Universitat Autònoma de Barcelona

Normative Contestation in EU Foreign Policy. Lessons from the Arms Control, Migration and Gender Equality Regimes

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Al meu avi, Comandant d'Infanteria Antonio Sánchez Castells, per haver lluitat pels drets i llibertats que avui tenim

I have witnessed several decades of EU integration. There were many strong moments. Of course, there were many difficult times too, and times of crisis. But never before have I seen such little common ground between our Member States. So few areas where they agree to work together. Never before have I heard so many leaders speak only of their domestic problems, with Europe mentioned only in passing, if at all.

Juncker, President of the European Commission, State of the Union 2016, 14th September

I believe it is essential for us to focus on this: the whole world is going through a moment of chaos. And the question is: is it a moment or a long-term trend? In both cases, we need as Europeans, as the European Union, to be extremely clear, united and firm with our own compass in mind: the set of values, principles and interests that guide our actions on the global scene. Because the number of global powers continues to rise, but instead of having a system that governs this multi-polar world through multilateral institutions, the very idea of multilateralism is being challenged more every day. There is a return to the logic of bilateral transactions between powers – if not between individual leaders; a situation where "might makes right", and the world is split in spheres of influence. This is not our logic and many others in the world do not want to go this way.

Mogherini, High Representative/Vice-President, 3rd September 2018

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Diego Badell
2nd August 2022

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LIST OF ACRONYMS

AHSJ- Area of Freedom, Security and Justice

AI- Artificial Intelligence

CFSP- Common Foreign and Security Policy

CODEV- Working Party on Development Cooperation

CODUN- Working Party on Global Disarmament and Arms Control

CONUN- United Nations Working Party

CPD- Commission on Population and Development

CSDP- Common Security and Defence Policy

CSO- Civil Society Organisation

CSW- Committee on the Status of Women

EAM- European Agenda on Migration

ECD- European Consensus on Development

ECOSOC- United Nations Economic and Social Council

EDA- European Defence Agency

EDF- European Defence Fund

EEAS- European External Action Service

ESS- European Security Strategy

EU- European Union

EUGS- European Union Global Strategy

HR/VP- High Representative of the Union for Foreign Policy and Security Policy/Vice-President of the European Commission

HRC- United Nations Human Rights Council

IHL- International Humanitarian Law

ILO- International Labour Organization

IOM- International Organization for Migration

JHA- Justice and Home Affairs

LAWS- Lethal Autonomous Weapon Systems

MDG- Millennium Development Goals

NGO- Non-Governmental Organisation

SDG- Sustainable Development Goals

SRHR- Sexual and Reproductive Health and Rights

TEU- Treaty on the European Union

TFEU- Treaty on the Functioning of the European Union

UN- United Nations

UNCCCW- United Nations Convention on Certain Conventional Weapons

UNGA- United Nations General Assembly

UNHCR- United Nations High Commissioner for Refugees

UNODA- United Nations Disarmament Commission

UNSC- United Nations Security Council

UNSCR- United Nations Security Council Resolution

WHO- World Health Organization

WPS- Women Peace and Security

ABSTRACT

This doctoral monograph examines the normative contestation of EU foreign policy. Despite the fact that the study of norms and EU foreign policy has been studied in the past, the focus has been on either the inside-out or the outside-in approach. To fill this gap, the thesis studies the relationship between norms and EU foreign policy through the interplay of inside-out and outside-in approaches. Moreover, EU studies literature has overlooked the analytical framework of contestation in the study of the relationship between EU foreign policy and norms. To address the shortcomings of the literature, the thesis offers an explanation of the relationship of the EU and its underpinning norms through the prism of contestation. To this end, it refers to the concepts of applicatory and validity contestation, while broadening the types of validity contestation with the consideration of opposition and dissidence. In doing so, the thesis is guided by two central research questions: How does normative contestation emerge in EU foreign policy? What are the implications of normative contestation for the EU foreign policy system?

These research questions are answered in three case studies of the dissertation on Lethal Autonomous Weapon Systems, the UN Global Compact on Migration and Sexual and Reproductive Health and Rights. Drawing on data collected through semi-structured interviews and document analysis, the dissertation concludes that, despite contestation being triggered by outside and/or inside events, EU foreign policy and its underpinning norms are much stronger than we might at first think. But it also points to the existence, within the EU, of actors willing to undermine EU values, either by establishing alliances outside the EU or by ceasing to defend them, as well as actors seeking to renationalise elements of EU foreign policy.

RESUM

Aquesta tesi doctoral en forma de monografia analitza la contestació normativa de la política exterior de la UE. Tot i que l'estudi de les normes i la política exterior de la UE ha estat estudiat en el passat, aquest s'ha centrat en l'enfocament *inside-out* o *outside-in*. Per omplir aquest buit, la tesi estudia la relació entre les normes i la política exterior de la UE mitjançant la interacció dels enfocaments *inside-out* i *outside-in*. A més, la literatura sobre estudis europeus no ha tingut en compte el marc analític de la contestació en l'estudi de la relació entre la política exterior de la UE i les normes. Per donar resposta a les limitacions de la literatura grafia, la tesi doctoral ofereix una explicació de la relació de la UE i les normes sustentada a través del prisma de la contestació. Per fer-ho, es remet als conceptes de contestació de l'aplicació i de la validesa, ampliant alhora els tipus de contestació de la validesa amb la consideració de la dissidència i l'oposició. La tesi es guia per dues preguntes centrals de recerca: Com sorgeix la resposta normativa a la política exterior de la UE? Quines són les implicacions de la resposta normativa per al sistema de política exterior de la UE?

Aquestes preguntes de recerca es responen en tres estudis de cas que aborden els Sistemes d'Armes Autònomes Letals, el Pacte Mundial sobre Migració de l'ONU i la Salut i els Drets Sexuals i Reproductius. A partir de les dades recollides mitjançant entrevistes semiestructurades i l'anàlisi de documents, la dissertació conclou que, malgrat la contestació provocada per esdeveniments externs i/o interns, la política exterior de la UE i les normes que la sustenten són molt més sòlides del que podríem pensar en un principi. Però també assenyala l'existència, dins de la UE, d'actors disposats a soscavar els valors de la UE, ja sigui establint aliances fora de la UE o deixant de defensar-los, així com d'actors que busquen renacionalitzar elements de la política exterior de la UE.

RESUMEN

Esta tesis doctoral en forma de monografía examina la contestación normativa de la política exterior de la UE. A pesar de que el estudio de las normas y la política exterior de la UE ha sido estudiado en el pasado, este ha centrado en el enfoque *inside-out* o en el *outside-in*. Para llenar este vacío, la tesis estudia la relación entre las normas y la política exterior de la UE a través de la interacción de los enfoques *inside-out* y *outside-in*. Además, la literatura de estudios sobre la UE ha pasado por alto el marco analítico de la contestación en el estudio de la relación entre la política exterior de la UE y las normas. Para subsanar las limitaciones de la bibliografía, la tesis ofrece una explicación de la relación de la UE y las normas que la sustentan a través del prisma de la contestación. Para ello, se remite a los conceptos de contestación de la aplicación y de la validez, ampliando al mismo tiempo los tipos de contestación de la validez con la consideración de la disidencia y la oposición. La tesis se guía por dos preguntas centrales de investigación: ¿Cómo surge la contestación normativa en la política exterior de la UE? ¿Cuáles son las implicaciones de la contestación normativa para el sistema de política exterior de la UE?

Estas preguntas de investigación se responden en tres estudios de caso que abordan los Sistemas de Armas Autónomas Letales, el Pacto Mundial sobre Migración de la ONU y la Salud y los Derechos Sexuales y Reproductivos. A partir de los datos recogidos mediante entrevistas semiestructuradas y el análisis de documentos, la disertación concluye que, a pesar de la contestación provocada por acontecimientos externos y/o internos, la política exterior de la UE y las normas que la sustentan son mucho más sólidas de lo que podríamos pensar en un principio. Pero también señala la existencia, dentro de la UE, de actores dispuestos a socavar los valores de la UE, ya sea estableciendo alianzas fuera de la UE o dejando de defenderlos, así como de actores que buscan renacionalizar elementos de la política exterior de la UE.

CHAPTER 1

INTRODUCTION

1.1 FRAMING THE THESIS

Today's international order appears to be increasingly contested. This phenomenon may be driven by the new distribution of power resulting from the global power shift, in which emerging actors are making new demands on existing institutions and norms. But this phenomenon is not entirely new, as Edward Hallett Carr, in his famous work *The Twenty Years Crisis: an Introduction to the Study of International Relations*, already postulated that disaffected powers, using ideological power and other resources (e.g. military), attempted to change the content of the rules and the distribution of goods in the international system (Carr 1946). Interestingly, what Carr's work already pointed out is that a changing distribution of power goes hand in hand with actors contesting the normative structure of the international system. But in the current international order, a hitherto unprecedented fact is that contestation arises in the context of highly institutionalised international politics. This is the case of the international order that was born in San Francisco in 1945, with the United Nations (UN) at its core.

The legal system that came into being in 1945 was in fact in a position to produce norms with a liberal ethos. This was the case of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War (also known as the Fourth Geneva Convention), the 1951 Convention relating to the Status of Refugees (also known as the Refugee Convention) or the 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which set out the human rights of women.

All this took place in a world marked by the Cold War and shaped by a competition between two models: liberalism and communism. Later, a third model was born with the emergence of the Third World.

This tension between different approaches to international order, faded in the immediate post-Cold War period. Indeed, from the 1990s (the fall of the Soviet Union) to the 2000s (the War on Terror) a new international order emerged. This order is known as the international liberal decade (Barbé 2021) or the post-national order (Börzel and Zürn 2021). It was an age of liberal hegemony (e.g., Fukuyama and the end of history). This resulted in an order that became wider by incorporating new members and an aspiration for universality. But it also became thicker as new norms were added to its expectations of state behaviour, often much more intrusive than a strictly Westphalian reading of the UN Charter would have demanded. For example, strong international institutions such as the International Criminal Court or the World Trade Organization were created. But also, international conferences such as the 1994 Fifth Conference on Population and Development in Cairo and the 1995 Fourth World Conference on Women in Beijing gave rise to non-binding instruments that enabled the international community to assess the progress made by states on Sexual and Reproductive Health and Rights (Barbé and Badell 2021). These norms expanded and introduced a greater sovereignty cost by touching on political and civil rights in areas such as women's rights or international criminal justice, but also in the promotion of economic liberalism such as the free market (e.g., the Washington Consensus). But at the same time, the expansion, both in depth and scope, of liberal norms during the post-Cold War period laid the groundwork for the current contestation of the international order (Finnemore et al. 2021, p. iii).

During this decade, an institution that would become the poster child of the post-national order was born: the European Union (EU). This milestone culminated more than 40 years of European integration that had previously taken the form of the European Communities. As for the relationship between the EU and norms, scholars have argued that they go hand in hand. And the EU cannot be understood without norms. This has led to defining the EU as a normative power, whereby it places norms and liberal values such as peace, freedom, democracy, the rule of law and human rights at the centre of its relations with external actors (Manners 2002; Wagner 2017). Moreover, as explained in the 2003 European Security Strategy and the 2016 EU Global Strategy, the promotion of norms is expected to take place through multilateralism. Indeed, the EU has relied on the principle of multilateralism to such an extent that it has become a foreign policy doctrine (Lazarou et al. 2010; Kissack 2013, p. 407). In this sense, it has been argued that the Union is genetically programmed to support multilateralism (Mogherini 2020). Therefore, the EU has a very close relationship with norms as well as with multilateralism. This translates into an EU foreign policy based on two clear objectives: promoting norms and multilateralism (Laïdi 2008; Barbé 2012).

And portraying the EU as the poster child of the post-national order sets the stage for a setback: the EU is highly dependent on the international liberal order. And from this state of affairs, questions can be raised about what remains for the EU when the order is no longer based on liberal norms but is marked by the return of power politics. In other words, what happens to the EU when norms adopt a Westphalian reading instead of a cosmopolitan meaning (Lake, Martin and Risse 2021)? To this end, scholars have explored the current contestation of the international order from both a broader and a narrower aspect. The broader aspect examines the contestation of multilateralism, which

is associated with the changing structure of the international system (Morse and Keohane 2014). And the narrower aspect focuses on the contestation of norms (Wiener 2014).

In this regard, it has been argued that in its external relations, when the EU faces such a situation, the EU will have to choose between entrenching itself in the defence of the status quo norm, or accommodating the demands of norm challengers, for the sake of a well-functioning multilateral system (Costa, Kissack and Barbé 2016). However, the study of EU reactions to external contestation has been researched to the detriment of the study of internal contestation. This indicates that there is a gap to be filled in the study of contestation, which is what this doctoral dissertation will undertake. Along these lines, the dissertation analyses the normative contestation of EU foreign policy. This analysis, being one of the added values of this dissertation, is done in line with the multilevel, multi-method, multi-competence and multi-authority character of EU foreign policy. The result is a doctoral dissertation that traces the normative contestation of EU foreign policy from two approaches, inside-out and outside-in, which has been defined as the "glocal" level (Johansson-Nogués, Vlaskamp and Barbé 2020). The aim is to analyse EU foreign policy by giving greater recognition to internal political dynamics; and taking into account that normative contestation in international institutions could affect EU normative cohesion. In short, this thesis studies the internal and external contestation of EU foreign policy and its effects.

1.2 Defining EU Foreign Policy

Academic research on the European Union (EU) and its foreign policy refers to different strands of literature. This is the case of Jørgensen et al. in *The SAGE Handbook of European Foreign Policy* where they argue that the study of EU foreign policy speaks to

three strands, which are International Studies, European Studies and Foreign Policy Analysis (Jørgensen 2016). This gives us an idea of the complexity and evolving nature of the subject that can be defined, using Ben Tonra and Thomas Christiansen's words, as "the EU foreign policy is an ongoing puzzle" (Tonra and Christiansen 2004, p. 1). The intersection of three disciplines in the study of EU foreign policy already highlights the challenge of studying the EU's foreign policy. For instance, the EU is a rather unique global actor that is neither a state nor an international organisation. Along these lines, this dissertation defines EU foreign policy in a broad manner, understanding EU foreign policy as "the area of European policies that are directed at the external environment with the objective of influencing that environment and the behaviour of other actors within it, in order to pursue interests, values and goals" (Keukeleire and Delreux 2014, p. 1).

Due to the complex nature of EU foreign policy, it can take multiple forms and it can be implemented by multiple institutional actors and through multiple instruments. But more importantly, EU foreign policy is organised within two different treaty frameworks that conform the Lisbon Treaty. First, the Treaty of the European Union (TEU) includes the main provisions of the Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). Second, the Treaty on the Functioning of the European Union (TFEU) includes the main provisions on the EU's external action and the external dimensions of internal policies. For instance, while arms control issues are addressed through the TEU by means of CFSP/CSDP; issues tackling development policies such as the EU Gender Action Plan, which includes provisions on Sexual and Reproductive Health and Rights, are addressed in the TFEU by means of shared competences between Member States and the European Commission, which has some degree of autonomy in the matter. We can also think of the case of migration, an issue that speaks to the external dimension of internal policies and is covered by the TFEU

and an issue that has gained importance in the agenda since the 1992 Maastricht Treaty. All this gives rise to a multifaceted EU foreign policy.

The multi-competent EU foreign policy goes together with a multi-method policy-making system (Keukeleire and Delreux 2014). In effect, the four clusters mentioned (1) Common Foreign and Security Policy (CFSP), (2) Common Security and Defence Policy (CSDP), (3) external action, and (4) internal policies with an external dimension (Keukeleire and Delreux 2014, p. 8) can also be studied along the lines of the classical debate in EU studies between intergovernmentalism and supranationalism as foreign policy systems (Barbé 2014, p. 21). On the one hand, CFSP and CSDP correspond to intergovernmentalism as a foreign policy system. On the other hand, external action and internal policies with an external dimension correspond to supranationalism as a foreign policy system.

And as Petri, Thevenin and Liedlbauer (2021) indicate, CFSP and CSDP describe policies in which an intergovernmental foreign policy system predominates, meaning that Member States have control over political decisions (e.g., unanimity rules in Council structures) and that there has been no or a very limited transfer of competences to the EU level (c.f. Morillas 2019 on the EEAS). In this functioning, Member States retain control over foreign policy development through the dominant position of the European Council and the Council of the EU through the predominance of unanimity in decision-making. As for the clusters of external action and internal policies with an external dimension, these correspond to a supranational foreign policy system in which there have been substantial transfers of competences to the EU level, thus giving more institutional power to the various EU institutions and bodies alongside the Council structures, namely the European Commission and the European Parliament. In this functioning, there is a

balance between the Council of the EU, the Commission, the European Parliament and the European Court of Justice, and with a decision-making system that provides for the possibility of majority voting. However, this is not always the case, as evidenced by trade policy, which responds to external dimensions but where unanimity is needed to approve trade agreements.

As previously mentioned, the added value of this doctoral dissertation lies in the analysis of EU foreign policy in terms of its multi-authority character (i.e. Member States, EEAS, European Commission), its multicompetent character (e.g. CFSP/CSDP where Member States have the exclusive purview in decision-making; external action and the external dimension where Member States are joined by the European Commission and the EEAS as actors in decision-making), its multi-method foreign policy (i.e. intergovernmental and supranational policy-making) and its multi-level character (i.e. the interaction between the EU and the international level; between the Member States and the EU; and between the Member States and the international level). To that end, the EU foreign policy is studied from two approaches: inside-out and outside-in. Nevertheless, there is a tendency in EU research to adopt an inside-out approach to the detriment of an outside-in approach. This thesis offers a balanced account of the two approaches. It explores how external changes, i.e., contesting international norms, affect the formulation of EU foreign policy itself, but also accounts for changes in EU foreign policy internally, which is related to how internal dynamics affect the norms and values that underpin EU foreign policy. This doctoral dissertation falls within this area of interest by studying contestation of EU foreign policy, understanding contestation as a social practice whereby actors discursively express the nascent/continuing legitimacy of norms or challenge the foundations of the norm (Wiener 2014; 2018).

More fundamentally, this thesis delves into how an increasingly complex, connected and contested world, marked by a proliferation of actors, conflicts and new types of threats, is pushing the EU to rearticulate and/or restructure its discourse and instruments. The EU is a social actor composed of the EU institutions and bodies together with the Member States if they act as trustees of the Union's interest (Cremona 2011). Moreover, as referenced above the EU is genetically programmed to support multilateralism, the most successful case being the UN. This European awareness of multilateral commitments and engagements dates back to the 1957 Treaty of Rome (Smith and Elgström 2013 p. 297). With this multilateral promotion objective, the 2003 European Security Strategy considered the need to strengthen the UN and the multilateral system in general. It was precisely the EU's most recent foreign policy document, the 2016 EU Global Strategy, that offered the EU's most concrete updated consideration of the UN. In this vein, the EU Global Strategy stated that "the EU will promote a rules-based global order with multilateralism as its key principle and the United Nations at its core" (EEAS 2016, p. 8). In other words, the EU in line, with Ruggie (1992), considers multilateralism to be the right response and the right way to engage with international regimes, where the EU associates the promotion of multilateralism within UN fora. Therefore, this dissertation, in examining norm contestation, will focus in particular on those norms that are the subject of deliberations at the UN.

1.3 RESEARCH QUESTIONS

The aim of this doctoral dissertation is to examine and evaluate through case studies the normative contestation of EU foreign policy. To facilitate the understanding of the object of this dissertation, it is important to highlight the main theoretical starting point: contestation is defined as a social practice through which actors discursively express the

nascent/continuing legitimacy of norms or challenge the foundations of the norm (Wiener 2014). Depending on how actors conduct normative encounters, contestation can culminate in conflict or consensus, where norms can be strengthened or challenged (Wiener 2017). Furthermore, the EU is seen as a social actor, meaning that it is shaped by the relationships, institutions and the rules and norms in which it is embedded. For example, the EU is seen as an actor highly dependent on international norms, which means that changes in the international structure will have a strong impact on EU foreign policy. In other words, EU consensus on norms and values may no longer be possible. Similarly, even if consensus on norms is the projected image, there may be dissensus on how to implement it. In short, this thesis aims to increase our understanding of the link between the external and internal level in relation to EU foreign policy. To achieve this goal, two research questions address the need for both theoretical and empirical work.

Research question 1. How does normative contestation emerge in EU foreign policy?

This question has been split in two parts. The first about external contestation, while the second question looks at internal contestation

a) What is the role of external actors in triggering contestation?
b) What is the role of internal actors in triggering contestation?

Research question 2. What are the implications of normative contestation for the EU foreign policy system?

In each case study, different parts of the research questions are explored (see Table 1). Furthermore, they offer a comprehensive approach to understanding the object of this thesis. It must be borne in mind that the knowledge that has emerged is more than the

sum of each research question and cannot be made to fit completely into these research questions.

Table 1. Research questions and case studies

		Chapter 3. Lethal Autonomous Weapon Systems	**Chapter 4. Global Compact for Migration**	**Chapter 5. Sexual and Reproductive Health and Rights**
How does normative contestation emerge?	What is the role of external actors in triggering contestation?			
	What is the role of internal actors in triggering contestation?			
What are the implications of normative contestation for the EU foreign policy system?				

1.4. Methodology and Research Design

This section presents the methodology of the doctoral dissertation. As presented in Chapter 2, this thesis is anchored in constructivism, which implies that the prevailing social relations in the world are based on the existence of shared values, norms, practices and other intersubjective meanings (Reus-Smit 2018). This suggests that for a social relation to exist there must be a minimum degree of intersubjective agreement. Thus, the central methodological assumption is that the social world is constructed through discourses and actions (Kratochwil 2018). In practical terms, it requires that this

dissertation is supported by research methods and techniques that focus on capturing discourse.

More specifically, this doctoral dissertation is mainly based on qualitative methods, where it is based on the case study research method. It is defined in this dissertation as a "well-defined aspect of a historical happening that the investigator selects for analysis" (Bennett 2004, p. 21). And case studies are fundamental to generate new knowledge (i.e., logic of discovery) as well as to confirm existing ones (i.e., logic of confirmation) (Bennett 2004). And in studying the EU, this research method allows researchers to gain an in-depth understanding of most of the factors that influence a policy decision (Dür 2008, p. 563). Indeed, the empirical part is based on three case studies: Chapter 3 looks at the EU and the arms control regime, with a particular focus on Lethal Autonomous Weapon Systems (LAWS); Chapter 4 delves into the EU and migration by studying the making of the UN Global Compact on Migration; and Chapter 5 deals with the EU and gender equality, with a focus on Sexual and Reproductive Health and Rights. The following lines will present the three criteria used for the case selection, the time frame of the dissertation, as well as the research techniques used.

1.4.1 Selection Criteria

First, to account for variation in the way contestation is exercised, this thesis studies norms at different stages of the norm life cycle (Finnemore and Sikkink 1998). The norm life cycle involves different demands and preferences of actors in three stages. The first stage looks at the moment when a norm emerges. This is a demand by states and/or non-state actors to revise the status quo in order to address the existence of new needs. The second stage, that of acceptance, is reached when the norm begins to be widely accepted by a critical mass of states that trigger a norm cascade. This leads to the last stage, in

which the norm becomes internalised, but also acquiring a taken-for-granted quality. In this sense, the case of Lethal Autonomous Weapon Systems is a norm in its emerging stage, the case of the UN Global Compact for Migration is a norm that has reached its acceptance stage, and the case of Sexual and Reproductive Health and Rights is a norm that has been internalised.

In addition to that, each case study has also been selected on the basis of the relevance of the topic to the EU's foreign policy agenda. For this reason, two main EU foreign policy documents have been used as reference points: the 2003 European Security Strategy (ESS) and the 2016 EU Global Strategy. As for the 2003 ESS, it already considered the areas of gender equality and arms control as priorities for the EU. Migration was introduced in the 2008 ESS implementation report. This was followed by the 2016 EU Global Strategy, which was defined as a 'compass for [EU] action' (EEAS 2016, p. 4), where gender, migration and artificial intelligence related to the field of robotics and the military were identified as issues of high importance for the EU. More importantly, gender and migration issues figured high on the agenda non only in the 2016 EU Global Strategy, but advancements in both fields were consistently mentioned in the 2017, 2018 and 2019 Implementation Reports (EEAS 2017; 2018; 2019). Although artificial intelligence was not listed in the 2017 and 2018 implementation reports, the issue was raised as a top priority in 2019, but this time reframed as technology-related threats and challenges. To be more precise, the 2019 monitoring report included artificial intelligence and migration as top priorities. The focus on these issues came with a clear common objective: the EU has to be a strategic actor to create multilateralism in these areas (EEAS 2019, p. 16).

