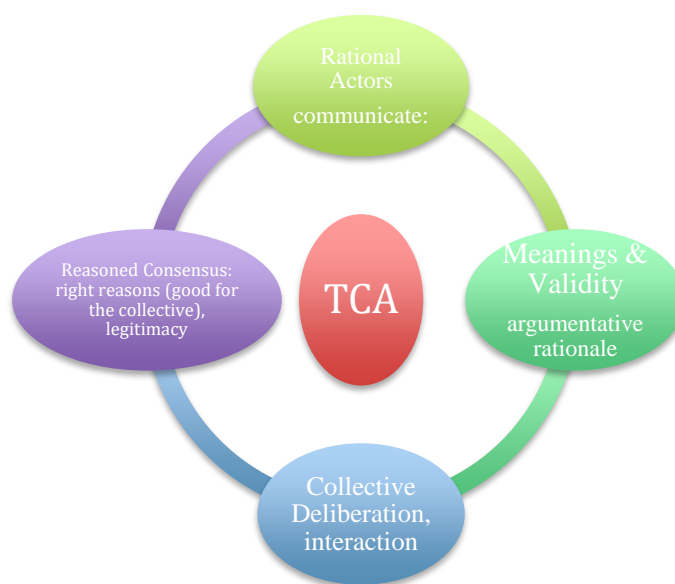
Figure 11 - The schema of TCA

It focuses on the interaction *per se*, as the space I explored in the cases regarding the EU external governance. Hence, what can we learn from TCA towards the legitimation of EU identity politics? At first, in accordance to Mitzen, "interstate talks matters for legitimacy" and, when the EU encounters the Other outside its borders, it is engaging in "global public spheres, [i.e.] discursive structures that enable communicative action beyond state borders" (MITZEN 2005:401). She writes about the normative potential of TCA in anarchy, but we can use the argument to think the EU in three steps: NPE as identity project pushes for the strengthening of global public spheres as a way to restrain states to descend into violence.

At second, being not a state, multilateral diplomacy exercised in international or interregional scopes as a dimension of global public sphere demonstrates the EU external practice of the discourse that binds its member states together. Lastly, such practice might attribute legitimacy to EU identity discourse when its arguments would be enacted by communicative action. That is, the very practice of engaging in multilateral diplomacy through TCA (NPE as foreign policy) would probably be satisfactory to uphold EU ontological security.

As explained by Risse, "argumentative rationality appears to be crucially linked to the constitutive rather than the regulative role of norms and identities by providing actors with a mode of interaction that enables them to mutually challenge and explore the validity claims of those norms and identities" (RISSE 2000:2). Some of EU validity claims would be contested as of any Other's one – which claims are not at stake towards the legitimation of EU identity politics, but whether or not the EU exercises multilateral diplomacy through argumentative rationality.

Transposing the idea explained by Mitzen that "enforcement capacity [of cosmopolitan law] might expand as a result of deliberative processes" (op.cit.:405) to the EU, we have again the focus on processes. The construction of NPE as the superior identity to which the international order should strive is a dialogical process, rather than unilaterally enforced. But it is precisely the EU search for ontological security *through* NPE that makes it harder to be more dialogical. To embrace deliberation in its foreign policy over its meanings and representations towards external legitimation of

an identity project would therefore undermine its self-perception of a superior and distinctive identity, what is hardly feasible.

It becomes then a problem because in the case of the EU, internal order and legitimacy are produced in the same sphere (supranational), so the failing of legitimacy will have necessary repercussions for the internal order, affecting its ontological security. "Every social order is intimately tied to legitimation processes, because durable order always rests on a consensus regarding the truth of a particular value claims" (op.cit.:407).

Therefore, although the external legitimation of EU political identity is contingent to each Other but would be sustained through dialogical engagement (TCA) in multilateral diplomacy, perhaps paradoxically, we have the implication that some level of cultural disagreements are, in principle, *imperative* to TCA: "it would be pointless to engage in a practical discourse [156] without a horizon provided by the lifeworld of a specific social group and without real conflicts in a concrete situation (…) Practical discourses are always related to the concrete point of departure of a disturbed normative agreement" (HABERMAS in BENHABIB & DALLMAYR 1995:100).