Finally, all of this affects foreign policy systems. On the one hand, the intergovernmental system is addressed through the case of Lethal Autonomous Weapon

Systems, where Member States have control over policy decisions and there has been no or a very limited transfer of competences to the EU level. On the other hand, the supranational system is addressed through the case studies of the UN Global Compact for Migration and Sexual and Reproductive Health and Rights. In this system, there has been a certain degree of transfer of competences/authority to the EU, thus giving more institutional power to the various EU institutions and bodies alongside the Council structures, namely the European Commission and the European Parliament.

1.4.2. DISSERTATION TIME FRAME

As for the time frame of this doctoral dissertation, in general terms it covers the period between 2014 and 2021. And in specific terms it builds a timeframe on the three case studies. In the case of Lethal Autonomous Weapon Systems, it covers the period between 2014 (the launch of the negotiations at the UN Convention on Certain Conventional Weapons) and 2021 (the last period of the negotiations analysed in this thesis). In the case of the Global Compact for Migration, it covers the negotiation period from 2016 (New York Declaration calling for a Global Compact for Migration) to 2018 (Marrakesh Conference endorsing the Migration Compact and UN General Assembly vote adopting the Compact). Finally, in the case of Sexual and Reproductive Health and Rights, the dissertation covers the period from 2017 with the adoption of the European Consensus on Development (strategic document setting out the EU's common vision for development cooperation with a chapter on SRHR) to 2021 with the adoption of the Team Europe Conclusions (an approach that initially started as the Union's response to the COVID-19 pandemic has gained traction to the point that it might be becoming a new approach to international development).

1.4.3. RESEARCH TECHNIQUES

Process tracing has been the key research technique used in this dissertation. Indeed, for making causal inferences in case studies, process tracing is an extremely useful tool (Brady et al. 2010, p. 21). Process tracing, according to Collier, refers to "the systematic examination of diagnostic evidence selected and analysed in light of research questions and hypotheses posed by the investigator. [It] can contribute decisively both to describing political and social phenomena" (Collier 2011, p. 823). As this doctoral dissertation explores the contestedness of three EU foreign policy issues, process tracing appears the most relevant method to assess the emergence of contestation and the effects it is having on EU foreign policy systems. In this case, process tracing serves the author of this dissertation to identify "the chain of events or the decision-making process" (Van Evera 1997, p. 64). More importantly, process tracing uncovers the factors triggering contestation and the effects it is having on EU foreign policy, as well as the role of the different actors and the relationships between them. It is applied to all three case studies as it serves to trace "the decision process by which various initial conditions are translated into outcomes" (George and McKeown 1985, p. 35). In other words, process tracing serves to connect the phases of the policy process and allows the researcher to identify the underlying reasons for the emergence of a particular decision through the sequence of events (George and McKeown 1985). And in order to obtain information on specific events and processes, the most appropriate sampling procedures are thus those that identify the key political actors who have been involved in the political events under study (Tansey 2007). Finally, in process tracing, non-probability sampling is the most appropriate sampling procedure, in which elite interviews is an excellent data collection technique.

In effect, different sources were used to collect the empirical material. They were mainly based on two research instruments: interviews and document analysis. This has served to cross-check the findings of the case studies. In this sense, the data or empirical evidence collection was subject to triangulation, defined as the application and combination of several research methodologies in the study of the same phenomenon, in the sense that multiple data sources were used for each case study (Denzin 1975).

The interviews have enabled the researcher of this dissertation to identify the key actors involved in the policy-making process, to analyse procedures and institutional development, and to closely examine each relevant phase of the process. Where possible, they were conducted face-to-face in Brussels during a research stay at KU Leuven (September-December 2020). In cases where it was not possible to conduct this interview in person, for logistical or COVID-19 pandemic-induced reasons, the interview was conducted by telephone or via online software (the vast majority of them via Webex). Ultimately, the interviews aimed to obtain an unbiased and balanced account of EU and Member State policies and motives. Therefore, two groups of interviewees were selected according to their professional position. The first group of interviewees was made up of officials from different related EU institutions: the European Council, the European Parliament,[1] the European Commission, the Council of the EU, the EEAS and EU Member States. A second group consisted of officials from EU Member States, including representatives from Brussels, the UN in New York and the UN in Geneva. In both groups, the interviews were conducted in a semi-structured form and were selected on the basis of their position in the EU institutional structure and their field of expertise, covering the case studies of this thesis.

[1] The author notes that the only institution directly elected by European citizens is the only one where the author failed to conduct interviews. The percentage of positive responses was 0 out of 11.

More importantly, the interview in semi-structured format was used in its systematising function (Bogner et al., 2009). In fact, the interviews were used to fill in the data gaps found when assessing secondary literature and the available documentation. Their aim was to fulfil a more comprehensive data collection (Döringer 2020). The interviews were based on a list of questions and issues prepared prior to the meeting and were conducted according to Chatham House rules: the name and position of the interviewees are kept confidential and anonymous. In this way, the interviewee feels more comfortable to speak freely. Questions were posed on their background, their personal understanding of the country's position, their views on the EU, and time was given to add any information that was deemed relevant to the interviewee. Where consent was given, interviews were recorded and then transcribed, but in all cases notes were also taken. And in cases where the information provided was sensitive with possible negative repercussions for the interviewee, it was decided to not include their name in the final list but to provide an anonymised version of their post. In total, 57 semi-structured interviews[2], were conducted for this thesis, lasting between half an hour and an hour. To collect the names of the interviewees, the snowball method was crucial for the dissertation (Mikecz, 2012). Finally, a list of anonymised interviewees, including their professional background, is included at the end of each chapter.

In addition, document analysis has also been applied in all three case studies. Document analysis is understood as a systematic review and evaluation of documents guided by the research questions (Bowen 2009). A major point is that documents, such as policies or statements, were read to uncover the underlying meanings and to understand the context of these documents and the authors (Altheide et al. 2008). Official documents

[2] The data was stored in strict compliance with EU and the UAB Doctoral School's guidelines (i.e. the UAB 2013 Code of Good Practices) for data protection.

and informal documents were used as primary sources. Newspapers, journal articles, books and book chapters, as well as specialised websites, were used as secondary sources. As far as official documents are concerned, among the most frequently consulted sources are EU and Member States' statements at the UN, as well as Council Conclusions. These statements are particularly valuable for detecting a government's positions on certain norms or on the relative importance given to a norm. In this sense, a first reading made it possible to identify the themes and discourses in which the norms are embedded and to assess whether these norms have any relevance for the EU, with the collection of these documents consisting of desk research. It focused on accessing EU websites, including the EU Delegation to the UN, the permanent mission to the UN and permanent representations to the EU of Member States, the Council of the EU, the European Commission, the European Council, the European External Action Service and the European Parliament.

1.5. STRUCTURE OF THE THESIS

This thesis is divided into four sections: the introductory section, the conceptual and analytical framework, the three case studies and the conclusions, with this chapter serving as the introduction.

The next part of the thesis provides the conceptual and analytical sections to offer a comprehensive review of the concept of norms. It anchors the thesis in the constructivist literature, describes how the debate on the concept of norms has evolved from the first generation of constructivists to the second one and gives significant weight to the concept of normative community and norm contestation. I posit that within a normative community two types of contestation can be exercised: applicatory contestation (i.e., how the norm should be applied) and validity contestation (i.e., why the norm should be

upheld) (Deitelhoff and Zimmermann 2018). In addition, the chapter considers two types of validity contestation: opposition and dissidence (Daase and Deitelhoff 2019). Opposition refers to an actor that has neither the mechanisms nor the resources that can lead to a change in the established norm and ends up contesting the application of the norm. Dissidence refers to an actor who has not only the will but also the capacities and mechanisms to bring about a change in the established norm being able to reject or deliberately violate the existing rules. Furthermore, the author draws the reader's attention to the relationship between the EU and norms. In which the EU is seen as a normative community underpinned by norms of a liberal character. And it is argued that all three types of contestation are present in the EU, applicatory contestation and the two types of validity contestation cited above.

The third part of the thesis delves into the three case studies. Chapter 3 presents the first case study, which is that of Lethal Autonomous Weapon Systems, which provides a tangible example for scholars to understand the challenges posed by Artificial Intelligence. Placed on the international agenda by civil society through the Campaign to Stop Killer Robots, this is an issue under discussion in the UN arms control framework: the UN Convention on Certain Conventional Weapons in Geneva. Deliberations on the principle of human control are in the stage of emergence. At the EU level, the contestation is of the applicatory type. It serves to build a common European voice and is based on a double contestation. First, at the level of Member States, there is consensus on the need for human control, but disagreement persists over the appropriate regulatory framework - hard or soft. Secondly, there is also a contestation towards the EU from some Member States who contest the EEAS's idea of presenting an 'EU position'.

Chapter 4 presents the second case study. This chapter analyses the case of migration, which is defined as a missing regime in which the absence is explained by an

asymmetry of power between countries of origin and destination countries. But this was not the case in 2016 with the start of the negotiations on the UN Global Compact for Migration. At the European level we are faced with a contestation exercised in its most radical form: validity as dissidence. A dissidence that is identified with Hungary's removal from the Union's bloc, with the construction of a far-right network with American connections, and with Austria's withdrawal from the Migration Compact at the time of its presidency of the Union (the country had also held the opposite position during the negotiation process and had been key in representing the EU's voice). While in the first episode the EU was able to encapsulate Hungary's dissidence with a symbolic expulsion from the normative community, this was not the case for Austria. And the General Assembly vote on the Migration Compact corroborated the fragmentation of the EU. In the end, norms such as the principle of sincere cooperation were contested, as was too the defining element of EU foreign policy: upholding multilateralism.

Chapter 5 presents the third and final case study of this doctoral dissertation. It explores the area of gender equality, focusing on Sexual and Reproductive Health and Rights. This is an international norm adopted at the 1994 Conference on Development and Population in Cairo and at the 1995 World Conference on Women in Beijing. The EU has become an actor that has strongly internalised this norm. However, this internalisation is accompanied by a contestation of the norm's validity in the form of opposition. The result is an EU that can be seen as a progressive actor on the world stage if Member States are assured that they will not have to implement the norm at home, especially the abortion aspects. In other words, the contestation in the form of opposition has ultimately strengthened the norm. But this is not the scenario when the opposition actors find shelter in the international arena. In that case, opposition takes the form of a

dissidence and may eventually erode the EU's commitment to Sexual and Reproductive Health and Rights.

The final chapter brings together the empirical results of the three case studies and reviews them in the light of the research questions. It also presents the implications of these empirical results for the literature on normative contestation and EU foreign policy. Furthermore, it points to avenues for further research on the issues addressed in this thesis.

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CHAPTER 2

CONCEPTUAL AND ANALYTICAL FRAMEWORK ON THE CONTESTATION OF NORMS AND THE EUROPEAN UNION

2.1 INTRODUCTION

This chapter delves into the field that situates the study of EU Foreign Policy somewhere in between International Relations and European Studies. To be more precise, it frames the conceptual and analytical framework of this dissertation by bringing together the literature on norm contestation and EU Foreign Policy. To this end, this chapter provides a review of the constructivist literature on norm studies. The literature review serves to highlight that norms have a dual quality whereby they are both stable and contested. And the exercise of contestation, depending on the normative community to which the actor belongs, will take the form of applicatory contestation (within the normative community); or alternatively, if the contestation comes from outside, it will take the form of validity contestation as opposition, or as dissent. This literature is set in the context of the EU, where the Union is defined as a single normative community. In addition, the chapter explores the complexity of the European foreign policy system. Thus, in considering contestation of EU foreign policy, it examines whether norms are contested within the intergovernmental system (i.e., Member States as the main actor) or within shared competences (i.e., Member States are not the only actor). However, it is postulated that within the EU, both applicatory and validity contestation are observed. The latter has profound consequences for the EU. Ultimately, the conceptual and analytical framework

serves as background for the analysis of the three case studies presented in the following chapters.

2.2 Overview of norms research and conceptualising the contestation of norms

Norms entered the International Relations (IR) research agenda in what is known as the constructivist turn (Checkel 1998). Norms came to be described as collective expectations about the appropriate behaviour of actors with a given identity (Katzenstein 1996). At the same time, two types of norms can be discerned. As Onuf (1997) highlights, these are: constitutive norms (i.e. those that define categories of actors, and actions that construct interests and identities) and regulative norms (i.e. those that constrain and shape state behaviour by delineating what is appropriate in a given situation) (Onuf 1997). To be more precise, norms are perceived as legitimate by a social group if they possess a sense of "oughtness" which, in turn, determines what associated behaviour is permissible and regulates how it should be carried out for the actors who choose to engage in it (Klotz 1999). In other words, norms are an intersubjective construct that acts as a point of reference for actors. Norms determine what is considered an appropriate behaviour and create categories of actors that determine their identity and interests. From this line of thought, constructivist studies coined the concept of the logic of appropriateness (Onuf 1994). According to March and Olsen, this can be defined as follows:

> "Human actors are imagined to follow rules that associate particular identities to particular situations, approaching individual opportunities for action by assessing similarities between current identities and choice dilemmas and more general concepts of self and situations […] The pursuit of purpose is associated

with identities more than with interests and with the selection of rules more than with individual rational expectations" (March and Olsen 1998, p. 949).

Before further exploring the concept of norms presented in this dissertation, it is necessary to bear in mind, that other IR theories and approaches beyond constructivism have also addressed the meaning and role of norms. For example, this is the case of realism, where norms can be understood as intervening variables and where actor behaviour is understood to be governed by the idea of cost-benefit calculations related to material interests (Mearsheimer 1995). In this line, realists follow a logic of consequences where norms are assessed as having the capacity to support or enable materialistic motivations. However, according to constructivists, when it comes to explaining their norm-related behaviour, actors do not only follow the logic of consequences, since actors' decisions are also governed by the logic of appropriateness (March and Olsen 1998). Norms can explain outcomes, as actors are more socially aware than materialists claim.

This leads to the view that constructivism holds that the logic of appropriateness can explain behaviour in cases where the logic of consequences would predict the opposite. That is, a norm formulates prescriptions and proscriptions of behaviour by which an actor can discern what is permissible and what is prohibited as well as what the actor is expected to do (Wunderlich 2020, p. 16). A useful example is found in weapons of mass destruction, where the existence of a nuclear taboo based on a strong moral component deters actors from their use (Tannenwald 1999).[3] In this sense, actors comply with norms because they want to belong to a certain social group.

[3] Realist scholars such as Kenneth Waltz attribute the non-use of nuclear weapons to the fact that these weapons are intended to deter other states from attacking with their nuclear weapons, through the promise of retaliation and possibly mutually assured destruction. Constructivism, on the other hand, argues that the cost-benefit analysis as well as actor self-interest and power do not fully account for the non-use of nuclear weapons. Constructivism considers that the non-use of nuclear weapons stems from a change in international norms: the nuclear taboo.

To reiterate, constructivist scholars, by dedicating their attention to the development of norms, have provided the academic world with an extensive literature on the dynamics of norms. As we shall see, these scholars can be divided into two generations: the first generation, and the second or critical generation. In the camp of the first generation, we find one of the most important contributions, whose relevance transcends generations. This refers to the work of Martha Finnemore and Kathryn Sikkink (1998) on the life cycle of norms (see Table 2). Although the theory of the life cycle of norms had some limitations, it remains the cornerstone of the study of norms. By way of example, and taking the metric with a pinch of salt, Finnemore and Sikkink is one of the most cited works published by the journal International Organisation. In their research, the authors assume that norms are linear in their diffusion, encapsulating them in three stages: (1) norm emergence, in which norm entrepreneurs, who are usually prominent individuals or civil society groups (but also states) draw attention to problems or create them by demanding new norms to change the behaviour of other powerful international actors, especially states; (2) norm acceptance, which is the stage in which a critical mass has been persuaded to accept the new norm. (i.e., the socialisation of actors with the new norm); and (3) norm internalisation which implies, once the norm has been so internalised in the identity of many actors (i.e., compliance becomes the natural behaviour), it is taken for granted.

Table 2. Norm life cycle

Norm stage	Stage 1: Emergence	Stage 2: Norm cascade/acceptance	Stage 3: Internalisation
Actors	Norm entrepreneurs with organisational platforms	States, international organisations, networks	Law, professions, bureaucracy
Motives	Altruism, empathy, ideational commitment	Legitimacy, reputation, esteem	Conformity
Dominant mechanisms	Persuasion	Socialisation, institutionalisation, demonstration	Habit, institutionalisation

Source: Finnemore and Sikkink 1998

More importantly, Finnemore and Sikkink's work helped to consolidate a growing first generation of constructivist scholars whose research was interested in how ideas come to achieve norm status, and why some ideas become norms while others do not. The first generation assumed that contestation took place at the emergence stage, where the emerging norm competes with other norms and perceptions of interest (Finnemore and Sikkink 1998, p. 897). In the emergent stage, the contestation is ideational, where the identity of the actor (e.g., in the field of arms control, being a good international citizen or security provider) is the main factor explaining the fate of the norm (Ben-Josef Hirsch 2014). At a later stage, once the norm has been accepted, contestation is no longer an issue since the norm is taken for granted. This implies that norms, once accepted, are set in stone. Following this assumption, if contestation takes place in the latter stages of the

life cycle, as the norm has a fixed meaning, it would lead to the death of the norm (Panke and Petersohn 2011). The example is useful in highlighting the inconsistencies of the first generation, where at least four lines of criticism have emerged. The first claims that Finnemore and Sikkink's model obscured a deeper contestation of the dominant norm framework. The second asserts that scholars have tended to study only the diffusion of liberal norms. The assumption that resonates with this critique points out that "the 'enlightened' Western norm entrepreneurs guided the 'unenlightened' non-Western norm followers" (Bloomfield 2016, p. 313). The third points out that most studies on the dynamics of norms only examined successful cases of diffusion or socialisation. The last criticism states that the process of diffusion is far from linear (Risse, Ropp and Sikkink 1999). In short, the norm research of this first generation simplified the norm dynamics for ease of analysis; it treated norms as relatively static with fixed structures and meanings.

The early literature on the dynamics of norms suffered from the same weaknesses as realism, how to explain change, in the case of constructivism, how to explain change in the structure (i.e. the agency-structure debate). As argued in this doctoral dissertation, norms face setbacks, pushbacks or backlashes throughout the norm's lifecycle (c.f. Alter and Zürn 2020). In parallel, scholars have started to add other stages to complement the norm life cycle, such as the pre-emergence stage, which allows the researcher to capture the early moments in the life of a potential norm, as "there are no shared assessments of the universal applicability of the practice for actors within a given identity" (Ben-Josef Hirsch 2014, p. 815). In this vein, Sandholtz was a prominent author who asserted that social norms not only guide actors' behaviour, but that actors constantly reshape the norm, as "there are no shared assessments about the universal applicability of practice for actors within a given identity" (Sandholtz 2008).

Further elaborating on this reasoning, several authors have raised the possibility that even established and well-accepted norms can suffer a crisis of legitimacy (McKeown 2009; Birdsall 2016). In other words, changes in content can occur even in deeply internalised and well-established norms. This is the focus of Betcy Jose's research that studies the contestability of the norm of civil immunity and the norm of non-intervention (Jose 2018). Her research pays attention to two elements that will become dominant in the second generation of constructivist scholarship: the contestation of well-entrenched norms and the agency factors that explain norm change.

This brings us to focus on the work of Mona Lena Krook and Jacqui True. They laid the groundwork for the second generation by pointing to the need to consider norms less as "fixed notions" or "finished products" and more as fluid "works in progress" (Krook and True 2010). This suggests that research within this generation is more inclined to speak of the replacement of norms rather than their death (Sandholtz 2019). The conceptualisation of norms as "works in progress" revealed a distinction of the considerable potential for contestation as a norm's initial statement of principles is translated into practical programmes of action. It also speaks to the possibility that tensions and debates over the meaning of a norm can occur at any stage of the norm's life cycle. For example, competing norms may coexist within the same time period, which may lead to the likely emergence of a lack of intersubjective understanding (or agreement) about norms (Buitelaar and Hirschmann 2020; Gholiagha, Holzscheiter and Liese 2020). Intersubjective agreement is conceived as a shared understanding of desirable and acceptable behaviour (Kratochwil and Ruggie 1986). That is, actors agree that the norm should belong to the international normative structure by accepting similar conceptions of what the logic of appropriateness requires in this given situation. The norms continue to exist as long as this level of intersubjective agreement persists. Norms

cannot exist if they do not contain some minimum level of intersubjective agreement, which is the basic notion of contestation (Wolff and Zimmermann 2016).

The points mentioned in the previous two paragraphs pave the way for stressing the main contribution of the second generation – a greater emphasis on the role of the agent, where norms possess a dual quality of being both stable and contested (Wiener 2007). This dual quality allows researchers to place norms on a continuum ranging from norms where there is full consensus to those that are less consensual and therefore highly contested (Stimmer and Wisken 2019, p. 525). In the second generation, studies refer to the logic of contestedness, where norms may appear stable over a period of time but are no longer taken for granted (Wiener 2007). But unlike the first generation and its life cycle of norms, this second generation is characterised by a diversity of approaches to the study of contestation. Second generation of constructivists scholars have focused on different issues related to contestability. This is the case of research interested in the strength or robustness of the norm, which relates to the effects of contestation as weakening or strengthening the norm (Wiener 2014; Deitelhoff and Zimmermann 2018); but also of work that delves into concepts such as norm antipreneurs, where the diffusion of the norm is marked by norm clashes between constellations of entrepreneurs and antipreneurs (Bob 2013; Scott and Bloomfield 2017); or from researchers analysing how norms compete, the so-called norm collision, on the horizontal and vertical axis, which can lead to the alteration of the content of certain aspects of the norm (Gholiagha, Holzscheiter and Liese 2020; Staunton and Ralph 2020; Barbé and Badell 2021). And all these examples have one thing in common: the analysis of contestation from a discursive dimension. This means an interest in the study of contestation through discourse.

This dissertation considers that contestation can be analysed through discourse and/or behaviour (Stimmer and Wisken 2019). On the one hand, the discursive contestation of norms refers to "a situation in which relevant political actors engage in discursive debates about different understandings of the meaning and/or (relative) importance of a norm" (Stimmer and Wisken 2019, p. 530). On the other hand, behavioural contestation occurs "when the actions of relevant actors imply the existence of conflicting understandings of the meaning and/or (relative) importance of a norm" (Stimmer and Wisken 2019, p. 531). Moreover, the behavioural dimension is embedded in the recent practice turn (the emergence of interest from International Relations scholars in everyday practice and process) and, by extension, in the study of norm implementation (i.e., norm compliance) (Cornut 2017). However, there are cases where it may be difficult to make a clear distinction between discursive contestation and behavioural contestation. Some non-linguistic actions may have a communicative intention and thus be classified as discursive actions (Foucault 1971). Having acknowledged this, this doctoral dissertation, as shown in the case studies, adopts a discursive approach to norm contestation through the analysis of discourse and public statements. It therefore focuses on public processes of contestation during the deliberation involved in the politics of international institutions (Stephen and Zürn 2019, p. 20). In this sense, this thesis defines contestation as "a range of social practices, which discursively express disapproval of norms" (Wiener 2014, p.1).

Another issue that is considered to be of utmost importance in this doctoral thesis is the question of who contests. This refers to the actor or group of actors who exercise the contestation. In line with Hoffman (2010), we can argue that a norm contestation exercised by an actor belonging to the same normative community does not have the same effect as a contestation coming from an actor situated in a different normative community

(Hoffmann 2010, p. 12). In this case, the norm community refers to the set of norms and values that the actor accepts as their own. Following this argument, Stimmer and Wisken (2019) consider that an open contestation of a norm indicates that the actor raising this objection is identifying himself outside the shared normative community, as the actor is signalling its disagreement with the established interpretation of the norm's meaning and/or the importance given to the norm (Stimmer and Wisken 2019, p. 520). This leads to highlight the existence of two branches in the study of contestation. One branch analyses when contestation is exercised within the norm community, with Antje Wiener being a prominent author in this branch of contestation research. The other branch is interested in the analysis of contestation outside the norm community. If we look for a scholar who devotes attention to contestation outside the norm community, Amitav Acharya is a prominent example. In this regard, the following lines will shed light on Wiener's and Acharya's contribution to the literature on norm contestation and the main insights that will be reflected in the course of this doctoral dissertation

As outlined above, Wiener's research focuses on contestation exercised within the norm community. Most of her work covers the question of how contestation can have a positive impact on norms, when contestation triggers clarifications or refinement processes (Wiener 2014; 2017; 2018). In her research, contestation is twofold: the contestation is fundamentally related to how the norm should be applied and how this normative applicatory clarification generates a process by which the norm produces a status of legitimacy. This means that contestation is necessary, healthy and vital for maintaining the current norm structure, as it is "constitutive for social change, for it always involves a critical redress of the rules of the game" (Wiener 2014, p. 2). In that sense, when an actor exercises contestation it is objecting to a norm from within the norm community. And the mechanism by which contestation triggers the norm's legitimacy is

based on the Habermasian concept of "communicative action" or what Risse calls the "logic of argumentation". In that sense, contestation is tied to the concept of problem-solving in which the best argument leads the way (Zimmermann 2017b). This means that through the logic of appropriateness, actors can agree on solutions through a lowest common denominator, which is a solution considered beneficial for all. In turn, Wiener's work also introduces the concept of the "legitimacy gap". This third element in addition to the fact that contestation generates legitimacy and is a source of problem solving opens the way to understand contestation as a situation where a norm is agreed at the international level but has different ways of being implemented at the regional/local level (i.e., each nation may have its own understanding of the norm). It implies that contestation takes place within a norm community, where there is ample space to discuss the application of the norm.

The second line that has been touched upon is related to the contestation coming from outside the norm community. In this area, Acharya is the most relevant author. His work focuses on the Western roots of the international liberal order and its failure to include all stakeholders affected by its norms or who have very limited access to them (Acharya 2017). Building on his earlier work on the concepts of norm localisation[4] and norm subsidiarity,[5] he advanced a new framework: norm circulation. Norm circulation refers to the situation where local actors do not only adapt to, reject or resist global norms in creative ways. On the contrary, actors may also repatriate another version of the norm, which was first issued at the global level, back to the global level fora, stimulating further

[4] Norm localisation describes how local actors respond to external pressure by adapting the new norms to fit their pre-existing local normative frameworks. The agency (or norm ownership) of the actors is very limited.

[5] Norm subsidiarity refers to actors being able to reject or resist specific external ideas by establishing subsidiary norms in order to counter outside influence or promote other international norms they consider more universal. Yet, due to the relatively weak local actors they cannot transform the norm.

negotiation and leading to the refinement of the norm (Acharya 2013, 2014). In that sense, it is assumed that actors who were left out of the norm formulation process now possess a greater degree of agency, where their contestation can feedback into the change of the international norm (Zimmermann 2017a; Zimmermann, Deitelhoff and Lesch 2018). Thus, an actor can question why a norm should be upheld if the actor's voice was not present or heard during the norm formulation and dissemination process. More importantly, those actors who were left out of (or refused to engage with) the norm formulation process and are therefore evidently outside the corresponding norm community, indicate the existence of a second norm community and more generally of norm community diversity.

The conceptualisation of normative contestation around the existence of normative communities has previously been explored by Sandholtz and Stiles when they focus on a normative conflict at the international level between the norm of human rights and the norm of sovereignty (Sandholtz and Stiles 2009, p. 22). This signals that we have one constellation of actors whose normative identity is constructed under the consideration of human rights as their fundamental norm; and another constellation of actors whose normative identity derives from the consideration of sovereignty as their fundamental norm.

Likewise, Lake, Martin and Risse (2021) seem to have echoed this point when they refer to the coexistence of different norm communities. Indeed, Lake, Martin and Risse have postulated the existence of at least two normative communities: one community that adheres to the liberal international order; and another that upholds a Westphalian order, in which both are intertwined in the normative community embodied in the order emanating from the United Nations (Lake, Martin and Risse 2021). That is,

a liberal international community in which states are willing to accept a certain transfer of authority (i.e. sovereignty costs) from the national to the regional and/or international level, placing human rights at its core, where contestation would ultimately lead to the production of more legitimate norms; and a Westphalian normative community based on the principle of national sovereignty and non-interference in internal affairs (Börzel and Zürn 2021), where contestation might seek the renationalisation of norms. However, it is risky to pit one norm community against the other. Indeed, Tourinho has considered such a risk by concluding that the two orders have co-constituted each other and co-evolved (Tourinho 2021). This raises the consideration that the contestation that takes place between two normative communities leads to the construction of truly robust norms. This may explain why sovereignty is such a robust international norm because it is the result of a process of contestation between norm communities. But it may also raise the risk that norms produced in a period of hegemony of one of the two normative communities may be contested with the aim of changing the normative structure and the normative content.

Table 3. Contestation through the prism of Wiener and Acharya

	Type of normative community	**Type of contestation**
Antje Wiener	Same normative community (inside the community)	Applicatory contestation
Amitav Acharya	Different normative communities (outside the community)	Validity contestation

Source: own elaboration

But moving closer to the normative community argument, Wiener and Acharya's work emphasises the idea that, depending on actors' access to contestation, contestation would lead to a discussion of how the norm should be implemented or why the norm should be implemented (see Table 3). The two issues resonate with Deitelhoff and Zimmermann's (2018) research on applicatory contestation and validity contestation. And as Scott and Bloomfield (2017) posit, we can associate contestation within a norm community with the concept of applicatory contestation; and contestation outside of norm communities with the concept of validity contestation (Scott and Bloomfield 2017).

In the case of applicatory contestation, this addresses three questions "whether a given norm is appropriate for a given situation […] which actions the norm requires in the specific situation and which norm must be prioritized in a specific situation if several norms apply, without making such a ranking permanent" (Deitelhoff and Zimmermann 2018, p. 7). Thus, applicatory contestation concerns when and/or how to apply a norm in specific circumstances, which tends to strengthen a norm, as it implicitly suggests that the norm is necessary (Deitelhoff and Zimmermann 2018, p. 8). On the other hand, validity contestation questions "whether (existing) normative claims are righteous" (Deitelhoff and Zimmermann 2018, p. 6). It sheds light on two questions "are the norm's claims congruent with our moral standards? Are they fair? And should a different norm be given permanent priority?" (Deitelhoff and Zimmermann 2018, p. 6). In other words, validity contestation is about the norms that a group of actors wants to uphold, and in turn the exercise of this could lead to the weakening of the existing norm.

With regard to validity contestation, the work of Daase and Deiteholff (2019) seems to further explore this concept when they delve into the notion of resistance by putting forward two concepts: opposition and dissidence. Regarding the concept of

opposition, Daase and Deitelhoff consider that an actor, even if willing to, may not have sufficient agency to fully engage in validity contestation. When faced with such a situation, the actor will be forced to exercise contestation of validity in the form of opposition, in which the actor "accepts the ruling order as such and makes use of the institutionalized forms of political involvement to express its dissent" (Daase and Deiteholff 2019, p.12). That is, the actor accepts and complies with the rules of participation. In other words, the actor has neither the mechanisms nor the resources that can lead to a change in the established norm and ends up contesting the application of the norm. The actor is, in a word, powerless. In the case of dissidence, the actor has not only the will but also the capacity and mechanisms to bring about a change in the established norm. In that situation, the actor openly rejects or violates the norms in which it exercises a validity contestation in the form of dissidence. In effect, in contestation as dissidence the actor in addition to rejecting the norms of the order "chooses unconventional forms of organization and articulation to exercise radical critique of rule" (Daase and Deiteholff 2019, p. 12-13). In effect, the actor rejects or deliberately violates the existing rules.

Table 4. Contestation from within and from without

	Type of normative community	**Type of contestation**
Antje Wiener	Same normative community (inside the community)	Applicatory contestation
Amitav Acharya	Different normative communities (outside the community)	Validity contestation

Added value of this doctoral Dissertation	Same normative community (inside the community)	Applicatory and validity contestation

Source: own elaboration

More specifically, this dissertation suggests that, although the EU defines itself as a community of norms or normative community, whose identity has been established in line with the post-national liberal order (Börzel and Zürn, 2021), we might encounter similar situations within the EU in which actors are willing to exercise a contestation that resonates with those actors who stand outside the existing normative community, by wanting to regain, for example, control over certain rules and norms. As Zürn, Wolff and Stephen (2019) and Adler-Nissen and Zarakol (2021) argue, challenges to the international liberal order also come from within the liberal norm community, especially from right-wing populist parties and movements advocating renationalisation policies, among others (Zürn, Wolff and Stephen 2019, p. 376; Adler-Nissen and Zarakol 2021). For example, Hungarian Prime Minister Orbán illustrates a case of contestation from within, as evidenced by his unwillingness to implement EU refugee law. Another example is the UK's claim to regain control of its sovereignty by leaving the EU.

This leads the dissertation to present one of its main assumptions. This has to do with the fact that contestation within the same norm community normally takes place through established mechanisms and procedural rules, leading to a potential strengthening of the norm by making it stronger and more legitimate (Barbé and Badell 2020). However, when contestation takes place between different norm communities, it may end up presenting polarising views that could weaken the norms (Badell 2020; Barbé and Badell 2021). This thesis considers that both types of contestation can be observed at the EU

level, that is, the presence of applicatory contestation and validity contestation (in the form of opposition or dissidence). All of this suggests that within the Union there is an emerging group of actors who are beginning to disengage from the values and norms internalised through the *acquis communautaire* (see Table 4). In other words, an emerging challenge for the EU is posed by "the return of the nation-state" (Bakardjieva Engelbrekt et al. 2020), with profound consequences for EU foreign policy and its systems.

2.3 THE EUROPEAN UNION AND NORM CONTESTATION

The relationship between the European Union (EU) and norms is fundamental to this dissertation. This is what a jurist would call the legal body of the EU. But for the field of International Relations at the intersection of European Studies it would be the constituent identity of the actor. For this it is fundamental to see what kind of actor the EU is. This implies looking into what the founding treaties of the EU establish. As we shall see, the treaties constitute the Union's norms and principles on which its identity is built. Most importantly, as stated in Article 2 of the Treaty on European Union (TEU):

> 'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

And its external action is no exception as stated in article 21 of the TEU:

> 'The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which

it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.'

As both articles indicate, the EU is anchored in liberal norms such as human rights, tolerance, equality between men and women. In the same way these norms have a fundamental place in the relations between the EU and the outside world, in which considerable weight is given to the international order established by the United Nations in which international law acts as a strategic compass for the EU's action. To this end, the 2003 European Security Strategy sought to project the EU's identity and norms to the outside world. It has served to spread good governance, supporting social and political reform, protecting human rights or strengthening the rule of law. This strategic document was released in parallel with the publication of Ian Manners' article in the Journal of Common Market Studies on Europe's normative power. Manners' article added to earlier conceptualisations of EU power as civilian power the fact that the EU should be seen as a normative power. It argued that the EU's importance derives from what the EU is and not necessarily from what the EU does (Manners 2002). And it quickly became a foundational myth of the Union (Manners 2010). Since then, the EU's role has often been described as one of norm promoter, or norm externaliser, as it places norms and values such as peace, freedom, democracy, the rule of law and human rights at the centre of its relations with external actors (Manners 2002; Lavenex and Schimmelfennig 2009). Indeed, the concept of Normative Power Europe is defined as the "ability to shape conceptions of 'normal' in international relations" (Manners 2002). Furthermore, Manners argues that at the core of the EU's normative base are five "fundamental norms"

that are codified in the EU Treaties (see the aforementioned Articles 2 and 21 TEU): peace, freedom, democracy, the rule of law and human rights, as well as four more contested "minor norms" which are social solidarity, anti-discrimination, sustainable development and good governance. Complementing Manners' work, Daniel C. Thomas expanded the list of EU foreign policy norms by considering "conflict prevention, the strengthening of multilateral institutions, free trade" (Thomas 2009, p. 344). In this way normative power was constructed under the foundations of liberalism (Wagner 2017). Therefore, we can speak of the EU as a liberal normative power. And traces of this kind of power are also presented in the most recent EU compass for action in the international system: the 2016 EU Global Strategy. More importantly, the 2003 Strategy and the 2016 Global Strategy are building the Union's foreign policy around two fundamental objectives: the promotion of EU norms and the upholding of multilateralism.

Paramount to this dissertation is the fact that the norms referred to by Manners and Thomas have been further defined by Pomorska and Juncos (2021) as the constitutive norms of EU foreign policy. Taking into account the definition put forward by Onuf (1997) in which constitutive norms are those that define categories of actors, and actions that construct the actors' interests and identities, it is clear that such norms construct the identity of the EU as a foreign policy actor.[6] And from this follows the conjecture that the EU behaves on the international scene with such a framework of action in mind: the promotion of norms and the maintenance of a rules-based order (Laidi 2008; Mogherini 2020).

[6] In line with constructivist research, Juncos and Pomorska (2021) while revisiting the existing literature, have also identified some 'regulative' EU norm such as co-ordination reflex, consensus-building and domaines réservés (Juncos and Pomorska 2011) or procedural norms in Juncos and Pomorska words. Their reference to procedural norms is closely related to the characteristic of a regulative norm structuring and constraining the actor's behaviour as they define procedural as 'the appropriate behaviour an individual should adopt within a particular group in a particular situation' (Juncos and Pomorska 2021, p. 6).

Nonetheless, that compass for EU action has been disrupted by the global power shifts of recent years. Along these lines, contemporary research has appeared interested in studying how external contestation has led the EU to choose between promoting the norm or promoting multilateralism (Barbé et al. 2016). The authors speak of a choice to be made by the EU based on accommodation or entrenchment, where accommodation refers to making concessions that may alter the design, purpose and orientation of that same institution for the sake of avoiding alienation from its challengers. Entrenchment, instead, refers to defending the values and institutional structure of the international institution in question against the challengers, risking isolation in its position or even rocking the negotiations. Consequently, this type of situation in which the EU is forced to make a choice has a direct impact on the EU's role at the international level. But such a choice can also have an impact at the internal level and thus affect the EU's foreign policy system. Indeed, such a choice may empower domestic actors susceptible to disaffection with the values and norms of the norm community to make such dissidence effective. By this it is meant that the international and the internal levels of the EU are deeply intertwined, and that change at one level produces change at the other.

It is therefore necessary to take into account that actors in a normative community who share the same norms may still have different views on the exact implications that follow from them (March and Olsen 2004, p. 8-9). This highlights the need to explore the contestation of the EU's liberal identity within the EU (Wagner 2017). In turn, within a normative community, contestation considers that norms are and should be contested (Wiener 2007). Along these lines, Costa (2019) has noted that in the study of EU foreign policy "little consideration has been given to the possibility that the regulative, as well as constitutive norms that underpin EU external relations, might themselves be the object of political conflict" (Costa 2019, p. 1). Regulative norms constrain and shape state

behaviour by delineating what is appropriate in each situation, and constitutive norms define the interests and identity of actors (Onuf 1997).

And it is in that sense that the literature on norm contestation has opened up a new line of research in the field of EU foreign policy (c.f. Johansson-Nogués, Vlaskamp and Barbé 2020). The new line of research analyses EU actions through a more policy-oriented perspective (Jenichen 2020). This fundamental shift is consistent with Finnemore and Sikkink's (1998) thesis in which the study of norms is understood to go hand in hand with its political component. Indeed, their article, titled "Norm Dynamics and Political Change", generates such a framework with clear intentionality. In the same framework, different authors have addressed this question by studying how EU foreign policy has shifted from a permissive consensus to a constraining dissensus (Hooghe and Marks 2009; Barbé and Morillas 2019). One could argue that, internally, a Union of 27 Member States is by nature open to disagreement and normative divergence, where contestation of norms is inevitable. As noted above, that does not have to be a negative thing. In Wiener's words, disagreements can help the EU find more legitimate solutions (Wiener 2014), as long as contestation follows a logic of argumentation (Risse 2000; Zimmermann 2017b), taking place in a space where the mechanisms for dialogue are previously agreed upon (Badell 2020). For example, looking at negotiations on arms control, such as landmines or cluster munitions, it seems to be valid that contestation helps the EU to find legitimate solutions. But one has to be cautious, the two cases also present a (much exaggerated) picture of the EU dominated by normative consensus. In fact, achieving common positions on both landmines and cluster munitions was extremely difficult and even not achieved until the last moment (Costa 2009). In any case, the cases of landmines and cluster munitions support the idea that norms do not progress in a linear

fashion in the EU and that consensus should not always be taken for granted (Elgström 2000; Jenichen 2020).

Ultimately, this dissertation fits into the recent literature on the study of norm contestation and EU foreign policy (Johansson-Nogués et al. 2020). Drawing on Wiener's (2014) definition, we define norm contestation as external and/or internal discursive objections through formal or informal mechanisms towards specific norms in the EU foreign policy domain. Although norms have a dual quality, whereby they can be both stable and contested, they can be situated on a spectrum ranging from norms where there is full consensus to those that are strongly contested (Stimmer and Wisken 2019, p. 525). This spectrum is critical to understanding which norms of a constitutive nature generate consensus and which norms may be contested. Having such information can lead institutions to reinforce mechanisms to defend the norm, or to strengthen it by including the normative visions of more reticent states. In this sense, it is essential to understand the foreign policy system in which the norm operates. A norm in which states have all the decision-making power is not the same as one in which states share this power with other actors. However, what would happen if a member state did not comply with the *acquis communautaire* and, for example, refused to combat discrimination based on gender or sexual orientation, as provided for in Article 19 TFEU? In other words, what would happen to the liberal identity of the EU if non-liberal norms were promoted?

In this sense, the case studies on the UN Global Compact for Migration and Sexual and Reproductive Health and Rights analysed in this thesis will show that some Member States, even when it comes to norms associated with what constitutes them as a liberal state, are prone to challenge the validity of norms that underpin the EU's liberal identity. In line with the normative contestation literature, we posit that contesters often argue that their voice was not heard during the norm formulation process. But in analysing such

cases it is essential to bear in mind that Member States have, prior to their accession, adopted the *acquis communautaire*. The *acquis communautaire* is the set of norms that regulates and constrains their behaviour and determines their identity and interests. In addition, as Rivera (2020) suggests, EU foreign policy allows actors to promote non-liberal norms, although in the long run it may hinder the coherence of EU foreign policy. Put differently, there are sufficient channels within the foreign policy system to avoid a case of contestation as dissidence. Migration can serve as an example to illustrate this assumption. In 2016, the Visegrad group (i.e., Czech Republic, Hungary, Poland, and Slovakia) advocated the concept of flexible solidarity to manage the flow of refugees. This proposal ran counter to the Commission's plan for mandatory quotas. But Hungary decided to challenge the validity of the Commission's plan by refusing to implement it. Later, the European Court of Justice ruling confirmed that Hungary, by refusing to comply with the Commission's plan, was in breach of EU rules. In the meantime, the Visegrad group continued to defend the concept of flexible solidarity, and finally convinced Germany, which considered that the concept put forward by the Visegrad countries had some merit. This is how in the Commission's New Pact on Migration and Asylum of 2020 (presented during the German presidency of the Council) included the concept of flexible solidarity, after consultation with the Member States, and placed it at the heart of the agreement. Thus, on that occasion the contestation on the validity of the norm resulted in a norm change, which from Wiener's point of view generated a stronger and more legitimate norm in the EU.

Getting to the point, research has highlighted that norm contestation has accelerated within the EU and has pitted “those in favour of universal values and/or strong, pro-active EU actions in the international arena” against those who “seek increased devolution of power and foreign policy initiative from EU institutions back to

national capitals" (Johansson-Nogués, Vlaskamp and Barbé 2020, p. 2). This process can be triggered by external actors, for example when the UN moves away from more cosmopolitan features of the international order, including adherence to liberal norms, and the EU is expected to fight back (Jørgensen and Laatikainen 2013, p. 6; Costa, Kissack, and Barbé 2016). Or, as shown above, in the example of flexible solidarity, EU foreign policy can be shaped from within toward a less liberal Union. But the boundary between external and internal is blurred. Indeed, "inside and outside contestation dynamics are often intertwined […] outside contestation can trigger inside contestation and vice versa" (Thevenin, Liedlbauer and Petri 2020, p. 456). This is why this doctoral dissertation offers such a balanced account by tracing the normative contestation of EU foreign policy from the so-called glocal level[7] of analysis (Johansson-Nogués, Vlaskamp, and Barbé 2020, p. 4).

And it is at this precise point that the EU's foreign policy systems play a key role. On the one hand we have the areas dominated by intergovernmentalism (i.e. CFSP and CSDP). On the other we have the areas with shared competences – the external action and the external dimension of internal policies (Costa 2019, p. 796; Petri, Thevenin and Liedlbauer 2020).

The first EU foreign policy system, where arms control is discussed, is the intergovernmental foreign policy system (i.e., CFSP and CSDP) (Keukeleire and Delreux 2014, p. 15). In that intensive transgovernmentalism mode, the Member States, through the European Council and the Council of the EU, retain the exclusive competence to decide whether there is an EU position on the matter (Wallace and Reh 2014, p. 109). But

[7] Glocalisation is a term borrowed from globalisation studies that describes the interaction between the global and the local level. In this dissertation, the glocal level analyses the interaction between the international level and the European level, where it refers to the study of the inside-out and outside-in approaches. On the one hand, the inside-out approach gives greater recognition to internal political dynamics within the EU. On the other, the outside-in approach considers that the normative contestation in international institutions affects normative cohesion in the EU.

following the Lisbon Treaty reforms, the functioning of the CFSP/CSDP depends not only on the role played by the Member States, but also on the role played by the EEAS (and led by its High Representative and Vice-President of the European Commission). Because of the power the EEAS has within the system in terms of resources and agenda-setting power, it can push Member States to work together on sensitive issues of national sovereignty. However, if overdone, proactive EEAS initiatives can be counterproductive and potentially lead to disengagement of Member States (Maurer and Wright 2021). In view of this, the CFSP/CSDP carries the risk that consensus, when achieved, will be based on the lowest common denominator, i.e., on following the preferences of the actor most reluctant to accept norm change (Thomas 2021, p. 628). This leads to foresee the existence, within this type of foreign policy system, of a double contestation (Badell and Schmitt 2021) that hinders the possibility of having a CFSP common position. Firstly, as a result of contestation between the Member States regarding the normativity granted to a CFSP common position; and secondly, a contestation between the Member States and the EU, where there is a strategic opposition to having an active participation of the Union (mainly the EEAS) in multilateral negotiations. More importantly, in that foreign policy system, the dominant issues have to do with deliberations on how to apply a norm in a specific circumstance. This means that the contestation in the intergovernmental system is anchored in the applicatory contestation. And Chapter 3 on the EU and autonomous weapons provides a relevant example of this.

A second EU foreign policy system is the one characterised by shared competences. It comprises the clusters that Keukeleire and Delreux (2014) refer to as external action and internal policies with an external dimension. In contrast to the CFSP/CSDP system, it is organised following an institutional balance between the Council of the EU, the European Commission and the European Parliament (Keukeleire

and Delreux 2014, p. 2). It can also consider, if necessary, the involvement of the European Court of Justice and majority voting in the Council of the EU. This makes a fundamental difference in how the contestation will emerge and how it will be exerted. That difference has to do with the fact that there has been a transfer of authority to the Commission and the EEAS. The transfer of authority is central to shed light on the contestation. On the one hand it can allow an encapsulation of the contestation, by having, for example, an actor with autonomy to defend the norm, but on the other hand it can give rise to an open contestation. This is based on the assumption that the more transfer of authority has taken place the more likely dissensus is (Costa 2019). More specifically, in shared competencies, it can be posited that contestation, rather than critical engagement with norms, may take the form of normative objections. In analysing normative clash, it is important to understand whether validity contestation takes the form of opposition or dissidence. If the clash takes the form of opposition, according to the literature, different factors such as the socialisation process within the Council, normative entrapment of the common position or diplomats as a community of practice would keep normative divergences within the margins of consensus (Zürn and Checkel 2005; Juncos and Pormorska 2011; Pomorska and Juncos 2021; Bichi 2011; Michalski and Danielson 2020; Lewis 2005; 2010; Thomas 2021). For this very reason, contestation as opposition is the result of an actor with limited agency to foster change where it ends up adopting the mechanisms of applicatory contestation. Conversely, if contestation is exercised in the form of dissidence, the intervening role of these factors would be meaningless. In such a situation, the debate can be expected to be dominated by the identity of the actors and their adherence to EU values. The case studies on the UN Global Compact for Migration and Sexual and Reproductive Health and Rights refer to issues addressed within this type of foreign policy system (i.e. migration and gender equality) in which Member States and

EU institutions share competences. In which, as we shall see, contestation as opposition is dominant in the case of SRHR; while contestation as dissidence is predominant in the case of the Global Compact for Migration.