According to Swidler, "both discourses and practices are concretely observable in a way that meanings, ideas, and values never really are" (SWIDLER in SCHATZKI et. al., 2001:75-76), that is, local actors on the implementation level, as exemplified by Wiener, often hold different normative claims grounded on their culture and representations. Those actors, together with EU actors constitute the life-world of TCA related to the cases I had analyzed, which were chosen particularly by the ideational and normative proximity among them in the first place. This criterion also probably relaxes Risse's objection regarding the existence of a life-world as one of Habermas' condition of the TCA.

His second objection is related to power asymmetries as a constant in international relations:

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[156] "Practical discourses, in the broadest sense, include *moral discourses* about universal norms of justice, *ethical discourses* about forms of the good life, and *political-pragmatic* discourses about the feasible" (BENHABIB, 2002:12)

"Argumentative rationality also implies that the participants in a discourse are open to being persuaded by the better argument and that relationships of power and social hierarchies recede in the background. /(…) the Habermasian condition of 'equal access' to the discourse, for example, is simply not met in world politics. (…) We can probably relax the condition of 'equal access' as long as the condition of non-hierarchy among participants in a discourse can be met. (…) The real issue then is not whether power relations are absent in a discourse, but to what extent they can explain the argumentative outcome" (RISSE 2000:7/18).

The life-worlds of the case studies are understood as this space where non-hierarchy among participants could be fulfilled if argumentative rationality was supposed to be employed. Nevertheless, as we saw, NPE as foreign policy might undermine NPE as identity rather because of fundamental reasons related to its ontological security, than because of simple mismanagement of policies. For the policies, we had a positive side-story in the second case, as an answer to the Brazilian resistance. For the EU ontological security dilemma, I developed a theory-driven contribution that I called the politics of norm reception, which invites for further empirical observation of processual paths where we have reasons to believe that norm and policy convergence is not involving recognition of NPE as a specific identity project.

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Conclusion

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Appendix

Interviews

Name	Occupation	Date	Language	Location
Teresa Salvador-Livina	Director of COPOLAD	20th October 2017	Spanish	E-mail
Programme Manager #1	EU-LAC Programme Manager	6th October 2017	Spanish	EU-LAC Foundation, Hamburg
Programme Manager #2	EU-LAC Programme Manager	6th October 2017	Spanish	EU-LAC Foundation, Hamburg
Alexis Goosdeel	Director EMCDDA	14th November 2017	English	EMCDDA, Lisbon
Héctor Suárez	Director of NDO in Junta Nacional de Drogas, Uruguay	26th October 2017	Spanish	Phone call
Martha Paredes	Sub-director of the Strategy and Analysis Subdivision of the Ministry of Law and Justice, Colombia	15th November 2017	Spanish	Altis Gran Hotel - COPOLAD Conference Room, Lisbon
Esteban Pizarro	Advisor at SENDA, Chile	13th November 2017	Spanish	Altis Gran Hotel - COPOLAD

				Conference Room, Lisbon
Veronica Brasesco	Director NDO in SEDRONAR, Argentina	16th November 2017	Spanish	Altis Gran Hotel - COPOLAD Conference Room, Lisbon
Eugenia Mata Chavarria	ICD Costa Rica	26th October 2017	Spanish	Phone call
Caribbean interviewee	Confidential	14th November 2017	English	Altis Gran Hotel - COPOLAD Conference Room, Lisbon
Klaas Grimmelmann	GIZ representative	6th November 2017	English	E-mail
Marco Ayala	Director of NDO in CONALTID, Bolivia	15th November 2017	Spanish	Altis Gran Hotel - COPOLAD Conference Room, Lisbon
Portuguese interviewee	SICAD representative	14th November 2017	Portuguese	Altis Gran Hotel - COPOLAD Conference Room, Lisbon
Guilherme Patriota	Ambassador in DELBRASGEN	6th December 2016	Portuguese	Missão do Brasil junto à ONU em Genebra (DELBRASGEN), Geneva
Gabriela Costa Chaves	Pharmaceutical, Head of the research on EU-Mercosur Free Trade Agreement and its impact on access to medicines in Fiocruz, researcher for ABIA, actively involved with GTPI/REBRIP and	2nd December 2016	Portuguese	Skype

	the Campaign for Access to Essential Medicines of Doctors Without Borders			
Marya Hynes	Acting Head of Section in CICAD/OAS	15th November 2017	English	Altis Gran Hotel - COPOLAD Conference Room, Lisbon