2.4 CONCLUSIONS

This chapter has brought together the parallel literatures on norm contestation and EU foreign policy. It has linked the literature on norms in the field of International Relations with the European Studies literature addressing the EU's relationship to norms. On the one hand, it has been argued that norm contestation, depending on that actor's normative community, will be about the application of the norm (within the normative community); or about the validity of the norm (outside the normative community) in the form of opposition or dissidence, where agency is a key element. On the other hand, the EU has been seen, by nature, as a site of contestation with previously established channels for its exercise (i.e., applicatory), but contestation can also be seen in the form of contestation of validity, which means bringing into play key norms that define the liberal identity of the Union, including the whereabouts of its foreign policy.

Along these lines, this doctoral dissertation, as presented in Table 5, is tracing the contestation of three norms that have been recognised as key to EU foreign policy. Based on its empirical character, this dissertation studies the public processes of contestation during deliberation. Thus, it analyses the discursive contestation of norms in the EU. And it does so by combining an outside-in and inside-out (i.e., glocal) approach.

Table 5. Case studies: contestation of EU foreign policy

Case study	Lethal Autonomous Weapon Systems	Global Compact for Migration	Sexual and Reproductive Health and Rights
Type of norm	Regulative	Constitutive	Constitutive
Regime	Arms control	Migration	Human Rights/Development
EU Foreign Policy area	CFSP/CSDP	Internal policies with an external dimension	External action
EU Supranational/Intergovernmental	Intergovernmental	Shared competences	Shared competences
Norm cycle stage	Stage 1: emergence	Stage 2: acceptance	Stage 3: internalisation
Contested principle	Human control	Migration[8]	Gender equality
Approach to contestation	Applicatory contestation	Validity contestation (dissidence)	Validity contestation (opposition)

Source: own elaboration

Based on the analysis presented here, the starting point of Chapter 3 (Lethal Autonomous Weapon System) is rooted in the fact that contestation can be positive and helps to build a common legitimate position. The chapter will assess the contestability of an arms control norm: the principle of human control. Chapters 4 and 5 will assess the contestation of two regimes that are defining to the identity of the EU, including its foreign policy. These are migration and gender equality. In particular, the case studies will help to assess how the EU and its Member States deal with contestation when it takes the path of

[8] As will be seen in chapter 4, the Global Compact for Migration was the first international document on migration. It was therefore creating the international migration regime. For this very reason, the contested principle refers to migration.

dissidence (UN Global Compact for Migration) and opposition (Sexual and Reproductive Health and Rights).

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CHAPTER 3

THE EUROPEAN UNION AND ARMS CONTROL: LETHAL AUTONOMOUS WEAPON SYSTEMS (2014-2021)

3.1 INTRODUCTION

Artificial Intelligence[9] (AI), like gunpowder once did, is set to revolutionise our daily lives. And like gunpowder and nuclear technology, AI is a dual-use technology. It can be used for civilian and military purposes. AI is focused on making machines intelligent, where machines determine the best course of action to achieve previously set goals. As far as the civilian sector is concerned, it can help, among many other applications, medicine to provide better diagnoses. And in the military sector, it is expected to transform many aspects of the military by enhancing modern warfare equipment and techniques with autonomous functionalities (Payne 2021 p.1). Today, air defence systems already have significant autonomous capabilities. For instance, the next generation of fighter aircraft is being developed with a clear focus on intelligent autonomous components (Boulanin and Verbruggen 2017; Holland Michel 2020). It is postulated that having an edge in AI capabilities will undoubtedly translate into strategic military advantages (c.f. Scharre 2017; Horrowitz 2018).

[9] One thing often overlooked in discussions arround AI regulations is that the most important thing within AI is data. In effect, as Arthur Holland Michel highlights when he quotes Haugh et al. (2018) is that "the intelligence is in the data not the algorithm" (Holland Michel 2021, p. v). And it pinpoints a greater risk, the so-called known-unknown paradox based on the assessment that "data are never perfect […] they are imperfect in complex and unpredictable ways". And as far as Lethal Autonomous Weapon Systems are concerned, the following risk should be considered "autonomous systems failures arising from data issues could be both inevitable and impossible to anticipate" (Holland Michel 2021, p. v).

This is not a distant, dystopian future. In March 2020, a UN report concluded that Lethal Autonomous Weapon Systems (LAWS) were used in Libya. The report concluded that the system was "programmed to attack targets without requiring data connectivity between the operator and the munition" (United Nations 2021, p. 17). One of the actors that has been most critical of the uses of AI in the military has been civil society. That is the goal of the Campaign to Stop Killer Robots (or the Campaign), which wants to ensure that, when an actor resorts to the use of force, humans retain control over targeting and attack decisions (Campaign 2022).

As a result of the Campaign's advocacy work, since 2013 the international community has held discussions on the possible regulation of LAWS. But the entry of autonomous weapons onto the agenda was not linear, nor did it follow the classic reformulation of humanitarian disarmament processes. On the one hand, civil society began campaigning against LAWS in 2007, but it was not until 2010 that the International Committee for Robotic Arms Control (ICRAC)[10] attempted to build a transnational advocacy network led by Human Rights Watch and the International Committee of the Red Cross (ICRC), and by a champion state: Germany. The meeting failed to achieve any of its objectives. And it was in 2012 that Human Rights Watch, but without the ICRC, launched the global campaign for a ban on autonomous weapons. And the main ally who brought up the need to address the issue was inside the UN, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns. Secondly, the autonomous weapons debate left, in 2013 the Human Rights Council (human rights-based approach) and (to date) entered, in 2014, the UN Convention on Certain Conventional

[10] ICRAC is an NGO that gathers experts in robotic technology, artificial intelligence, robot ethics, international relations, international security, arms control, international humanitarian law, human rights law and public campaigning. The NGO work focuses on the pressing dangers that military robots pose to international peace and security and to civilians in war.

Weapons (CCW; arms control approach), which is an unusual development. For example, in the case of anti-personnel mines and cluster munitions, the reframing was from the security to the humanitarian lens.

Within the European Union (EU), LAWS is an issue that speaks to the arms control agenda and falls within the scope of the CFSP/CSDP (Common Foreign and Security Policy /Common Security and Defence Policy) cluster where Member States are the key actors in achieving a common position and upholding it (Biedenkopf, Costa and Gora 2021 p. 332). In fact, it was not until the adoption of the Maastricht Treaty in 1992 which gave birth to the CFSP that the EU became an international actor increasingly involved in arms control. Today the EU is working in three specific areas it deems key to strengthen existing regulations or create new ones. These are: Weapons of Mass Destruction, Conventional Weapons (where the debate on LAWS falls) and Arms Control Exports (EEAS 2016). Despite the requirement for unanimity in CFSP/CSDP matters, where even one Member State's disagreement can veto or block an EU position, the Union's approach to arms control is twofold (Anthony 2001). First, it serves to build internally shared norms and agreed principles upon which to act. Second, it serves to present to the outside world a common political front through which the EU can shape the rules of the game. And in the case of LAWS, it aimed to create a third way: the European way based on a soft law regulation focused on procedures and practices (Bode and Huelss 2018, p. 21; Badell and Schmitt 2022, p. 257). This third way stands between the group advocating for status quo (i.e., International Humanitarian Law is sufficient) and hard law (i.e., new international law is needed).

As will be seen in this chapter, contestation is exerted in the form of applicatory contestation (Deitelhoff and Zimmermann 2018). This means that actors address the issue following pre-established and agreed rules in which disagreements, if they exist, are dealt

with through existing channels of political participation (Barbé and Badell 2020). The analysis of the deliberations by the EU and its Member States is organised along three stages of the negotiations held at the CCW. The first stage covers the period 2013-2016, which saw a move from informal discussions to the establishment of the Group of Governmental Experts (GGE). At that stage we see the EU and Member States rowing against the tide and caught off guard by the LAWS entry on the agenda. But some states such as France, with the support of the EU delegation in Geneva, were keen to mobilise resources to address the issue. The second stage covers the period 2017-2019, when formal GGE discussions produced the so-called 11 Guiding Principles. This period sees the highest level of cohesion between the EU and its Member States on a possible regulation focusing on procedures and practices such as national weapons reviews or a code of conduct. At the same time, national delegations became increasingly interested in the debate on autonomous weapons. The third stage covers the period between 2020 and 2021[11], during which steps were taken towards a normative and operational framework. In this last stage it appears clearly that contestation in the case of LAWS, within the EU, follows a double format (Badell and Schmitt 2022). First, at the level of Member States, there is consensus on the need for human control, but disagreement persists over the appropriate regulatory framework - hard or soft. Secondly, there is also a contestation towards the EU from some Member States who contest the EEAS's idea of presenting an 'EU position'. But more importantly, in line with Ben-Josef Hirsch (2014), contestation at this initial stage is driven by the identity of actors, where Member States' identities can be differentiated between those of being a security provider and those of being a good international citizen. This leads to a situation where the EU, faced with the possibility of LAWS deliberations leaving the UN, is unable to respond to the demands

[11] The cut-off date of this research was December 2021. Since then, informal, and formal meetings at the CCW have taken place.

of civil society. However, at the level of the EU institutions, both the European Parliament and mainly the European Commission are preparing to have a greater say in the regulation of LAWS. A good example is the increased funding to the bureaucratic structure of the CCW. Additionally, at the Member State level, states such as Germany (considered an increasingly vocal good international citizen for banning LAWS) and Austria (leader of the main coalition of states for banning LAWS) could end up hosting the conference to ban autonomous weapons.

The next section first explores the entrance into the arms control agenda of Lethal Autonomous Weapon Systems, alongside with the evolution of the EU arms control regime. A third section is presenting the case study on LAWS, in which documents and seven semi-structured interviews are used to trace between 2013 (Human Rights Council dialogue on LAWS) and 2021 (Sixth Conference Review) the contestation of autonomous weapons' normative framework and the effects it had on the EU foreign policy system. Conclusions and future avenues for research are addressed in the fourth section.

3.2. Norms and Arms Control

3.2.1 Setting Autonomous Weapons In The Agenda: The Role of Civil Society

Norms do not emerge in a linear manner (Wiener 2009). Rather, some are the result of years or almost decades of active and constant advocacy usually exerted by civil society. That is the case with the emergence of the norm on human control that addresses the problem of Lethal Autonomous Weapon Systems (LAWS). Although it entered the international disarmament agenda in 2013, the need for such a norm, as Charli Carpenter points out, was already identified in 2007 by an epistemic community of researchers concerned about the paradigm shift in the field of military technology and the implications it could have for the laws of war (Carpenter 2014, p. 89). One such example

is Noel Sharkey's[12] work, which reflected his concern about whether autonomous weapons can be developed to make ethical targeting decisions (Sharkey 2007).

Indeed, Sharkey's work was instrumental in advancing the debate on autonomous weapons. For example, in 2008, he called on governments to draft and adopt a code of conduct regulating the acquisition, deployment and use of autonomous weapons. This is something that, almost ten years later, will gain ground in the formal negotiation (i.e. Group of Governmental Experts) process. A year later, in 2009, Sharkey, together with Jürgen Altmann and Peter M. Asaro, laid the foundations for the International Committee for Robotic Arms Control (ICRAC). One of the first ICRAC meetings was held in 2010 in Berlin. The meeting convened the academic epistemic community and civil society organisations such as Human Rights Watch, but also entities with previous experience in international processes to ban weapons such as landmines and cluster munitions. The meeting was also attended by the guardian of international humanitarian law, the International Committee of the Red Cross (ICRC). The presence of both Human Rights Watch and ICRC is particularly meaningful given that all successful processes in the field of humanitarian disarmament have taken place when Human Rights Watch and ICRC have combined their efforts. But in the case of the meeting organised by ICRAC, these two organisations did not set the ground for joint action (Carpenter 2014, p. 100).

At the same time, the meeting was not held in Germany purely by coincidence. The group was looking for a state actor that is not only sympathetic to the idea of a treaty on autonomous weapons, but has sufficient capacity and resources to take the initiative to host and maintain an independent multilateral process, if necessary, outside the UN orbit. On that note, the academic literature regards Germany as a good international

[12] Noel Sharkey is a Professor of Artificial Intelligence and Robotics and Professor of Public Engagement at the University of Sheffield.

citizen, i.e., an actor who in disarmament negotiations will not be guided by national security interests but by cosmopolitan ideas of universal rights (Becker-Jacob et al. 2013), an identity compatible with the humanitarian disarmament advocated by civil society.

Despite ICRAC's efforts, no transnational advocacy network nor any champion state emerged from the meeting (Rosert and Sauer 2021, p. 18). Both Human Rights Watch and ICRC considered the issue of autonomous weapons to be more of a futuristic element than an element with tangible consequences. Yet, ICRAC adopted what is known as the "Declaration of Berlin", where it was highlighted that LAWS are posing serious threats to international peace and security and to civilians (ICRAC 2010). The NGO called on the international community to start the deliberations towards an international convention that will address the dangers emanating from autonomous weapons. In addition to that, ICRAC made a distinction between fully autonomous systems and partially autonomous systems. Again, this is a matter that would come up throughout the debate in the Group of Governmental Experts, and that between 2021 and 2022 would gain weight. Returning to the ICRAC proposal, the Statement proposed a total ban on fully autonomous systems, and for partially autonomous systems suggested a restrictive regulatory framework. Notably, it also advocated a ban on nuclear-armed drones.

Despite not generating the momentum that civil society hoped to through advocacy work, CSOs continued to prioritise in their strategy the need for an international ban on autonomous weapons. In this vein, ICRAC managed to get the attention of Richard Moyes, policy director of Landmine Action, a key organisation in pushing for a ban on anti-personnel landmines. Landmine Action was clearly advocating for a ban on autonomous robots capable of killing humans through the same kind of treaty that has banned landmines (Marks 2008). But within the institution there was no interest in further discussing the issue. The recognition of a need for a new norm was doomed to fail. But

in the same year an unexpected ally emerged. In May 2010, Philip Alston, the UN special rapporteur on extrajudicial killings, approached the drone debate producing a report from the perspective of human rights and international humanitarian law. In other words, the Alston report anchored the drone issue in the realm of humanitarian law. This reframing of the issue paved the way for civil society to address the issue of autonomous weapons from the lens of humanitarian law.

The UN reframing aroused Human Rights Watch's interest. Indeed, Human Rights Watch was shocked by its own initial failure to prevent the emergence of a norm that allowed targeted killings. This norm had been pushed by the U.S. in its War on Terror. In it, the U.S. had argued that the emerging type of warfare required new norms or modifications to existing ones. The argument eventually adopted by Human Rights Watch for the suppression of the norm allowing targeted killings focused on how the norm collided with other norms, such as those protecting the right to life and norms of sovereignty (Jose 2017) but it never questioned the use of drones. One lesson was drawn from that experience, the imperative need to avoid the emergence of illiberal norms that ran counter to the movement begun in the liberal decade of the 1990s in which humanitarianism had become the compass in the field of arms control, and by extension constraining the norms of war. As a result, civil society had to regain the initiative and not act as norm resistant, a category corresponding to the anti-entrepreneur (Bloomfield 2015). This is an actor that defends the status quo as it seeks to avoid any new international instruments. From that perspective, in 2011, during a conversation in Jody William's kitchen with Williams' husband, Steve Goose (Executive Director of Human Rights Watch Arms Division) and with Mary Wareham[13] (Advocacy Director of Human

[13] Wareham assisted Jody Williams in coordinating the International Campaign to Ban Landmines, co-laureate of the 1997 Nobel Peace Prize

Rights Watch Arms Division), admitted the failure to prevent the misuse of drones, and hence the need to prevent the development of a new technology: autonomous weapons.[14] This was the beginning of the Campaign Against Killer Robots.

In parallel, in 2011, Moyes founded the NGO Article 36,[15] whose primary mission is to address technological developments in the field of weapons from a humanitarian perspective. The novelty of Article 36 was its reinterpretation of advocacy work. Whereas previous negotiations on landmines or cluster munitions had taken place under an active civil society working in silos, with the result that synergies between campaigns and shared objectives were not generated, Article 36 seeks to have a cross-cutting impact on any debate that intertwines weapons and human security.

One of his first tasks was to introduce ICRAC to the language of advocacy, as well as to working as a network (Carpenter 2014, p. 116). This was occurring at the same time that Article 36 was beginning conversations with Human Rights Watch; and that Human Rights Watch eventually became interested in ICRAC's work. All of which culminated, in April 2012, in the official launch of the Campaign to Stop Killer Robots. The Campaign comprised a steering committee gathering NGOs such as Human Rights Watch, Amnesty International, Mines Action Canada, International Committee for Robot Arms Control, Women's International League for Peace and Freedom, Article 36, PAX, Association for Aid and Relief Japan, Novel Women's Initiative, Pugwash Conferences on Science and World Affairs and Seguridad Humana en Latinoamérica y el Caribe. And at the top of the organisation, Mary Wareham of Human Rights Watch was the coordinator. She remained in that post until 2021.

[14] Question from the author to Jody Williams during her lecture on 12 April 2019 at the Universitat Autònoma de Barcelona.

[15] The organisation was named after the provision of the 1977 Additional Protocol to the Geneva Conventions, which obliges governments to review the legality of new weapons and methods of warfare.

More importantly, the UN played again a central role to make civil society advance in their quest against LAWS. First, in 2010, Philip Alston, the UN special rapporteur on extrajudicial killings, approached the drone debate from the perspective of human rights and international humanitarian law. Second, in 2013, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, presented a report assessing the impact of drones, with a particular focus on autonomous weapons systems. It was the first time that an international institution was devoting its full attention to the issue of LAWS. It took place during an interactive dialogue at the UN Human Rights Council.

In this regard, Heyns became the leading advocate for the need to develop a new international norm to address these weapons. The Heyns Report considered that the deployment of autonomous weapons involves "not merely an upgrade of the kinds of weapons used, but also a change in the identity of those who use them. With the contemplation of lethal autonomous robotics, the distinction between weapons and warriors risks becoming blurred, as the former would take autonomous decisions about their own use" (Human Rights Council 2013, pp. 5–6).

The 2013 report also contained all relevant elements that would emerge during the negotiations that began in 2014 (see section 3.3). For instance, the "specific importance" of the "norms of distinction and proportionality" was emphasised, and it was noted that the ability of LAWS to "operate in accordance with these norms" was likely to be hampered (Human Rights Council 2013, pp. 12-13). Moreover, in the report it is possible to identify the traces of the relevant dimensions related to autonomy: which task is automated, what is the human-machine relationship and the degree of complexity of the decisions taken. For example, Heyns in his report emphasised the importance of keeping humans in the loop, the Heyns Report also noted that while "robots are especially

effective at dealing with quantitative issues, they have limited abilities to make the qualitative assessments that are often called for when dealing with human life" (Human Rights Council 2013, pp. 10–1).

On that note, Paul Scharre's work has shed light on the three issues that were addressed in the Heyns Report. On the question of which task is automated, Scharre considers that the more tasks the machine perform the more autonomous it will be (Scharre, 2018, p.58). In the area of human-machine relations, Scharre suggests subdividing autonomous weapons into three categories: semi-autonomous, supervised autonomous and fully autonomous (Scharre 2018, p.60-2). First, semi-autonomous weapons (or human-in-the-loop) are systems in which the machine performs a task but waits for a human operator to act before continuing. Secondly, supervised autonomous weapons (or human-on-the-loop) are systems that can sense the environment and recommend a course of action, deciding on their own, but a human operator monitors the machine's behaviour and, if necessary, intervenes to stop it. Third, fully autonomous weapons (or human-out-of-the-loop) are systems that can perceive, decide and act without any degree of human intervention. The machine, once activated by a human operator, carries out the task without communicating with the human operator. Finally on the degree of complexity of the decisions taken, i.e., the degree of intelligence of the machines, Scharre proposes a classification ranging from automatic systems to autonomous systems (Scharre 2018 p.63). According to Scharre, automatic systems can be considered as not having a very advanced decision-making capacity, they only perceive the environment and act congruently. This means that the reaction of the machine is highly predictable by the human operator. In contrast, automated systems have a more advanced level of decision making. These systems are able to take into account a series of data and a cost-benefit analysis before performing any action, and throughout

this process the human operator can follow the machines' decisions. Autonomous systems have a more complex decision-making system. Human operators can understand the task to be performed by the system, but do not necessarily know how to perform it. But at the same time, as the Heyns Report notes and as Scharre has argued, the LAWS case suggests that the arguments against these weapons are more complex than in previous such cases.[16]

In any case, the 2013 interactive dialogue was an important milestone for the Campaign to Stop Killer Robots. The Campaign embraced the Heyns Report as an opportunity to put the issue on the agenda and began advocating for a new norm banning the use of LAWS. Consequently, what the Campaign has ended up doing is revitalising the "indiscrimination" argument,[17] an argument that has worked well twice in the past. In effect, this argument has been prominent since the beginning of the advocacy campaign against LAWS and remains a focal point of the current pro-ban discourse of the Campaign to Stop Killer Robots.

3.2.2 The EU and Arms Control

The European project is first and foremost a peace project. Arms control is at the very heart of the foundation of the European Union (EU). In fact, if one observes what Robert Schuman considered in his speech was to place all Franco-German coal and steel production under a common High Authority, Schuman further argued that the creation of a common High Authority would prove that any "war between France and Germany is not only unthinkable, but materially impossible" (Schuman 1950). That is to say, by putting the production of steel and coal, key to manufacturing weapons, under a common

[16] The question has been addressed by Rosert and Sauer (2021). The authors argue that the question of what exactly is wrong with autonomous weapons can be posed from different angles. This has led to tensions among advocates themselves over the aims of the campaign, making it easier for states that are more reluctant to accept change to make the debate even more complex and exploit gaps within the Campaign.
[17] This refers to weapons that may be "deemed indiscriminate if they cannot be targeted at specific and discrete military objects, if they produce effects which cannot be confined to military objects during or after the use of the weapon, or if they are typically not targeted at specific objects despite being capable of precise targeting in principle" (Rosert and Sauer 2019, p. 371)

authority, the production and proliferation of weapons was curbed. In other words, the EU seems an actor well equipped to become relevant in the field of arms control.

Despite the importance of arms control in the European integration project, it was not until the adoption of the Maastricht Treaty in 1992 and the birth of the Common Foreign and Security Policy (CFSP) that the EU became an international actor increasingly involved in arms control.[18] This involvement is based on three areas of arms control. In this line, the European External Action Service (EEAS), an organisation born from the Lisbon Treaty of 2009, establishes that the EU and its Member States have three areas where action is required: Weapons of Mass Destruction,[19] Conventional Weapons[20] and Arms Control Export[21] (EEAS 2016).

More to the point, regardless of the institutional evolutions to which the CFSP has been subjected, such as the creation of the Common Security and Defence Policy (CSDP) in the 1997 Amsterdam Treaty, or the aforementioned creation of the EEAS which among other things sought to improve the coordination of Member States' positions, the area of deliberations has always been dominated by the foreign policy system based on intergovernmentalism. On the basis of an intergovernmental system in which decisions are taken by unanimity, Member States and the EEAS address these issues in the Foreign Affairs Council with the help of the expertise of four Working Groups: CONOP (Working Group on Non-Proliferation); CODUN (Working Group on Global Disarmament and

[18] The EU engagement in arms control activities was already existing prior to the Maastricth Treaty. It is the case of the European Community setting up, in 1981, a working group on nonproliferation. Despite that it worked in secrecy due to the reservations of France and the United Kingdom, the working group was key to present the first European contribution to a Review Conference in 1990, known as the European Council's Dublin Declaration (Müller and van Dassen 1997).

[19] This area touches upon nuclear, chemical and biological weapons, and ballistic missiles. As well as on how to prevent, deter, halt or eliminate Weapons of Mass Destruction proliferation programmes worldwide, and prevent acquisition by terrorist groups.

[20] This area deals with small arms, light weapons and ammunition; counter illicit manufacture; arms exports, transfer and circulation. It also addresses countries aiming to clear mines from their territory and help landmine victims; advocates against the use of landmines and for the destruction of mine stockpiles.

[21] This area focuses on promoting responsibility and transparency by both exporting and importing countries, as well as adherences to regional and international standards such as the Arms Trade Treaty.

Arms Control), COARM (Working Group on Conventional Arms Exports), Working Group on Dual-Use Goods; and the Political-Military Group.

In strategic terms, in addition to the treaties, two documents are fundamental to assess how the EU has been building itself as an actor in the field of global arms control. These two documents are the 2003 European Security Strategy and the 2016 Global Strategy. With regard to the 2003 European Security Strategy, the document and the subsequent 2008 implementation report were key in establishing the EU as an actor in the field of arms control, where the EU paid particular attention to four major issues: Small Arms and Light Weapons (SALW), cluster munitions, landmines and Weapons of Mass Destruction, defined as "the greatest potential threat to our security" (Council of the EUa 2003, p. 31). On all four issues, the EU advocated international hard law as a tool to address the threats.

The 2016 Global Strategy echoed the same stance. But the EU's Global Strategy made sure of this by pointing to the need to expand arms control regimes. In this regard, the Global Strategy considered that "the EU will strongly support the expanding membership, universalisation, full implementation and enforcement of multilateral disarmament, non-proliferation and arms control treaties and regimes. We will use every means at our disposal to assist in resolving proliferation crises, as we successfully did on the Iranian nuclear programme. The EU will actively participate in export control regimes, strengthen common rules governing Member States' export policies of military – including dual-use – equipment and technologies, and support export control authorities in third countries and technical bodies that sustain arms control regimes" (EU Global Strategy, 2016, p. 41). And the need to expand the scope of existing regimes went hand-in-hand with developing the need to address new ones, as the EU recognised that "global rules are also necessary in fields such as biotechnology, artificial intelligence, robotics

and remotely piloted systems, to avoid the related security risks and reap their economic benefits" (EU Global Strategy 2016, p. 43).

More importantly, as Anthony (2001) has argued, when the EU and its Member States address issues related to disarmament, non-proliferation or arms control, the inside-out and outside-in approaches can be identified. And this has implications for how CFSP/CSDP relates to the outside world; and how CFSP/CSDP enhances a common position. On the one hand, the inside-out approach considers that by engaging in arms control discussions what the EU and Member States are doing is "building shared norms and agreed principles as the basis for the foreign and security policy implemented by each of the Member States" (Anthony 2001, p. 614). On the other hand, the outside-in approach refers to areas in where norms already exist allows "the EU Member States to present a common political front to the world" (Anthony 2001, p. 614).

And as shown in the area of non-proliferation, the 2003 EU Strategy against the Proliferation of Weapons of Mass Destruction had this dual objective. On the one hand, to put an end to Europe's internal rifts and, externally, to provide European leadership aimed at countering the U.S. policy of assertive counterproliferation (van Ham 2013, p. 162). In parallel, the Strategy included a clause to export EU non-proliferation objectives to its external relations more broadly. The clause should be included in all mixed agreements[22] with third parties (Council of the EU 2003b).[23] However, divergences were considerable, a situation that speaks to the assessment provided by Benjamin Kienzle that consensus within the EU arms control agenda is neither easy nor impossible to achieve (Kienzle 2010). Indeed, while France is a staunch supporter of nuclear weapons, Ireland

[22] If the subject matter of an agreement does not fall under the exclusive competence of the EU, EU countries also have to sign the agreement. These are known as mixed agreements.
[23] It includes commitments to take steps to ratify or implement all other relevant international instruments and to establish effective national export controls. This is one of the reason India (not a part to the Non-Proliferation Treaty) has refused to signed a Free Trade Agreement with the EU.

and Austria are committed abolitionists; in between are supporters of arms control and disarmament such as Germany or the Netherlands (Müller et al. 2013, p. 311). But this has not prevented the EU from establishing itself as an important player in multilateral fora such as the Non-Proliferation Treaty Review Conferences.

Indeed, the impact of common positions in the CFSP area has a cohesive effect internally by strengthening, and by extension solidifying, the norm community that is the EU, and as an exporter of norms to the outside world. And a good example where the EU has functioned as an exporter of norms is the Arms Trade Treaty, which was inspired by EU norms on arms export controls (Rocha 2016). But the EU has another equally powerful tool at its disposal. This is based on economic and technical assistance for the functioning and implementation of the different treaties or conventions. In other words, reinforcing the secretariat, and especially its bureaucracies. One such case is the Organisation for the Prohibition of Chemical Weapons (OPCW), leading the Director General of the OPCW to express appreciation for the EU for its "active and visible role in supporting the OPCW […] and this support is absolutely essential in enabling the Secretariat to offer increased assistance to other Member States" (OPCW 2009a), where he was thankful for the EU "financial support in this area [implementation support]" (OPCW 20009b).

But it should be noted that over the years the exclusivity of the CFSP, whereby Member States have been the sole actor, has been eroded. The case of the EEAS is not the only one in which an actor other than a Member State has gained power and presence in the field of arms control. For example, in 2005, the European Commission brought a complaint before the European Court of Justice (ECJ) against the Council over the Council's decision, in the framework of the CFSP, to support a moratorium on small arms and light weapons in West Africa and to provide financial and technical assistance to the

Economic Community of West African States (ECOWAS) in this regard. The Commission argued that, as it has authority under the Treaty in areas related to common commercial policy and development aid, the Council was wrong to adopt such a measure without the Commission's consent. In 2008, the ECJ annulled the Council's decision (Ginsberg and Penksa 2012 p.26).

Having said this, the EU is considered, in the field of arms control, to be on divisive issues a "laboratory of consensus" (Grand 2000, p. 48). This label derives from the fact that within the EU there is a great variety in the positions of Member States on the issues to be addressed. Thus, the EU ends up becoming a microcosm of what is reflected in multilateral frameworks on arms control, in which two identities, and thus two approaches, are clearly identifiable. On the one hand we have the identity of the state as security provider and, on the other, the identity of the state as good international citizen (Dunne 2008; Becker-Jacob et al. 2013). Traditionally, France has been characterised by its identity as a security provider, and Germany by its identity as a good citizen (Badell and Schmitt 2022, p.251). This ends up making EU proposals more acceptable than the proposals of a nation state (Müller et al. 2013, p. 316). And this has been the case for several conventions, which were initiated in the framework of the UN Convention on Certain Conventional Weapons and were adopted outside the UN in Oslo (i.e., the Convention on Cluster Munitions) and Ottawa (the Anti-Personnel Landmines Convention). In addition, the position of the EU and its Member States in these two processes was not initially that of an actor committed to the need to ban landmines and cluster munitions, it rather evolved over the course of the negotiations and eventually became an entrepreneur of the norm (Costa 2009; Vlaskamp 2010; Müller et al. 2013).

This brings us to a final point related to the entry of these issues into the agenda. In the current institutional framework, in place since the Lisbon Treaty of 2009, entry

into the CFSP/CSDP agenda will require a certain degree of consensus among key institutional actors (Princen 2007, p. 33). Accordingly, Member States and executive actors at the EU level are the key actors at this stage (Dijkstra 2012; Vanhoonacker and Pomorska 2013; Biedenkopf, Costa and Gora 2021). And at the level of executive actors, the EEAS is a powerful actor within the system in terms of resources and agenda-setting power, as it can bring Member States to work together on sensitive issues of national sovereignty (Badell and Schmitt 2022, p. 246). If the risk is overplayed, proactive EEAS initiatives can be counterproductive and even trigger disengagement of Member States (Maurer and Wright 2021).

This could explain the case of LAWS in the EU. Especially the fact that in the 2016 EU Global Strategy the topic was barely mentioned through the reference to AI and robotics, where the topic could be negotiated within the technology agenda – an ambiguity that in the 2017 and 2018 Global Strategy implementation reports vanished (EUGS 2017; 2018). While the EEAS wanted to address the issue, there was no consensus among Member States to do so. It was finally in 2019 that the Global Strategy implementation report started to link technological developments to security threats (EUGS 2019, p. 16). Indeed, the 2019 implementation report was building its position on Council conclusions (i.e. the CFSP-Our Priorities Report) and EU statements at the UN CCW that framed the use of autonomous weapons as a potential threat to international security (see section 3.3).

3.3. The European Union, Autonomous Weapons, and Contestation

The following lines outline the role of the EU and its Member States during international deliberations on Lethal Autonomous Weapons Systems (LAWS), which are currently taking place in the framework of the UN Convention on Certain Conventional Weapons

(CCW). It will also present specific insights that can be used to enrich the state of play in the EU and its Member States. Against this background, an analysis is carried out taking into account the internal (i.e., intra-EU level) and external level (i.e., UN level) throughout the three stages that emerged in the CCW deliberations up until 2021.

3.3.1 From Informal Discussions To The Establishment Of The GGE (2013-2016)

The first stage covers the international deliberations on Lethal Autonomous Weapon Systems (LAWS) that started in 2013 with the entry in the agenda during a Human Right Council (HRC) interactive dialogue up until to the establishment in 2016 of a Group of Governmental Experts (i.e., formal negotiations) in the UN arms control forum (i.e., Convention on Certain Conventional Weapons). Throughout this stage, we will see a reluctance of Member States to be vocal on the issue with the few exceptions of France, Germany as well as the EU delegation in Geneva. The latter being an extension of the European External Actions Service (EEAS) programmed to achieve EU unity.

As has been said, the 2013 HRC interactive dialogue was the first forum to deal with LAWS. In that forum, France found support from the European Union (EU) delegation in Geneva and suggested moving the debate to the UN disarmament forum, the Convention on Certain Conventional Weapons (CCW). The decision was motivated by the complexity of the issue, both legal and technical (European Union 2013). Although reframing the debate in security terms was an unusual move, as previously the human rights framing had dominated arms control negotiations (Costa 2009), the EU was pushing to find the appropriate multilateral forum to address LAWS. This was a risky strategy, as the CCW, while admitting adoption of documents by majority vote, follows a tradition of consensus decision-making. Yet, the CCW decision-making format could be useful for the EU to become an important actor during the negotiations, as it has a longstanding experience in building consensus in this forum and could accommodate

different positions to converge towards common ground (Barbé and Badell 2020 p.140). This was recognised by the EU delegation when welcoming the formalisation of the change of venue in 2014 by the High Contracting Parties to the CCW[24]: it stressed that the CCW was more appropriate as the forum could respond in "a flexible way to future developments in the field of weapons technology" (European Union 2015). The Union (and by extension the 28 Member States) considered the CCW a potential forum for incubating ideas (Sauer 2020).

Following France's request to move the issue to the multilateral forum of arms control, the country was appointed chair at the 2014 CCW informal meeting of experts. The initial discussion highlighted two elements that would be constantly present throughout the meetings: to what extent LAWS could comply with international law, and what the necessary degree of human control is. In that first phase, no state openly declared its interest in developing LAWS, and several countries expressed concerns about the use of autonomous weapons in and outside armed conflicts. There was awareness that resorting to LAWS could erode existing humanitarian norms, as it would lower the threshold for the use of force. In the following sessions, 2015 and 2016, although the EU was still unable to present a common CFSP (Common Foreign and Security Policy) position, Member States continued to play an active role in the informal meetings. This implied that the EU position on LAWS would be determined by the common ground found among the Member States during negotiations. That is, the EU delegation could only present positions and commentaries if all Member States agreed (Interview 7). Considering the nature of CFSP/CSDP, an agreement on LAWS might resemble the ideal

[24] Parties to the Convention on Certain Conventional Weapons meet annually at the Meeting of the High Contracting Parties, and every five years at the Review Conference. They are tasked with reviewing the Convention and its protocol; considering the work done by the Group of Governmental Experts, and decide on the mandate of the Group of Governmental Experts. The mandate can be set to study a specific problem or weapon, but also on whether to negotiate a new Protocol.

outcome of the actor least receptive to change (Thomas 2021, p. 628). And as events will unfold, the main actor within the EU that will embrace such reluctance to change will be France. Although a window of opportunity will open up during the second stage of the discussion.

That said, in 2015 and 2016, another Member State showed increasing interest in tackling the LAWS deliberations. This was Germany, which chaired the CCW meetings and helped put a very strong focus on the protection of civilians, where consensus was building on the importance of the fundamental norm of civilian immunity. Along these lines, delegations began to address the question of the extent to which LAWS could comply with international law, as well as the extent to which human control was necessary. In addition to that, all delegations declared that LAWS must comply with international humanitarian law (IHL), as they referred to traditional organising principles of civilian immunity, such as the principle of distinction between civilians and combatants (codified in articles 48, 51.2 and 52.3 of the Protocol Additional (I) to the Geneva Conventions), the proportionality of the attack (codified in articles 51.5, and 57 of the Protocol Additional (I) to the Geneva Conventions), and the principle of precaution against the effect of attacks (codified in articles 58(c) of the Protocol Additional (I) to the Geneva Conventions).

More importantly, the scientific community, in an open letter from AI and robotics researchers, stated that the technology had reached a point where deployment of these systems was feasible and recommended a pre-emptive ban to avoid having weapons beyond “meaningful human control” (Future of Life Institute 2015). In a similar vein, the ICRC stressed that human control should be the key principle to ensure compliance with IHL (ICRC 2016). But what the ICRC did not do was make public its preferred framework. At the time, the ICRC confined itself to commenting on the substance of the

issue, that is, the possible procedures and practices governing LAWS.[25] Previously, human control was only implicitly mentioned in the Oslo Convention on Cluster Munitions, which prevents the stockpiling of cluster bombs, or in the Ottawa Convention, which bans anti-personnel mines (Human Rights Watch 2016).

More importantly, the sessions convened by Germany led the debate from the deadlocked discussion of the definition of autonomy to one around human control. One interviewee reported feeling it necessary to change the subject of the deliberations, as states were ill-equipped to dive into discussions on technological criteria (Interview 4). And avoiding the deadlock was to the credit of Article 36, which proposed the term "meaningful human control" (Roff and Moyes 2016). This helped to further reframe the debate into notions that resonate with the classic language of arms control and past humanitarian disarmament negotiations. Yet, France was the only EU Member State to cast its doubt regarding this new framing. Along with the US, which preferred its own notion of human control, defined as "appropriate levels of human judgment over the use of force" (U.S.Department of Defense 2017, p. 2), France considered that the term "meaningful" lacked the precision and technical accuracy to ensure that humans remain throughout the life cycle of any weapon system (Government of France 2016). To overcome this, Germany in its chairmanship report, appeased advocates and critics of human control by referring to it as the "appropriate human judgment and involvement" (United Nations 2016b). All of this led to a debate that that progressed substantially, as in November 2016 the High Contracting Parties to the CCW adopted by consensus the establishment of a Group of Governmental Experts (GGE). In fact, the establishment of a GGE is one of the features listed in the CCW to address issues that are considered to be

[25] It will take eleven years for the ICRC to finally advocate for a ban on autonomous weapons. In 2021 the ICRC embraced this path.

of particular importance. This put an end to informal meetings, as it called to “explore and agree on possible recommendations on options related to emerging technologies in the area of LAWS, in the context and objectives and purposes of the Convention [CCW]” with a particular focus on human control (United Nations 2016).

Putting it all together, Member States, especially France and Germany, were instrumental in moving LAWS from the human rights forum (i.e., HRC) debate to the arms control forum that is the CCW (i.e., France), and in helping to formalise the object of discussion (i.e., Germany). In other words, France's security provider identity led the country to reframe LAWS in terms of security (i.e., the arms control forum), and Germany's good citizen identity led the country to focus on an ethical and moral imperative: human control. Such efforts were welcomed by the EU delegation in Geneva. And in November 2016, the High Contracting Parties to the CCW adopted by consensus the establishment of a Group of Governmental Experts (GGE). Up to that point EU external action only spoke of the need for “global rules” in the field of AI and robotics to avoid “related security risks and reap their economic benefits” (EUGS 2016, p. 43). Although the EU supported international negotiations on LAWS, the issue was not explicitly on the EU's foreign policy radar. This was due to the reluctance of Member States to promote an EU understanding of the norm. A reluctance rooted in diplomats' limited expertise in the field and, therefore, in the need for substantive knowledge (Interview 2). In short, contestation in this period was exerted regarding the normative framework that should govern LAWS. At this stage, Member States addressed the question of the norm's content by placing human control at the heart of the normative framework.

3.3.2 Formal GGE discussions and agreement of the guiding principles (2017-2019)

In the second stage, deliberations were formalised with the establishment of the Group of Governmental Experts (GGE). In other words, diplomats' negotiating skills were combined with expert knowledge. During this phase of deliberation, collaboration between France and Germany, the two countries that have been interested in LAWS from the outset, intensified. And it will generate a peak in terms of cooperation of the Member States as a group, with the EEAS activating its resources to achieve unity. In addition, Member States will display their growing interest in the issue with Austria leading the group of countries willing to ban LAWS. Most importantly, it will be clear at this stage that an agreed normative framework is unlikely (i.e., groups advocating for different outcomes: status quo, soft law and hard law).

Bearing that in mind, the first two GGE meetings, in 2017 and 2018, were chaired by India and continued to focus on the importance of human control, where it addressed the "characteristics related to the human element in the use of force and its interface with machines as necessary for addressing accountability and responsibility" (United Nations 2018, p. 27). Also, it was highlighted that "humans must at all times remain accountable in accordance with applicable international law for decisions on the use of force" (United Nations 2018, p. 28). Discussions now revolved around the need to establish emerging commonalities in relation to LAWS. Nonetheless, the 2018 UN report noted the existence of three groups of states that weighted the emerging norm differently (United Nations 2018, p. 27).

On the one hand, Australia, Israel, the US, the UK (still an EU Member State at that time), South Korea and the Russian Federation considered existing IHL sufficient to deal with LAWS. They defended the status quo by arguing that a moratorium or ban was

too premature, or even unfounded and counterproductive. It was claimed that human control was already guaranteed in article 36 of Protocol Additional (I) to the Geneva Conventions, as it says that states are required to verify whether LAWS would be prohibited by the Protocol or by any other rule of international law. In this regard, the Russian Federation affirmed that it would withdraw from negotiations if negotiations took the form of a more formal discussion in which it was planned to negotiate a hard law or soft law regulating human control in the targeting cycle.

During that period, UN General Secretary António Guterres included for the first time in his disarmament agenda the need to address LAWS. He declared that these weapons defy the existent normative framework, which is IHL and the conventions (United Nations Secretary-General 2018c, 2018a). In this vein, he endorsed the call for a norm banning LAWS (United Nations Secretary-General, 2018b). An emerging coalition of countries in favour of banning LAWS, led by Austria, Brazil and Chile, embraced this call, noting the principle of meaningful human control. To date, the coalition has brought together 40 like-minded countries willing to open negotiations on an international legally binding agreement that would ensure human control by banning weapon systems that lack human control in the targeting process.

Table 6. Contestation of the regulatory framework and the principle of human control

		Regulating LAWS	**Approach to human control**
Countries or group of countries	International humanitarian law as a sufficient step. Endorsed by Australia, Israel, the US, the UK, South Korea and the Russian Federation	Status quo	US/UK: principle of human judgement in the targeting cycle
	New international law instrument advocated by Austria, Brazil and Chile	Hard law (new international treaty)	Meaningful human control in the killing stage
	Political Declaration sponsored by France and Germany	Soft law	France: principle of responsible human command Germany: principle of effective human control

The two competing norms, defending the status quo and promoting a new international norm banning LAWS, increased the likelihood that the GEG would not reach an agreement (see Table 6). To avoid a deadlock, a third group of states, under the auspices of France and Germany, resorted to soft law to propose a Political Declaration to work towards a lowest common denominator outcome. The EU delegation aligned itself with the Franco-German proposal for a Political Declaration, seeing it as a third way between those who wanted a ban treaty and those who supported the status quo. The EU delegation endorsed this proposal perceiving that the document put forward by the Franco-German couple could have triggered European unity around LAWS (Interview 7). In effect, in the framework of CFSP/CSDP, the EEAS is programmed to achieve unity.

More importantly, the EU embraced the Political Declaration as it was presented by two of the most important Member States (Interview 7). Behind this assessment, France was seen as the only country that, after Brexit, played an important role in the field of arms control and non-proliferation. In other words, France is an important security provider through its nuclear position (Interview 7). While Germany is seen as a good international citizen that has influence on arms control issues (Interview 7). Thus, the proposal is the clearest European voice presented to the GGE, and the document brought together the two souls of the EU: security provider and good citizen.

The Political Declaration echoed several EU commitments related to international law and, more concretely, in line with the ICRC opinion, stated that IHL is fully applicable to the case of LAWS and underlines the importance of Additional Protocol I to the Geneva Conventions. In other words, in 2018 through the Political Declaration it seemed that the EU was on the verge of securing an agreement. The document has also attempting to arrive at a working definition whereby LAWS are defined as fully autonomous lethal weapons systems, where human control is framed as an ambiguous organising principle: the exercise of sufficient control.

The group of actors envisions a pragmatic deployment of the normative components of Article 36[26] in which transparency and accountability are intended to be ensured through national weapons reviews. In addition, once the Political Declaration is adopted, the instrument could consider more sophisticated soft law measures, such as a politically binding measure in the form of a code of conduct as well as the establishment of an expert committee within the CCW to inform on technological developments related

[26] Article 36 of the Protocol I to the Geneva Conventions consideres that 'in the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law applicable to the High Contracting Party.'

to LAWS (Political Declaration 2017). Ultimately, the Political Declaration was to be considered “as the third way” and gained the support of 28 countries, including both delegations preferring the status quo and those willing to ban autonomous weapons. In the words of one interviewee, the compromise idea of presenting a Political Declaration avoided another deadlock (Interview 3).

And France, with the support of the EU delegation, rejected, once again, that the debate on LAWS should be resolved in the human rights forum or in any other arms control forum. During the negotiations, the French delegation proved in its statements its willingness to preserve the existing regulatory framework through some limited actions rather than more fundamental changes. Throughout the discussion, France claimed that given the nascent state of this technology, it is impossible to make a clear judgment on the weapons' compliance with international law, and therefore opposes a preventive ban or moratorium (Government of France 2015; 2016).

Despite France's view that LAWS must comply with IHL, the country began working to ensure a sufficient level of human control. During deliberations at the CCW, France has contested the broad moral scope of human control, arguing that a military approach should prevail, as they framed the principle of responsible human command (Government of France 2018). France sees the Political Declaration as a final step in the regulation of LAWS (Government of France 2018). For example, the Ministry of Defence is currently working on a national strategy that advances the role of AI in the military. In effect, the country is making a distinction between fully autonomous systems and partially autonomous systems (Government of France 2019). While fully autonomous systems are not expected to be developed or used, partially autonomous systems will be subject to regulation.

Opposing the French views, Germany agrees on the need for change, but differs on the exact scope and content of the norm. Throughout the debate, Germany developed a position that coincides with the group advocating a legally binding agreement banning the use of weapon systems that lack human control in the targeting process. To give an illustration, Germany stated in 2015 that legal weapons reviews as required by NGO Article 36, would lead to the outcome of LAWS being illegal (Government of Germany 2015). In a similar vein, the country stated at the General Assembly (UNGA) in 2018 that it is open to banning LAWS (Government of Germany, 2018), as well as framing the organising principle of human control in civilian terms by referring to the "principle of effective human control" (Government of Germany 2019). At the domestic level, the country has advanced in its AI Strategy that the German military does not intend to acquire or procure LAWS. Yet, the country looks forward to working with France "to promote measures less than a ban, and less than a legally binding instrument or a legally binding treaty" (Delcker 2019 quoting Wareham). More significantly, Germany sees the Political Declaration as a "major step" toward achieving a legally binding regulation safeguarding human control in the use of force (Government of Germany 2019). The ability to speak to both side of the spectrum suggests that Germany could play a major role in putting together a coherent EU voice on LAWS regulation.

While almost all Member States have welcomed the Political Declaration, there is a normative dissensus when it comes to operationalising human control and its codification - a dissensus that is a sign of the growing interest by Member States compared to the previous stage. But, more importantly, the issue was salient in the Member States' agenda as they were finally vocal on the matter. This is the case of Slovenia, which considers that the international community should safeguard human control in the use of force through the adoption of a new additional protocol of the CCW

(Government of Slovenia 2018). That is, a new international law instrument. With a similar tone, Croatia shares that idea by claiming that "international prohibition of weapon systems operating without meaningful human control should not be something unthinkable" (Government of Croatia 2015b), further emphasising that "creating a future legally-binding agreement […] should not be left completely out of sight" (Government of Croatia 2015a). More importantly, Ireland sees merit in a "legally binding option, but the current lack of a common understanding of what is meant by LAWS means that we do not yet have an appropriate platform on which to build an effective negotiating process" (Government of Ireland 2018) and considers a Political Declaration to have the potential to create the conditions and support the efforts going forward. In parallel, Ireland started to work closely with Belgium and Luxembourg to safeguard human control in the targeting cycle by working on a "strong political and/or dedicated international legal instrument" (Governments of Belgium, Ireland, Luxembourg 2019). Previously to that action, the Parliament of Belgium requested its government to work on a legally binding instrument banning the development and use of weapon systems that lack human control in the targeting process (Belgian Parliament 2018). The case of Belgium is worth considering as it is the only EU Member State where the Campaign has succeeded in shaping the country's position. In the end, Belgium, Ireland and Luxembourg proved that the emerging principle on human control is gaining more prominence, and even moving up the scale by becoming a norm with broad moral implications.

Whereas some Member States positions have been shaped during deliberations, Austria is the only like-minded Member State that has supported the Campaign's call from the start and is leading the coalition in the CCW to advance legally binding regulation to prohibit the development and use of weapons systems that lack human control. The explanation for Austria's behaviour lies in the fact that the country follows its self-

projected identity of being a good international citizen, whose delegation has been a norm initiator, promoter and keeper in most disarmament regimes (Dunne 2008). The Austrian proposal differs from that of other Member States seeking to advance a legally binding regulation setting obligations to safeguard human control in the use of force, as Austria is also willing to address the security concerns arising from proliferation and arms dynamics. Austria's course of action is in line with the central idea that drove the country's' position during the negotiation of the Treaty Prohibiting Nuclear Weapons, where, although Austria knows that it will not get France or the U.S. to relinquish nuclear weapons, the country considers it important to challenge the norm that nuclear weapons make the world safer (c.f. Kmentt 2021).

From the perspective of EU external action, while the EU Global Strategy made vague references to AI and robotics, the topic vanished in the 2018 and 2019 EU Global Strategy Reports. Nevertheless, Mogherini brought the issue of LAWS to the European Parliament in September 2018 and chaired the November 2018 Annual European Defence Agency Conference dedicated to autonomous weapon systems, where she stated that the EU is "working to build consensus on what should and should not be allowed in the field of autonomous weapons" (Mogherini 2018). This was the direct result of the Parliament resolution on autonomous weapons, which urged Member States and the European Council "to work towards the start of international negotiations on a legally binding instrument prohibiting lethal autonomous weapons systems" (European Parliament, 2018). In addition, Mogherini established a Global Tech Panel, which has continued to meet under HR/VP Borrell, whose participants shared the need for input ensuring that the development of AI that can be used in weapons systems fully complies with international law and respects human dignity (EEAS 2018). To date, it remains unknown what kind of

policy recommendations the Global Tech Panel advised, and whether the HR/VP have taken them into account.

While it seemed that the EU was starting, internally, to open a dialogue on LAWS, the UN debate was moving forward. In 2018, the CCW approved the so-called 10 Guiding Principles, to which the 2019 Annual Meeting of the High Contracting Parties added another one: human-machine interaction. These 11 guiding principles should serve as the basis for addressing a possible operational and normative framework on LAWS. More importantly, the internal discussions and the progress made at the UN level confirmed that there is a clear agreement among Member States on the need for human control over the use of force.

All in all, considering the normative nature of the EU and its dependency on Member States to project a common voice on LAWS, the Union has been key in facilitating the debate in an institutional setting that is seen by all actors as the right one, but also where every actor is treated equally. Moreover, the EU delegation has also been an important actor in moving the debate forward, working in close coordination with France and Germany to present a Political Declaration as a way of bridging the opposing views on LAWS, a Political Declaration that focused on procedural norms and practices such as national weapons reviews and a code of conduct. At the same time, this greater collaboration in the CCW coincided with a growing interest regarding LAWS both in Member States and in EU institutions. Yet, internal milestones such as the 2018 European Parliament resolution in favour of banning LAWS or the negotiations on the European Defence Fund (EDF) have shaped neither the external role and mandate of the delegation in Geneva nor the missions of the Member States. Taking a step back to gain more perspective, even the Franco-German proposal for a Political Declaration did not trigger the unity around LAWS that the EEAS was eagerly seeking. Simply put, there was no

feedback loop between what was being negotiated at the UN in Geneva and the growing interest taking place in Brussels.

3.3.3 TOWARDS A NORMATIVE AND OPERATIONAL FRAMEWORK (2020-2021)

In this third phase of deliberations, progress, from the EU's point of view, is at a standstill. In effect, the EU's dual contestation of LAWS is at its peak. First, at the Member State level, there is consensus on the need for human control, but disagreement persists over the appropriate regulatory framework: hard or soft law. Secondly, there is also a rejection of the EU by some Member States who contest the EEAS's idea of presenting an 'EU position'. All of this leads to favouring collaboration on a cross-regional basis.

The 2020 sessions of the GGE, initially chaired by Latvia and replaced by North Macedonia, were expected to explore the operational and regulatory framework issues but were severely impacted by the COVID-19 pandemic, which reduced the number of meetings from two to one. At the same time, the reluctance of the Russian delegation to be involved in the GGE hybrid format may also hinder, in the long run, the progress made during the 2020 September session. Russia disagrees on holding the sessions and did not participate in the 2020 GGE meeting. Despite potential setbacks in the LAWS negotiations, the question of the EU's role was also important. On the one hand, the EU delegation in Geneva wanted to produce a joint EU commentary on the 11 guiding principles, but countries such as Austria opposed (Interview 3). The willingness of the EU delegation to present a joint commentary on the 11 guiding principle was a direct result of the growing interest in LAWS within the EU, expressed in the Working Party on Non-Proliferation (CONOP) and the Working Party on Conventional Arms Exports (COARM), which discussed LAWS with the ICRC and the International Panel on the Regulation of Autonomous Weapons (iPRAW), which is an expert-group on LAWS receiving support from the German government.

Various Member States delegations preferred not to work as a group in the negotiations (see Table 7). This is the case of Austria, Belgium, Germany, Ireland and Luxembourg, which chose to be part of a Group of Nine ban-favouring countries (also including Brazil, Chile, Mexico and New Zealand). These states prefer to maintain the group's cross-regional dimension and openness to non-EU partners, which facilitates engagement and outreach with groups such as the Non-Aligned Movement (NAM). It is clear from the interviews that producing something labelled EU would have created a lot of distrust among regional groups. In other words, although the EU has been an active voice during the first phase of the negotiations, there is a shared perception that the deliberations in the CCW may be facing a momentum regarding the operational and normative framework, where Member States do not want a strong EU voice. Member States perceived the opening of a window of opportunity with regard to negotiations on a new international instrument. This situation can be read as a red flag to the EEAS actions whereby the institution should keep in mind that the CFSP is only an intergovernmental system of foreign policy based on cooperation. Thus, until (dis)agreement is reached, an active role of the EU at the external level cannot be expected.

Table 7. The EU and its Member States: from informal to formal discussions

	2013-2016	**2017-2019**	**2019-2021**
Key Member States and their negotiation positions/objectives	France: Move debate from HRC to CCW Germany: focus on "human control"	Austria: creation of a coalition calling for a norm banning LAWS France, Germany: soft law as the lowest common denominator (Political Declaration) UK: no need for new rules; IHL sufficient	Austria: leading with Brazil and Chile the coalition to ban LAWS Belgium, Ireland, Luxembourg: working towards a strong political and/or dedicated international legal instrument Germany: start working with others to move beyond Political Declaration (hard law possible) France: Political Declaration as the endpoint
Member States aligned internally and with Brussels?	Broad alignment and shared objectives between EU and MS: need to discuss	Norm divergence in the fundamental norm (hard law or soft law)	Widening gap between Germany and France

	LAWS at the international level (CCW the right forum)	EU delegation supporting the Franco-German proposal Consensus on human control and IHL	Poland and Hungary moving closer to US views (i.e., status quo)
EU involvement	Supporting role, but lack of CFSP common position EEAS vague interest	EEAS gaining interest 2018 Parliament resolution calling for a CFSP common position and strong ban 2019 Commission's High-Level Expert Group on AI endorses the ban	EU label seen as counter-productive to reaching agreement with other blocs EU seeking indirect influence: funding international secretariat 2021 Parliament resolution calls for a CFSP common position and soft ban 2021 Commission's EDF applies ethics screening on autonomous weapons

The normative gap between the EU and its Member States, and between the EU institutions, is also noticeable between two key Member States. Since France and Germany presented the proposed Political Declaration, the gap between the countries has widened. On the one hand, Germany has started working other EU countries (i.e., Austria, Belgium, Ireland and Luxembourg) and the Group of Nine. On the other hand, France has rejected the invitation to join this cross-regional group and has remained anchored to its proposal: a Political Declaration is the endpoint. As to what may explain the different behaviour of France and Germany, it is worth noting that Germany has been willing to engage with civil society organisations. For instance, the country has provided funding to the expert group iPRAW and hosted international conferences on the matter. In France, however, civil society is absent from the debate, being led mainly by the Ministry of Defence (Interview 3) and it is one of the few Member States that frames as strategic the use of AI in the military, including (to some extent) autonomous weapons (Ministère des Armées 2019).

More significantly during the 2021 sessions Member States and the Campaign agendas had high expectations regarding progress made on LAWS. If 2014 launched the informal meeting on LAWS and 2017 launched formal meetings in the GGE; 2021 was seen as the year where a mandate opening deliberation on a new international instrument on LAWS should have been established. Firstly, the GGE sessions, chaired by Belgium, fell short on agreeing on conclusions to expand its mandate. And the Sixth Review Conference of the CCW, chaired by France, followed the same path marked by a lack of ambition. The reluctance of the U.S., and more importantly of Russia, watered down the resolutions, and the GGE mandate for 2022 remained unaltered. But countries such as Spain, Sweden, Italy, the Netherlands or Finland that in the past shared mixed views concerning LAWS were finally clear in their preferred outcome: new international law is

needed. For instance, in the past, the Netherlands (together with France) was open to consider the use of autonomous weapons. Or in the case of Sweden, the country claims to have a feminist foreign policy but was criticised by the Campaign by not being sufficiently outspoken against LAWS. A similar critique was exerted against Canada, a country with a feminist foreign policy that has been silent in critical moments during the GGE. The Campaign considers it to be incompatible to preach a feminist foreign policy without being clearly against autonomous weapons. More to the point, the Spanish delegations shared its views in the Sixth Conference Review. For Spain the only possible solution to deal with LAWS is by creating new international law. Also, the Group of Nine broadened its membership. It was now temporarily gathering Finland, Italy, the Netherlands and Switzerland to become the Group of Thirteen, which shared its disappointment in the non-expansion of the GGE mandate to include negotiations concerning a new international instrument. The Group of 13 concluded that 'autonomous weapon systems […] cannot be used in compliance with international humanitarian law, are de facto outlawed and their use must be prevented' while the GGE mandate for 2022 "should have been clearer and more ambitious [and] simply repeating the discussion we have already had at previous GGE does not do justice to the work already completed or the task at hand" (Group of 13 2021).

And touching the object of this chapter, the EU and its Member States also shared the need to go beyond what had already been discussed. While it remained ambiguous in the preferred type of regulation, the EU acknowledged the work of the GGE and "the substantial contribution it has made to our understanding of this complex topic and to finding common ground". And it emphasised "that it is important the GGE continue its efforts based on a solid mandate, to allow for progress" (European Union 2021). One can posit that when the EU uses the term "allow for progress" it is saying out loud to the rest

of the parties that the Union and its Member States will not side with countries defending that existing international law is enough to govern. And more importantly, that the EU step by step is making of LAWS regulation a need, where a new hard law instrument is not ruled out of the equation. However, the Sixth Conference Review of the CCW failed to agree on concrete steps or solutions. The U.S., and Russia to a greater extent, torpedoed the critical mass of states pushing for mandating the GGE to negotiate a new instrument. Russia is famously known for being an obstructionist actor in arms control regulations, but in the particular case of LAWS is making the delegations pay for their decision to hold discussions during 2020 without the country's consent. As things stands, it is likely that the CCW falls short in achieving consensual regulation on LAWS. And the failure to move the autonomous weapons debate forward with the formal opening of negotiations for a new convention or protocol is leading the Campaign to seriously consider the need to depart from the UN framework and recreate the format already used for the landmines and cluster munitions conventions.

All things considered, in this period, and from an EU- and Member State-centred perspective, we see a reflection of what happened in the first stage of deliberations. That is to say, if in the second stage we see that collaboration between Member States is at its peak, in this stage we see that Member States disengage from the EU to seek new channels to further the discussions. At the same time, there is a certain consensus to avoid giving prominence to the European voice represented by the EU delegation in Geneva. That is, the consolidation of a double contestation between Member States, and between the EU and the Member States.

3.3.4 The EU and LAWS Regulation: Facing a Hamletian Moment

The sessions of 2021, and most notable the Sixth Review Conference of the CCW, were seen by the Campaign and Member States like Austria, Belgium, Finland, Germany, Ireland, Italy, Luxembourg, the Netherlands and Sweden as a major disappointment, a disappointment rooted in the resulting unlikelihood of opening negotiations to draft a new international instrument. As for the EU, it sees the CCW as "the relevant international forum [where] we expect it to deliver results" (European Union 2021). A normative consensus among Member States on the need for human control exists. Yet, as in the well-known earlier arms control negotiations, Member States continued to present a variety of preferred policy outcomes (Interview 1, 2, 3 and 5).

In effect, there is a crucial difference from previous negotiations: the Commission, with the agreement of the 27 Member States and the Parliament, is launching the European Defence Fund (EDF), which includes a first-of-its-kind ethical review of autonomous weapons. Despite concerns about how the ethical screening is going to relate to Article 36 (of the Protocol I to the Geneva Conventions) concerning weapons that would violate international law, it is quite possible that the ethical review will serve as a model for any international mechanism, hence offering the Commission an indirect, but influential, way to shape the regulation of LAWS (Interview 7). The approach taken by the Commission makes the case that the normativity surrounding LAWS could be derived from procedures and practices (Bode and Huelss 2018, p. 21; Badell and Schmitt 2022, p. 257). While this could be a game-changer for the EU and its Member States, the Commission's work on autonomous weapons is currently focused only on internal market aspects (Interview 6). The Commission's reluctance to shape the external position of the EU and its Member States is set in stone in the Commission's 2021 proposal for AI regulation, where the Commission clearly says that AI in the military falls within the

scope of the CFSP (European Commission 2021). But a door remains open to regulate AI only if international negotiations are deadlocked (Interview 7). On a similar note, it was also mentioned during the interviews that the EU could move towards a common position on LAWS in 2022 once NATO presents its AI Strategy with a section dedicated to autonomous weapons at the Madrid Summit. It was implied that NATO's AI Strategy would resolve disagreements between Member States. While this might be possible for those Member States that are part of NATO, it seems highly unlikely that a CFSP common position will emerge, as six Member States are not part of NATO: Austria, Cyprus, Finland, Ireland, Malta and Sweden.

Yet, the Commission's position could clash with the views of the European Parliament. During the EDF trilogue negotiations in early 2019, driven by the Greens/EFA group, the Parliament instructed the Commission and the Council to prohibit the funding of LAWS. But the Parliament position on LAWS has changed over the years. If in 2018, the European Parliament (8th term) was still calling for a ban on the development, production and use of LAWS (European Parliament 2018); in 2021, the Parliament (9th term) recalled its position to ban the development, production and use of LAWS and instead opened the possibility of using LAWS, in accordance with the EDF regulation, if human control over targeting and engagement decisions is ensured when conducting strikes (European Parliament 2021a). Taking the shift with a pinch of salt, the Parliament's approach is consistent with its role as a champion for increased investment in disruptive technologies (Calcara 2020; European Parliament 2021b).

More importantly, formal discussions in the EU's foreign policy making bodies around LAWS remained blocked by France. Yet, Germany during its 2020 Council presidency, set out to push for a more active EU in the area of disruptive technologies and weapons. For instance, Germany, in December 2020, launched informal discussions on

the need to regulate LAWS and other disruptive technologies (Interview 7). In view of Germany's role in UN and EU bodies, this paves the way for the following to be considered, Germany's role may gain weight if the Campaign eventually decides to leave the CCW format. In the early days, the International Committee for Robotic Arms Control organised a conference that attempted to launch both a mobilised civil society around the issue, and the leadership of a champion state. Neither objective was achieved. The venue was in Berlin. In addition to Germany, within the EU, Austria may also be norm champions, and this is all the more relevant given that these treaty processes enable norm champions not only to shape the agenda, but also to set up their own majoritarian procedural norms (Price 1998). For instance, carefully selecting and sending the invitations of who is going to participate in the forums (Carpenter 2022).

Last but not least, there is a small window of opportunity for the EU to play a major role in the LAWS debate, whereby it could start uploading its views. The potential involvement that can be envisaged for the EU in the international negotiations is related to a pragmatic normative approach whereby the EU has started to focus on the structure of the CCW and the robustness of the secretariat (Interview 5). And this approach is based on focusing not on the framework but on the framework's content. In the 2020 sessions, the EU's willingness to find a place in the negotiations led the Union to become a more proactive player in the LAWS funding discussions. This increased funding could, indirectly, enhance the bureaucratic power of the secretariat. Indeed, there is growing awareness that the secretariat could be tasked with collecting and sharing best practices in the use of LAWS. Again, this suggests a likely LAWS regulation emanating from procedures and practices.

3.4 CONCLUSIONS

This chapter has argued that Lethal Autonomous Weapons Systems (LAWS) and the principle of human control are in an emerging stage. As a brief recap, LAWS officially entered the international agenda in 2013, during the Human Rights Council's (HRC) interactive dialogue. The entry onto the international agenda was the result of civil society advocacy, first by the International Committee for Robotic Arms Control (ICRAC) and then by the Campaign to Stop Killer Robots (Campaign) to address the issue, all of which began in 2007. The issue has subsequently moved to the UN Convention on Certain Conventional Weapons (CCW), and to date the discussions on which type of framework autonomous weapons require continue. And compared to previous cases, such as landmines or cluster munitions, LAWS have become the longest-running humanitarian disarmament negotiation.

On a more concise note, this chapter has traced the EU and Member States deliberations on autonomous weapons. It followed the negotiations at the CCW and organised them into three distinct periods. The first stage shed light on the period 2013-2016, which saw a move from informal discussions to the establishment of the Group of Governmental Experts (GGE); the second stage covered the period 2017-2019, when formal GGE discussions produced the so-called 11 Guiding Principles; and the third stage analysed the period between 2020 and 2021[27], during which steps were taken towards a normative and operational framework. The analysis showed how the EU and several of its Member States strive for norm promotion at the international level, though strategies differ throughout the process, leading to certain tensions.

[27] The cut-off date of this research was December 2021. Since then, informal, and formal meetings at the CCW have taken place.

In effect, there is a general agreement within the EU to discuss LAWS in the CCW forum in which the Union's deliberations on the issue are marked by a double contestation. First, between Member States concerning the normativity given to a LAWS regulatory framework, while agreeing on the need to retain human control; and second, between Member States and the EU where there is strategic opposition (e.g., France, Belgium) to having an active Union involvement (mainly the EEAS) in the multilateral negotiations. This may also be a result of an entrapment, i.e., the post-Lisbon configuration that elevated the EEAS/HR/VP's role in EU foreign policy and thus risks causing overreach and subsequent pushback by Member States wary of giving up national prerogatives. Despite this, contestation is not taking the form of opposition (chapter 5 on Sexual and Reproductive Health and Rights) or dissidence (chapter 4 on the Global Compact for Migration). As a matter of fact, the EU and its Member States with regard to LAWS are exerting contestation in the form of applicatory contestation, as they are addressing the issue by following existing channels of political participation (Deitelhoff and Zimmermann 2018; Barbé and Badell 2020). Simply put, by exerting contestation, the EU and the Member States are crafting the EU's common position on LAWS. Something that is the common practice in the EU approach to arms control.

More to the point, in the initial steps, displaying a common EU voice was seen as strategically useful by France for shifting the international discussions from the HRC to the CCW. While the EU delegation aimed for maintaining an active voice in the negotiations, the lack of a CFSP position on the matter inhibited it from speaking up strongly. It could only resort to supporting the multilateral discussions. The most active Member States working towards a ban of LAWS, notably Austria and – later on – Belgium, Ireland and Luxembourg, preferred pursuing their efforts without any EU label, as this would have inhibited their outreach to other countries. Yet, a window opened in

2018 when EU unity around LAWS could have been possible. It was the result of European Parliament resolutions pushing for greater European presence in the international scene, calling on the European Council and the Commission to work towards the ban of LAWS. This coincided with the Franco-German proposal for a political declaration, seen by the EEAS as key to triggering EU unity. The Parliament was also crucial to prohibit the funding of LAWS in the framework of the EDF, but subsequently softened its position on the use of autonomous weapons. Nowadays, the Commission is responsible for developing an ethics screening assuring that autonomous weapons are not funded by the EU. The Commission states that their role is just to focus on the internal market, but it sees the issue of geopolitical relevance and a backdoor regulation could be considered.

All this highlights the lack of a feedback loop between what was happening at the CCW in Geneva and what was being discussed in Brussels. One could initially think that the missing focus on military applications by the Brussels institutions may partially derive from the historically ingrained reluctance to touch upon such sensitive topics. In line with what has been proved in this chapter, it is argued that it was a conscious choice by key Member States to keep the issue of LAWS under the lid in Brussels, either for negotiation reasons (as an EU branding would have undermined the alliance-building capacities of those Member States pushing for a hard law) or because they do not want the EU to interfere with this crucial aspect of national sovereignty.

More importantly, since 2020, discussions are increasingly concerned with setting up a normative and operational framework. The formulation of an EU common voice continues to be contested, and Member States dissensus has deepened, notably by Germany and France diverging further on their preferences. However, the EU could still emerge as a relevant actor by leveraging its work on the procedural aspects, such as

funding the secretariat or presenting a blueprint for an ethics screening based on its EDF. In other words, the EU could play a larger role in the CCW negotiations by focusing on LAWS procedures and practices (Bode and Huelss 2018; Badell and Schmitt 2022). If this materialises, the EU will indeed make true on its dual norm identity of norm promotion and multilateralism. Yet, countries such as France seem to only allow the EU to act as a norm promoter as long as it does not conflict with their core national interests.

Looking further ahead, if negotiations at the CCW do not proceed at a speed and direction deemed sufficient by key participants, there are other channels through which progress may be achieved by coalitions of willing countries – though with the risk of excluding or even alienating others. For instance, NATO has opened discussions on military uses of AI and 2022 could be a turning point. Whether and how this translates to concrete, global and legally binding agreements on the use of LAWS remains the subject of further study. Another avenue of research that is important to analyse is how the Commission's ethical screening is developed. The self-named geopolitical Commission has now gained authority in the realm of AI and defence, yet it does not dare to touch the issue of LAWS more aggressively. Thus, it would be of interest to shed light on how and why the Commission has chosen this path.

Finally, in line with previous arms control agreements, civil society organisations, after 10 years of international discussions, appear ready to leave the UN framework. It will therefore be crucial for the Campaign to find a champion state that is willing to host discussions resulting in the adoption of an international convention banning the use of autonomous weapons and regulating the use of partially autonomous weapons. At the EU level, two countries seem to have all the ballots to host such discussions. On the one hand, Austria, leader of the international coalition to ban autonomous weapons and an actor traditionally aligned with humanitarian disarmament causes. On the other hand, Germany

seems to be the most suitable actor for such debates to take place. The country hosted in 2010 the first international meeting of what later became the origin of the transnational advocacy network against autonomous weapons. At the same time, in disarmament discussions Germany is not guided by national security interests, but by cosmopolitan ideas of universal rights, an identity compatible with the humanitarian disarmament advocated by civil society. An example of this is the funding given to the International Panel on the Regulation of Autonomous Weapons (iPRAW), an expert-group on LAWS that has become fundamental in providing help to Member States to better address the issue of LAWS.

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LIST OF INTERVIEWS

#	**Position**	**Date**
1	Member State representative	9/10/2020
2	Member State representative	16/10/2020
3	Member State representative	28/10/2020
4	UN representative	12/10/2020
5	Member State representative	18/3/2020
6	EU official	3/9/2021
7	EU official	23/7/2021

CHAPTER 4

THE EUROPEAN UNION AND MIGRATION: THE UN GLOBAL COMPACT FOR MIGRATION (2016-2018)

4.1. INTRODUCTION

In 2015, migration truly became a global phenomenon, as all geographic corners of the world simultaneously faced a migratory crisis. North America was facing a migration crisis whose roots were in Central America. Southeast Asia was facing the Rohingya crisis, the result of ethnic cleansing orchestrated by the Myanmar authorities. And Europe was facing a migration crisis derived from the Syrian civil war, where the Mediterranean route became a ring of death in which it accounted for more than 60% of migrant deaths worldwide. To put it in other words, in 2015, 3.3% of the world's population (i.e., 244 million people) was an international migrant (IOM 2018).[28] And in the period 2005-2015, international migration saw an increase of 0.5%, from 2.8% to 3.3%. Over a period of less than fifteen years, international migration grew as much as in the period 1970-2000.

More importantly, migration was a global phenomenon during a time in which there was no international migration regime. As an example, while refugees are defined and their rights are set in stone in the UN Refugee Convention, in the case of migration there is neither an international document setting out their rights nor an accepted definition of who a migrant is. The lack of an international instrument has led to consider migration as the missing regime (Ghosh 2000). Efforts have been made in the past, for instance, the 1990 International Convention on the Protection of the Rights of All Migrant

[28] The data only considers regular migration; irregular migration data is unavailable.

Workers and Members of Their Families. But whenever an actor is willing to resolve the migration issue through multilateral means, an asymmetry of power arises. Such an asymmetry is between countries of origin (usually the Global South) and countries of destination (usually the Global North). When countries of origin seek a multilateral response, countries of destination are vetoing it (Kainz and Betts 2021). That is to say, migration has for a long time been frozen in a permanent emergent stage (Finnemore and Sikkink 1998).

Within the European Union (EU), the migration regime is much more developed and internalised. Two dimensions characterise it: internal and external. Namely, how to deal with migrants within the EU and how to deal with migration from third countries. This is the case since the Maastricht Treaty of 1992. And while the competence, at that time, remained purely intergovernmental, the European Commission and the European Parliament have progressively become important actors in the European governance of migration. This process of sharing competences on migration between the EU institutions and the Member States culminated in the 2009 Lisbon Treaty, which applied the ordinary European legislative procedure to different aspects such as the family reunification directive, that harmonised national legislations for reunification of third country nationals in the EU. In parallel, the EU, since 2001, also developed an external dimension to migration based on ad hoc bilateral processes and forums such as the 2006 Rabat[29] or 2016 EU-Turkey Statement aiming to address migration routes. But the migration crisis of 2015 showed that the construction of a European migration regime was based on incomplete governance, characterised by 'the combination of low harmonization, weak

[29] The Rabat Process, also called the Euro-African Dialogue on Migration and Development was launched in 2006. It brings together European and African countries from North, West and Central Africa, as well as the European Commission and the Economic Community of West African States. The aim of the Rabat Process is to create a framework for consultation and coordination on the challenges posed by migration issues.

monitoring, low solidarity and lack of strong institutions […] became increasingly unsustainable' (Scipioni 2018, p. 1365).

More precisely, across regions it started to be clear that tackling global migration with a patchwork of international institutions was a difficult task (Ferris and Donato 2020). As a result of the entrepreneurship of the U.S. under Obama and UN bureaucrats, the UN hosted a UN Summit on Refugees and Migrants in September 2016 resulting in the unanimous adoption of the New York Declaration on Refugees and Migrants. The Declaration initiated the process leading to the adoption of two global compacts: one on refugees and one on migration. On the one hand, the Refugee Compact addressed a gap in the existing refugee regime: a weak institutionalisation of responsibility sharing (Betts 2018). In other words, the Refugee Compact was reinforcing the refugee regime. On the other hand, the Migration Compact[30] was creating the migration regime. And indeed, migration was for the first time settled on the international agenda and moved into the acceptance phase in December 2018, when 152 countries adopted the Global Compact at the General Assembly.

The Migration Compact made important changes in areas such as the institutionalisation of the regime. It created, for example, a UN network on migration to better coordinate the existing, albeit fragmented, competencies of the UN system on migration. Its major milestone was the entry of the International Organization for Migration (IOM) as a related UN agency.[31] But several destination countries, mainly the U.S. under Trump, contested the agreement to the point of withdrawing from the

[30] The official name is Global Compact for Safe, Orderly and Regular Migration. In this chapter it is indistinctively referred to as the Global Compact for Migration or Migration Compact.

[31] The International Organization for Migration was created in 1951 as the Intergovernmental Committee for European Migration to help European governments cope with the large number of people displaced by World War II. It adopted its current name in 1989, accompanied by a renewed vision to become the overarching international migration agency. Until that year, the organisation offered only operational logistics services. Today, it intends, among other missions, to promote international cooperation on migration issues by working closely with governmental, intergovernmental and non-governmental actors.

negotiation process and voting against the Global Compact for Migration. While the European Commission and the European Parliament remained firmly committed to the Migration Compact, several EU Member States were swayed by the U.S., with Hungary being the main follower. As a result, Member States that had previously agreed to address the migration question at the international level decided to vote against the Migration Compact.

As the chapter will reveal, contestation is being exerted in its most radical form: validity as dissidence.[32] That is when the actor rejects or deliberately violates the existing norms and rules. This chapter identifies three episodes of dissidence. The first was triggered by the U.S. at the end of the preparatory sessions in December 2017. It led to the EU playing a greater role during the negotiations to the point of uploading European practices into the final document. The second episode began in February 2018 and was led by Hungary. The EU and its Member States' response to Hungary's dissidence reinforced the Union's foreign policy procedures and mechanisms. It did not drive Member States apart and, more significantly, it demonstrated how the EU and its Member States, if necessary, can encapsulate an episode of contestation to the point of symbolically expelling the country from the EU's normative community. The third and final episode was exercised by Austria in October 2018. It took place at a time when the Migration Compact was not on the radar of the EU and Member States, and eroded, from the EU's point of view, the Global Compact for Migration with a cascade of Member States voting against or abstaining during the General Assembly vote. Such was the scale of dissidence that the EU was reneging on its commitment to uphold multilateralism. The result was a fragmented and paralysed EU over the Migration Compact, with, for

[32] This form of contestation suggests that actors are rejecting the rules of the order and choosing unconventional forms of organisation and articulation to exercise a radical critique of the rule (Daase and Deitelhoff 2019, p. 12-13).

example, Member States closely monitoring the Commission to ensure that, when dealing with third countries, no reference is made to the Migration Compact, while the Commission implements it from behind the scenes.

The next section first explores the normative evolution of the migration regime at the international level, followed by the second section on its development at the European level. A third section presents the case study on the UN Global Compact for Migration, in which documents and 18 semi-structured interviews are used to trace between 2016 (start of negotiations) and 2018 (adoption of the Migration Compact) the contestation of the Global Compact for Migration and hints at the effects it is having on the implementation of the Migration Compact and on the governance of the EU's external migration policy. Conclusions and future avenues for research are addressed in the fourth and last section.

4.2. Migration: The Elephant in the Room

4.2.1 The Making of the International Migration Regime

Refugee rights are enshrined in an international regime anchored in international law. This is the case of the 1951 UN Refugee Convention and its 1967 Protocol, which give the norm's legal character. The Convention in its article 1.2, shares the definition of who can be considered a refugee, and states the following:

> 'someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it'.

Also, the refugee regime is supported by institutions such as the 1950 UN Office of the Higher Commissioner for Refugees (OHCR); and even examples of norm internalisation at the regional level, such as the EU Convention that determines the

responsibility of EU Member State in the examination of an asylum application lodged in one of the EU Member States (known as the Dublin Regulation), but is mainly implemented at the national level through asylum laws.

Nonetheless, migrants are not classifiable as refugees and the existence of migrant rights has been the near-exclusive purview of states. More importantly, there is no universally agreed definition of migration or migrant.[33] Host or transit states often provide effective legal protection for human rights following the prescriptions of their national law. This can lead to great disparities in the way migration is governed. That is, national sovereignty is the fundamental norm governing migration. Disparities in how to govern the issue of refugees and migrants led Peter Sutherland, UN Special Representative for International Migration to speak of a binary approach treating 'refugees as 'good' (i.e., deserving help because they are forced to leave their country and deprived of its protection) and irregular migrants as 'bad' (because they have made their own decision to move, without due regard for legal process)' (United Nations 2017a).

But this does not mean that the issue of migration has not been considered of paramount importance to the international community. The first attempts to address the question of migration date back to the League of Nations. Indeed, the International Labour Organization (ILO) wanted to address the need for a migration regime in 1938, when it established the Permanent Migration Committee. The migration question gained traction once again during the post-World War II period, when the ILO and the UN recommended that international cooperation on migration issues should be lodged with the ILO as the

[33] One of the most widely accepted definitions of an international migrant is that coined by the UN Department of Economic and Social Affairs. It considers a migrant to be someone who changes his or her country of habitual residence, regardless of the reason for migration or legal status. A distinction is generally made between short-term or temporary migration, which covers movements lasting between three and 12 months, and long-term or permanent migration, which refers to a change of country of residence lasting a year or more.

single permanent UN Agency, following the example of the UNHRC (UN High Commissioner for Refugees). On that occasion, the U.S. exerted its power and influence to reject this approach and created a new institution with these specific functions, which was based on intergovernmental negotiations: the 1951 Provisional Intergovernmental Committee for the Movement of Migrants from Europe, later renamed, in 1989, as the International Organization for Migration (IOM).

The tension between institutions to set a migration agenda continued in the subsequent period after the Cold War. The ILO did not become the only institution with the authority to coordinate migration related efforts, but it used its influence within the UN system to expand the agenda on protecting of the rights of migrant workers (e.g. Migration for Employment Convention, ILO Migrant Workers Convention). Attempts to provide a framework for migrant workers resulted in a UN Working Group chaired by Mexico and Morocco to draft a convention. The final draft was adopted at the end of the Cold War, in a period of increasing global mass migration. The 1990 UN International Convention on the Protection of the Rights of All Migrant Workers and Member of their Families articulated a human rights framework for migrant workers. It has been ratified by 51 states, none of which is a major host country or EU Member State. Following this, the UN Commission on Human Rights created another working group on the human rights of migrants and appointed a Special Rapporteur on the Human Rights of Migrants in 1999 (Ferris and Donato 2020, p. 55).

At the same time, in 1994, during the International Conference on Population and Development (ICPD) in Cairo, an attempt was also made to advance the norm. A chapter on migration was included in the ICPD conclusions. Yet, efforts by the UN General Assembly to convene a UN thematic conference on migration were unsuccessful. This was due to the resistance from host countries, which were keen to deter any attempt to

introduce migration into a multilateral-institutional framework. Indeed, one of the dominant characteristics of migration is the preference for bilateralism over multilateralism. Later, Assistant Secretary-General Michael Doyle authored a report that was crucial for the emergence of the norm. It led the UN Secretary General Kofi Annan to convene a Global Commission on International Migration in December 2003. As a result of the Commission's work, migration came to the forefront at the UN. In 2006, Kofi Annan appointed the first UN Special Representative for the Secretary-General on Migration, Peter Sutherland, and the General Assembly convened the first High-Level Dialogue on Migration and Development in September 2006. From his first days in office, Sutherland had one clear goal: to bring IOM into the UN system, but he encountered obstacles in the U.S. and the EU.

Based on the progress achieved in the High-Level Dialogues, the Global Forum on Migration and Development (GFMD) was launched. The GFMD is part of the so-called patchwork of actors and institutions, both formal and informal, that have great influence in shaping the international migration regime (Ferris and Donato 2020). Since 2007, the GFMD brings together states and non-state actors and facilitates deliberations on issues and topics that are considered to need further attention (Newland 2010). This forum has proved to be of key importance for the international community to initiate deliberations on migration and has paved the way to the transition of the migration norm to the emergence stage that was achieved in the 2016 UN Summit for Refugees and Migrants

In this sense, the GFMD is conceived as a mechanism for international dialogue that facilitates global consensus or compromise over migration issues. This is very important, as what we mean by migrant is likely to vary across regions and national borders. In effect, compromise and consensus among actors from different cultural

backgrounds require opportunities to engage in meaningful debate. Based on the work by Wiener (2014) it can be considered that the GFMD is a key forum to enhance cultural validation as during the its meetings actors have not only been able to delve into issues such as information-sharing and partnership-building but this informal forum has also enhanced interactions between stakeholders on migration, as it was building trust between parties. The introduction of migration and development as part of the forum has paved the way to build bridges between countries of origin and countries of destination. For instance, EU Member States such as Belgium and Greece have hosted GFMD meetings, as have countries of origin such as Mauritius. The GFMD has proven to be significantly successful in building trust, as it paved the way to hold the Second UN High-Level Dialogue on Migration and Development in 2013. In parallel, the GFMD continued to be hosted by countries of origin and destination: examples of these are Sweden in 2014, Bangladesh in 2016 and Germany-Morocco in 2017-2018.[34] Confidence building has also been facilitated by different regional consultative processes, such as the Intergovernmental Consultations on Migration, Asylum and Refugees – the EU, some Member States, the UNHRC and the IOM participated in this event; or the Migration Dialogues for Southern and Western Sahara under the auspices of ECOWAS and endorsed by the IOM, the African Union (AU) and the EU. In general, these institutions have provided mechanisms to establish an international dialogue among actors as well as to give voice on migration issues to actors who had never received such attention before. Most importantly, the GFMD forum has also helped the UN Special Representative to produce, in 2017, a comprehensive report on migration, which pointed out global policy

[34] The 2017-2018 Global Forum on Migration and Development took place in conjunction with the 2018 Intergovernmental conference for adopting the Global Compact for Migration in December. It was called the Marrakech Migration Week.

recommendations. A number of recommendations were included in the Global Compact for Migration.

This leads us to the last stage of how the norm finally gained an emerging status, and subsequently moved to the acceptance stage. The introduction in the UN agenda was mainly driven by the UN bureaucracy. And the main entrepreneur was the UN Special Representative Peter Sutherland. In reaction to the April 18 2015 tragedy off the Italian coast, where more than 800 people died in their attempt to reach the European continent, Sutherland hosted about 16 meetings, with the aim of addressing the Syrian and Mediterranean crises. With the previous example of the Vietnam boat crisis in the 1970s, which led the UN to convene an international conference in July 1979, Sutherland and his team thought that the UN could address the question of migration in similar way. In other words, while the events in Europe were not the world's largest displacement of its time, its geopolitical importance made migration a top priority for international cooperation in the international arena (Micinski 2022, p. 147). Accordingly, they thought that the EU could address the situation of the Syrian crisis with the ultimate goal of reanimating multilateralism in that area, with the aim of making the IOM the UN's migration agency. They found no support in the EU. In fact, the best support for dealing with the crisis came from the U.S., which ended up playing a more proactive and positive role than the EU. The U.S. was willing to take the lead on a comprehensive plan of action for the Syrian refugee crisis, and the Deputy Secretary of State, Antony Blinken was determined to have the UN undertake such a summit.

Taking advantage of the willingness shown by the U.S., Sutherland established the so-called Quartet. It brought together Pether Sutherland, UNHCR chief Antonio Guterres, the director general of the IOM, William Swing, and the director general of the International Committee of the Red Cross, Yves Daccord. However, the Quartet was not

successful in convincing UN Secretary General Ban Ki Moon to take any action on the Syrian crisis. Moon's unwillingness was partly due to the fact that the EU and its Member States did not want the UN to get actively involved. Attempts were made to have Moon meet with the EU presidents and the chairman of the African Union. But the EU declined. In the light of the European refusal, another institution joined the no-group. The UN refugee agency refused to put the European issue at the centre of its agenda. It reasoned that Europe has all the means at its disposal to deal with the crisis, while countries such as Uganda or Kenya do not.

The refugee issue stalled, leading to a rethinking of the summit's objective. In the end, the UN decided in November 2015 to hold a summit on migrants and refugees, which took place in September 2016. The decision was taken on the basis that within the UN there is a larger number of Member States that are more friendly to the issue of migration than to that of refugees. The decision infuriated the U.S., which from the very beginning was pushing for resolute action. On the side lines of the Security Council, Samantha Power, the U.S. ambassador to the UN, announced that the country was planning to hold its own summit on refugees. Aiming to bring together the two aims, that of the U.S. willing to address only the refugee issue and engender concrete commitments, and that of the large majority of UN Member States to address the migration issue, the General Assembly appointed Dina Kawar, a Jordanian diplomat, and David Donoghue, an Irish diplomat, as co-facilitators of the September 2016 summit. However, the summit's success was not secured until Moroccan diplomat Kamal Amakrane, who was serving as director in the Office of the President of the 71st session of the General Assembly, came up with the idea of a Global Compact for Migration. And he mustered the African Union to support and energise it. So it was that, in the end, the New York Declaration ended up calling for two new instruments: one on refugees, which responded to the request of the

U.S.; and another on migration, which satisfied the claims of a large majority of UN Member States.

In other words, as a result of the entrepreneurship of the U.S. and UN bureaucrats, the New York Declaration on Refugees and Migrants launched the process that led to the adoption of two Global Compacts: one on refugees and one on migration. While the Refugee Compact was strengthening the refugee regime, the Migration Compact was establishing the migration regime. To reach such a milestone, the Migration Compact went through three phases: the consultation phase between April and December 2017 that involved civil society and all levels of governance; the stocktaking phase in the form of a meeting in Puerto Vallarta in December 2017; and the intergovernmental negotiations divided into six rounds of negotiations between February and July 2018. All of this culminated in December 2018 with the Intergovernmental Conference for the Adoption of the Global Compact for Safe, Orderly and Regular Migration that took place in Morocco, and the final vote by the General Assembly in which 152 countries adopted the Global Compact for Migration.

The Migration Compact introduced important changes in areas such as the institutionalisation of the regime. For instance, it created a UN network on migration to better coordinate the existing, albeit fragmented, competencies of the UN system on migration. The major milestone was the entry into the UN system as a related agency of the International Organization for Migration (IOM).

4.2.2 The EU and Migration: Sitting Between the National Level and the European Level

The EU migration regime is characterised by having both an internal dimension and external dimension. This implies that the EU has not only developed internal policies to address migration but has also created tools to deal with the issue with third countries.

The first steps were taken in the 1970s and 1980s, when Member States addressed migration in informal fora. And informality turned into formality in 1992 as the Maastricht Treaty identified migration as a matter of common interest. However, the initiative was led by the Member States in the Council. In any case, the Maastricht Treaty started the slow process towards a certain transfer of authority. Migration became part of the EU's third intergovernmental pillar, Justice and Home Affairs (JHA), where cooperation between the parties was not legally binding. In addition, the European Commission was associated, and the European Parliament was informed or consulted if necessary.

Later, the 1997 Amsterdam Treaty slowly moved migration towards communitarisation by establishing an Area of Freedom, Security and Justice (AFSJ) (Zaun 2017), meaning that the Commission began to address migration as part of its portfolio. Amsterdam also put in place a five-year transition period during which unanimity prevailed. But migration as a shared competence had to wait until the entry into force of the 2009 Lisbon Treaty (Trauner and Ripoll Servent 2016). The ordinary European legislative procedure applied to different aspects of migration, such as family reunification (Family Reunification Directive). However, Article 79 TFEU states that the development of a common immigration policy shall not affect the right of Member States to determine the number of third-country nationals seeking work that they accept. The above examples show how labour migration is addressed at both the national and European levels.

More specifically, at the EU level, two Council formations deal with migration: the Justice and Home Affairs Council and the General Affairs Council. The more senior ones work in the Strategic Committee on Immigration, Frontiers and Asylum and the High-Level Working Group on Asylum and Migration, which deals with the external

dimension of migration. The working groups also discuss issues such as integration, migration and return and readmission. JAI-RELEX coordinates the external dimension of migration, borders and visas.

Above the Council is the European Council, which has become the migration agenda setter and has been responsible for issuing Council Conclusions that provide general guidelines. This was the case with the 1999 Tampere Conclusions, the 2004 Hague Conclusions, the 2009 Stockholm Conclusions and the 2014 Brussels Conclusions. While the 1999 Tampere Conclusions anchored EU asylum and immigration policy in the Union's attachment to liberal values (Lavenex 2019, p. 575). The Conclusions stated that "It would be in contradiction with Europe’s traditions to deny such freedom to those whose circumstances lead them justifiably to seek access to our territory. […] taking into account the need for a consistent control of external borders […] These common policies must be based on principles which are both clear to our own citizens and also offer guarantees to those who seek protection in or access to the European Union" (European Council 1999). The 2014 Brussels Conclusions began to securitise the Union's common asylum and immigration policy to the detriment of liberal values by considering that "Addressing the root causes of irregular migration flows is an essential part of EU migration policy. This, together with the prevention and tackling of irregular migration, will help avoid the loss of lives of migrants undertaking hazardous journeys. A sustainable solution can only be found by intensifying cooperation with countries of origin and transit, including through assistance to strengthen their migration and border management capacity." (European Council 2014).

The 2014 Brussels Conclusions marked a shift to a less ambitious agenda. The 1999 idealism of spreading liberal values to third parties was replaced with the need to improve the protection and security of third parties' national borders. The shift illustrates

former Swedish Prime Minister Carl Bildt's assessment of the EU's adaptation to a new environment, as it is no longer surrounded by a ring of friends but by a ring of fire. And the 2015 migration crisis paved the way for an internal disagreement on how the Brussels Conclusions could deal with the unfolding events. Indeed, the 2015 migration crisis called into question the application of the III Dublin Regulation (country responsible for examining an asylum application) and the existence of the Schengen Area (freedom of movement). It showed that EU migration governance suffered from "low harmonisation, weak monitoring, low solidarity, and lack of strong institutions" (Scipioni 2018, p. 1366). As a result of the divergent views of the Member States, the European Commission filled the vacuum left by the European Council by becoming the migration agenda setter.

All of the above highlights the existence of a governance deficit at the intra-EU level. On the other hand, at the external level, migration policies have generally enjoyed the support of all Member States. In fact, if the migration crisis generated any change in the European governance of migration, it was in its reinforcement of the external dimension.

The EU's external migration policy has been implemented since 2001 and designed as an extension of the internal dimension. In effect, the 1999 Tampere Conclusions highlighted that ‘external relations must be used in an integrated and consistent way to build the area of freedom, security and justice’ (European Council 1999). This external dimension consists of building cooperation with non-Member States (i.e., third parties) and with the support of international organisations. Whereas the European Council sets the general policy guidelines in five-year programs, the Commission implements them in the non-Member States. Three Commission Directorate

Generals (DGs) are responsible for migration policy, DG HOME[35], DG DEVCO[36] and DG NEAR,[37] and together with the European External Action Service (EEAS) define external migration interventions.

The DGs, for their part, define the policy substance in action plans and annual national indicative programs. They screen projects to be commissioned, which are then managed centrally by the DG and by the EU's Delegations in non-Member States. These negotiate the content, scope and resources of the projects directly with local stakeholders, monitoring them on the ground and reporting back to Brussels. Funding for such projects is channelled through geographical instruments like the European Neighbourhood and Partnership Instrument. To be more exact, EU external instruments are characterised by their bilateral nature or by their regional perspective.

Aiming to solve the internal rifts, the Commission, in May 2015, launched the European Agenda on Migration (EAM). Most of its instruments are based on the idea of externalising the internal conflict. That is, to further develop external migration governance so as to put an end to internal disputes. In any case, the EAM offered a comprehensive strategy in relation to the migration agenda. For example, in the short term, the EAM stated the need to organise rescue and life-saving operations in the Mediterranean (e.g., Operation Mare Nostrum/Triton), while in the medium term the fight against smugglers was deemed essential (e.g., Operation Sophia/Irini).

The European Commission also developed the 2016 Migration Partnership Framework (MPF), which combined aspects such as the mobility partnership, repatriation and visa facilitation agreement to use as leverage for third country cooperation on

[35] DG HOME refers to the Directorate General for Migration and Home Affairs.
[36] DG DEVCO refers to the Directorate General for Development and Cooperation. It has been renamed, during the Von der Leyen's Commission, as Directorate General for International Partnerships.
[37] DG NEAR refers to the Directorate General for European Neighbourhood and Enlargement Negotiations.

migration. Along with the EAM and the MPF, another new piece was added to address the 2015 migration crisis: the 2015 Valletta Action Plan. In short, the Valletta Action Plan brought together all the tools listed by the EAM and MPF and planned to apply them in the African neighbourhood. More importantly, the EAM, the MPF and the Valletta 2015 Action Plan allowed the Commission to resolve internal discrepancies between the different Directorates General that had an external dimension (interviews 1, 2 and 5). Mainly between DG HOME and DG DEVCO. The new action frameworks not only combined the approaches of DG HOME (prone to address migration from a security point of view) and DG DEVCO (prone to regard migration from a human rights point of view), but also coordination between EU services improved and weekly meetings are now held. This was a very important move, as it strengthened the Commission within EU migration governance by allowing it to speak with one voice (interviews 1 and 2). The new architecture of the Commission will be important during the episodes of contestation of the Global Compact for Migration triggered by Hungary and Austria.

The 2017 European Consensus on Development (ECD), which is the framework for action for EU development cooperation, clearly speaks to the new tools as it aims to fight irregular migration, drawing on the diaspora to enhance development in countries of origin and establishing mechanisms for the temporary mobility of regular migrant workers (Cassarino 2018, p.401). In a similar vein, non-binding policy frameworks for cooperation have also been developed, such as the 2016 EU-Turkey Declaration, which seeks to stem the flow of irregular migration through Turkey to the EU. Most recently, in March 2019, the European Commission declared that the migration crisis was over (European Commission 2019). The announcement allowed the European Council to take back control on migration, as indicated in the EU Strategic Agenda, which is the

document listing the main areas of action of the European Commission 2019-2024 (European Council 2019).

4.3. The Contestation of the UN Global Compact for Migration

4.3.1. From the Migration Crisis to the UN Global Compact For Migration

As has already been seen, the 2015 migration crisis showed how the EU migration governance was suffering from 'low harmonisation, weak monitoring, low solidarity, and lack of strong institutions' (Scipioni 2018, p. 1366). More specifically, southern countries such as Greece, Italy and Spain started to doubt that other Member States were willing to help them with the arrival of migrants, while the main asylum countries did not trust southern countries to register them properly (Fine 2019). All this resulted in a governance crisis related to the Dublin III Regulation and the Schengen Area.

At the Member State level, a polarisation was taking place between those aligned with the liberal Tampere migration policy of 1999 and those aligned with the securitising Brussels migration policy of 2014. The Tampere group was led by German Chancellor Angela Merkel. On the Brussels side we find Hungarian Prime Minister Viktor Orbán advocating an anti-immigrant EU narrative (Hopkins 2019). This opened a window of opportunity for the European Commission to become an agenda-setter on migration policy. Drawing a parallel between Member States and the preferred policy for dealing with migration, in the European Commission we identified a similar conflicting relationship between Directorates General. On the one hand, DG HOME tends to focus on return and readmission; on the other hand, DG DEVCO focuses on migration and development. However, while Member States continued to have polarised views on the migration issue, the European Commission resolved that internal conflict. The 2015 EAM, the 2015 Valletta Summit and the 2016 MPF were key to resolving the conflict.

And the two migration souls of the EU are present in the EAM and the MPF. On the one hand, the EAM hopes to "to build up a coherent and comprehensive approach to reap the benefits and address the challenges deriving from migration" (European Commission, 2015). On the other hand, the MPF places security at the centre, and is grounded in a containment strategy aimed at the prevention of irregular migrant flows to Europe, mainly by enhancing border management, reinforcing surveillance and fighting smuggling networks (Knoll and Weijer, 2016).

Along these lines, the EU began to address the relocation of asylum seekers through a temporary EU-wide instrument with specific rules and procedures. But then it seemed to backtrack to address relocation with less formality, fewer actors and more room for discriminatory practices (Fine 2019). At the same time, the EU signed ad hoc bilateral agreements such as the EU-Lebanon Compact and the EU-Turkey Statement or new regional instruments like the Emergency Trust Fund for Africa. These agreements followed in the footsteps of the UN Global Compact for Migration: they were political frameworks for cooperation and were not legally binding, thus bypassing the European Parliament. In effect, accountability and transparency of these instruments are very limited.

While the previous instruments were mainly bilateral and/or with a regional perspective, the EU also aimed to develop a multilateral and international instrument. To this end, the EU sought to increase collaboration with third countries and international organisations such as the UN and the International Organization for Migration (IOM). The initiative to finally address the migration issue at the international level was twofold. As Badell (2020) points out, ‘the EU may act in an interest-driven way by transferring the daunting task of achieving a common solution that cannot be found at the intra-EU level to the international realm. But it is also acting in a norm-driven way, as by

mobilizing resources, the EU is creating a migration norm. Consequently, the Global Compact for Migration may find itself becoming the international norm that facilitates internal EU consensus' (Badell 2020, p. 349-50).

And the 2017 European Consensus for Development (ECD) stressed that the EU and its Member States would "take a more coordinated, holistic, and structured approach to migration […] support[ing] the further implementation of the joint 2015 Valetta Action Plan and the elaboration of the UN Global Compacts on Migration and Refugees" (European Union 2017c, p. 18). In other words, the Global Compact for Migration was becoming a key framework for action for the EU and its Member States. This was further institutionalised in different Council conclusions, such as those of the 2018 European Council, where it was concluded that "The EU and its Member States, as appropriate, are pro-actively engaging in the UN processes, shaping their content and placing migration and refugee response firmly on the UN agenda. […] The EU and its Member States, as appropriate, will engage to achieve robust, balanced and inclusive Global Compacts as political and non-legally binding international cooperative frameworks based on shared responsibility and solidarity in line with the commitments of the 2030 Agenda and the UN Declaration for Refugees and Migrants" (Council of the EU 2018).

In fact, the EU saw addressing migration in the international level as a way to resolve internal disagreements, which it did by resorting to the 2016 Council Conclusions on migration and the ECD. Moving such a sensitive issue to an international institution[38] could be seen as an attempt to depoliticise the issue. The less an issue is politicised, the more it will be dealt with through institutional norms and rules, such as procedural

[38] According to Lavenex (2016), when the EU is interacting with International Organisations, three strategies may be followed: (1) IOs complementing or correcting EU policy; (2) IOs acting as subcontractors for the EU project; and (3) IOs transferring EU rules to other countries. The interaction serves to obtain their expertise, but more importantly, paving the way to EU legitimacy on migration abroad.

mechanisms (Jørgensen and Costa 2012, p. 254). Moving the issue to the international arena would also bring more actors to the deliberation table, and the outcome would be more legitimate, as it would give voice to countries of origin, transit and destination. Second, addressing migration, which is a low-political issue and characterised by weak institutionalisation, would influence the policy-making process within the EU by disempowering Member States, thus diluting hard views on the issue and empowering EU institutions (Kissack 2012). Not only was the UN seen as a more amenable venue for EU preferences and objectives, but the Commission, if arguing that the Migration Compact was speaking to the development dimension, was better placed to shape the European negotiating position.

4.3.2. From the New York Declaration to Puerto Vallarta (September 2016–December 2017)

The 2016 New York Declaration and the process leading to its adoption were not initially driven by the EU. If anything, the EU and its Member States were putting sticks in the wheels. Rather, it was the result of U.S. entrepreneurship that began in 2015 when the U.S. Deputy Secretary of State Antony Blinken put forward a proposal for a global action plan to manage the Syrian refugee crisis. This resulted in a team called the Quartet, bringing together Peter Sutherland (UN Special Representative for International Migration), António Guterres (UN High Commissioner for Refugees), William Swing (IOM Director General) and the head of the International Committee of the Red Cross, Yves Daccord, which were not successful in convincing Secretary General Ban Ki-moon to take action on refugees. This led to a scenario in which the U.S. was willing to hold a summit on refugees, whereas other UN Member States were pushing for migrants to be included in the agenda. Bringing the two aims together, a UN Summit on Refugees and Migrants was held on September 19, 2016. At the time, it was commonly agreed that the

ultimate goal of the summit was to revitalise the International Organization for Migration (IOM) and embed the institution within the UN system. Such inclusion, at first, was initially resisted by both the U.S. and the EU (Interview 16).

The UN Summit in 2016 was later followed by the 2016 New York Declaration, which established a mandate to negotiate two Compacts, a Compact on Refugees and a Compact on Migrants. One interviewee reported that although the Compact on Refugees was the very backbone of the document, the Migration Compact's inclusion was not secured (Interview 8). In the end it was included through the successful advocacy of African countries persuaded by the Moroccan diplomat Kamal Amakrane, who was the director of the Office of the President of the General Assembly (Interview 16). The only EU Member State that was actively advocating for the inclusion of a Migration Compact in the New York Declaration was, at the time, Ireland. A country whose history has been shaped by migration.

In the case of the EU, the Global Compact for Migration regulation granted the Union permanent status to be part of the negotiations (United Nations 2017b). The preparatory phase was subdivided into two phases. The consultation phase that gathered state and non-state actors and ran from April to November 2017. The second was the stocktaking phase taking the form of a meeting in Puerto Vallarta in December 2017. In the preparatory phase, meetings were held in both Geneva and New York, and the EEAS (represented by the EU delegation) was mandated to present the EU joint statements. On this occasion, Member States were also invited to intervene in addition to the EU, whereas this was not foreseen to be the case during the formal negotiations (January-July 2018). More importantly, the EU interventions were based on the task entrusted in the Council conclusions, but also on the EU Guidelines agreed by CONUN (UN Working Group) (European Union 2017c) that were endorsed by the Permanent Representatives

Committee (COREPER II) (Interview 8). In this regard, it is noteworthy that the High-Level Working Group on Asylum and Migration, which convened mainly officials from Member State capitals, was also active in addressing the substantive content of the migration file, while CONUN was decoding the terminology into the language of the UN (Interview 8). At this stage, two people interviewed considered the Global Compact for Migration to be a very day-to-day UN multilateral negotiation that did not engender any interest in capitals or in the public at large (Interview 2, 8).

No internal actor contested the process of elaborating a Migration Compact, and a commonly shared red line was apparent: migration is not a human right and, therefore, the document should not reflect that idea (interview 6). At this point, Hungary wished to go further. The country was against acknowledging that migrants should be given access to basic rights codified in the various human rights conventions, including EU treaties, and claimed that the EU could not uphold such declarations. The claim was disregarded as the EU delegation noted that human rights are for everyone – a fundamental value codified in the EU treaties (Interview 8). That being said, the EU delegation carried on with the task of building unity by reaching a middle ground. And it provided Member States some degree of ownership that would enable a hardening of the EU position by clearly distinguishing between regular and irregular migration, or not creating the figure of climate migrant (Interview 8). A balanced stance of the liberal and the security dimension was reached[39].

More to the point, the EU delegation in New York delivered statements on behalf of the 28 Member States confirming the existing common position on the Global Compact for Migration emanating from the mandate that was agreed in Brussels (i.e., the 2017

[39] For instance, the UK, Denmark, Belgium and Sweden endorsed this balanced position. On the one hand, the UK and Denmark position were focused mainly on return and readmission; On the other, Belgium and Sweden were emphasising the human rights of migrants such as access to social services.

ECD and the CONUN guidelines). Likewise, EU statements signalled that no transfer of authority was on the horizon at either the EU or international level, as the delegation on several occasions recalled the “sovereign right of states to determine whom to admit to their territories and under what conditions, subject to that state's international obligations” (European Union 2017d, p. 1), while reaffirming “the principles of solidarity and shared responsibility in managing large movements of migrants” (European Union 2017b, p. 1). It further argued that this should be further developed in line with “the core international human rights treaties and States must fully protect the human rights of all migrants, regardless of their migratory status” (European Union 2017a, p. 3).

Member States not only rallied behind the EU delegation's statement, but also urged the inclusion of new areas. Bulgaria, which later abandoned the agreement, called for addressing children's rights in the Migration Compact "migrant children are children first and foremost […] and they [are] entitled to all human rights" (Government of Bulgaria 2017). At this point, it appeared that the EU had successfully externalised and resolved an internal problem while it slowly moved closer to the adoption of the first international agreement on migration. Alongside this, civil society organisations were also involved during the whole process and deliberations were conducted to draft the areas that should be included in the Global Compact for Migration.

During this period of time, the EU was able to produce joint comments and ensured that Member States had sufficient ownership to shape the document in accordance with their interests; it also became clear that Member States and its national sovereignty would remain the cornerstone after the adoption of the Migration Compact; and, finally, it was taking the appearance of an international agreement that was opening up the order by empowering civil society organisations to have a greater presence in the process. In the words of one interviewee, the Migration Compact was evolving into a

successful document that embraced a whole-of-society and whole-of-government approach (Interview 3). More fundamentally, deliberations between the EU and Member States at the time were both constructive and non-politicised (Interview 8). The fear was shared, however, that if the EU had been able to reach a common understanding and keep Member States on board it was because the Migration Compact was still in the consultation phase without being high on the political agenda (Interview 2, 3, 8).

The Puerto Vallarta meeting in December 2017 played a decisive role in determining the destiny of the document. It signalled the end of the consultation stage and the beginning of the stocktaking stage. The Mexican and Swiss co-facilitators viewed the Puerto Vallarta meeting as the inflection point for the Migration Compact to transition from the preparatory phase to the negotiation (and final) phase. In effect, Puerto Vallarta was expected to compile all the relevant inputs gathered during the consultation phase and come up with a first draft (the so-called zero draft) of the UN Global Compact for Migration. But a fatal blow was about to unfold. Despite the U.S. State Department's attempts to keep the country on board, Stephen Miller, a senior advisor to the U.S. president and White House speechwriting director notorious for his anti-immigrant rhetoric, had persuaded President Donald J. Trump to disengage from the agreement (Lynch 2017). That decision was taken days before the Puerto Vallarta meeting, where the U.S. ambassador to the UN outlined that "our decisions on immigration policies must always be made by Americans and Americans alone. We will decide how best to control our borders and who will be allowed to enter our country. The global approach in the New York Declaration is simply not compatible with U.S. sovereignty" (U.S. 2017). Therefore, the country was applying a Westphalian reading of the Migration Compact and called into question the cosmopolitan component of it. Such fierceness against the Global Compact for Migration was subsequently elaborated by the ambassador, where

she noted that "unlike standard titles for international instruments, ‘compact’ has no settled meaning in international law, but it implies legal obligation" (U.S. 2018).[40] At this point, however, the U.S. was only decoupling itself from the negotiations without the perspective of obstructing the process or the final product. But the U.S. choice not to be part of the Migration Compact reflects the country's long-standing tradition of not adopting any international document that touches on individual rights. Last time the U.S. adopted a document constraining its national sovereignty was in 1966, when it signed and ratified the International Covenant on Civil and Political Rights. Otherwise, the last document that addressed individual rights on a non-binding basis, and which was adopted by the U.S., was the 1995 Beijing Declaration and Platform for Action, that among other things established the international norm on Sexual and Reproductive Health and Rights (Chapter 5 of this dissertation). Not even the Obama Administration from 2009 to 2017 made good on the promise to ratify the 1989 Convention on the Rights of the Child.

4.3.3. From the Zero Draft to the Final Draft (January–July 2018)

The U.S. contestation of the Global Compact for Migration was not immediately effective, but rather triggered what can be called a delayed contestation episode. The first assessment by the EU was that the U.S. decision would push the EU to the forefront of the negotiations. As one interviewee said, "we were hoping the U.S. comes in and is the bad cop. We can be the good cop and then we land somewhere in the middle. But because they were absent, we were sometimes in the position of being the bad cop most of the time. But of course, we talked about return and readmission, and so all the NGOs, Latin America, and Africa said they were so disappointed with the EU being so radical. The U.S. in the negotiations were absent and this had an impact on our position as the EU"

[40] Indeed, the U.S. was setting the narrative by which contestation against the Global Compact for Migration would be exerted.

(Interview 8). All of a sudden, the EU became an unexpected leader in negotiating the agreement. While this was risky due to the polarisation of the issue at the EU level, it also provided an opportunity to strike a deal at the international level that potentially could resolve internal rifts over migration

But in March 2018, Hungary started to manifest its discontent with the Migration Compact and confronted the EU by alleging that "migration is an unfavourable and dangerous process." The country's rhetoric mirrored the normative assertions employed by the U.S. Hungary affirmed that "migration is not a basic human right" and claimed that "the international community must realise that migration is not beneficial for anyone" (Government of Hungary 2018). And it was in between the first and second round of official negotiations when the Hungarian dissidence made its presence felt. But this was also the time to see how well structured and robust the EU's foreign policy machinery and proceedings are.

As a first step, the EU delegation in New York called upon Brussels to be more proactive. And the decision taken in Brussels was to delegate back to New York. While the initial reaction was one of surprise and concern, it quickly became clear that the decision to seek a compromise was more suitable than devolving back to Brussels. One interviewee felt that this decision to be New York led during the negotiations was a positive one, as in the EU delegation the Member States related to one another differently from in Brussels due to a different set of dynamics, mainly grounded in the socialisation of the group, in which they referred to themselves as a family (Interview 5, 12). As a result, a first attempt was made to persuade Hungary to return to the European consensus. To that end, different EU coordination meetings were arranged. These meetings were aimed at seducing Hungary by adding to the EU negotiating position issues that the country considered key and had so far not been taken into account. Soon it became clear

that the Hungarian position did not seek to address the substance of the EU's position vis-à-vis the Global Compact for Migration. As mentioned by several interviewees, the Hungarian position sought to break the unity of the EU and use the broken unity as a political stage (Interview 8). In this regard, the Hungarian Foreign Minister attended several rounds of negotiations, where it was emphasised that he attended with his camera team and quickly returned to Budapest. It is worth noting that Hungarian national elections took place in April 2018. It served him well to project a harsh image at home by displaying how ready he was to defend Hungarian sovereignty at any cost. The cost included bringing the EU into discredit. The foreign minister was eroding the role of the EU and its first international agreement on migration for domestic gain.

From the persuasion attempt, the EU delegation moved on to the legalistic attempt. In this regard, the EU delegation felt that the EU and its Member States could continue to proactively negotiate the Migration Compact, as the Council Conclusions gave a sufficient basis. The 2017 European Consensus on Development, but also the Council Conclusions on migration and related, were seen as the basis. The point was that there was no longer a need to go back to Brussels and wait for the approval of COREPER II since there was already agreed language on this. But the attempt was unsuccessful, as a few small Member States did not want the EU delegation, the EEAS or the EU in general to work in this manner. They were worried that by isolating Hungary it would be potentially counterproductive if those Member States encountered other problematic issues (Interview 16).

Hungary was seen as willing to break the unity of the EU in general (Interview 12), which made Member States feel hostage to one Member State as well as weakening the EU at the UN. At that juncture, the EEAS was trying to pursue a policy of appeasement with Hungary, which met with opposition from the EU delegation to the UN

in New York and the EU ambassador, who was keen to be tougher on the country. This indicates an incipient rift between the EEAS in Brussels, which delegated responsibility for negotiating the Migration Compact to New York, and the EU delegation in New York, which had to take on the task of representing the EEAS and the EU as a whole during the process. It was then that HP/VP Mogherini was dragged into a fruitless attempt to convince Hungary to re-join the 27-member bloc (interview 4).

Neither persuasion nor legalistic attempt led Hungary to re-join the group again and allow the EU to deliver. In a bold move, the European Commission decided to play the competence-sharing card. It reasoned that unanimity was not required, as the Global Compact for Migration spoke to the development portfolio. In April 2018, the European Commission proposed two Council Decisions authorising the Commission to conclude the Migration Compact on behalf of the EU and its Member States. The President of the European Commission may have defended this approach by stating that "[i]f one or two or three countries leave the United Nations migration pact, then we as the EU can't stand up for our own interests" (Reuters 2018). Ultimately, the legal services of the Council and the European Commission both became involved and worked to strike a compromise. On the one hand, the Commission's legal service considered that it was lawful to authorise the Commission to conclude the Migration Compact on behalf of the EU and its Member States. On the other hand, the Council's legal service considered the opposite. As both services came to different conclusions, the European Commission's proposals were not adopted by the Council and were subsequently withdrawn (interviews 4, 6, 7 and 8).

The EU delegation was unable to convene a coordination meeting due to Hungary's dissidence. At the same time, the Global Compact for Migration was still being discussed in the CONUN Working Group and within COREPER II. Against this background, one thing remained important: the degree to which Member States were

aligned with EU values and norms. In other words, whether they upheld the EU as a normative community. And a window of opportunity opened, Hungary made it clear that the EU could still do all the work it deemed necessary, yet the delegation could not speak (Interview 8). It was suggested that Hungary was strongly opposed to labelling anything as EU, but the Union could still draft a negotiating position, send it to all Member States asking for their opinion, and then convene an EU informal coordination meeting. And again, once the meeting took place in the EU delegation, the EU delegation could not speak. This was in line with the fact that the rest of the Member States, including the Czech Republic or Poland, agreed with the fact that they wanted to continue to work together, and Hungary pulling out of the Union bloc was not enough for them to cease their work together. All 27 Member States were ready to commit to the episode of contestation and symbolically expel Hungary from the EU community. The debate that followed in the room was driven by the Member States. They concluded that there should be someone to speak on behalf of the group. It was suggested that the country holding the EU presidency take on the role, but Hungary refused, since it was granting an official role to the European voice. Bulgaria held the presidency at the time. Next in line as proposed speaker was Austria, being the incoming presidency, and Hungary did not raise any objections. This was how Austria was given the role of speaking on behalf of the 27 Member States, a role it retained throughout the negotiations, at a time were the held the rotating presidency. In other words, an agreement was reached among the remaining 27 Member States authorising Austria to speak on their behalf (interviews 4, 6, 7 and 8), containing the Hungarian dissidence.

During that time, the Hungarian Foreign Minister attended the following meetings, becoming the only minister present. Procedurally, this led to Hungary being first on the list of speakers, which was followed by regional blocs like the EU-27

(interview 4). As for Hungary's attempts to break the Union consensus, Bart De Wever, leader of the New Flemish Alliance (NVA, a right-wing populist party), which was part of the Belgian coalition government, noted that "neither Trump's nor Orbán's withdrawal from the Migration Compact caused a turning point for the party's support of the international instrument" (De Weber cited by Cerulus, 2018). Put another way, during the official negotiations, neither the U.S. withdrawal nor the Hungarian dissidence were key to fragmenting the EU and its Member States.

With these developments in mind, the European Parliament adopted a cross-party resolution calling on the EU to live up to its commitments as a global actor and focus on the need to show unity and speak with one voice (European Parliament, 2018b). The resolution was adopted with 74% of votes in favour. Member States continued to work according to the CONUN guidelines and the agreed common position. In the negotiation room, Austria was supported materially and logistically by the EU delegation to present a common position in the form of lines to be taken on behalf of the EU as a whole and the 27 Member States (interviews 5, 6, 7 and), to the extent that the EU seat in the General Assembly remained empty while EU staff rallied behind the Austrian seat (interviews 4 and 5). Outside the room, with the green light from all 27 Member States, the negotiations were conducted by EU delegation personnel. But Hungary again dissented when the document was being finalised. Its objection focused on the point that Austria was speaking on behalf of all 27 Member States at a time when the country also held the rotating presidency of the EU. Hungary perceived the risk of the document being institutionally endorsed by an official EU actor. In any case, the 27 bypassed the Hungarian claim, also the Austrian representative communicated to Vienna and the instruction that came from the capital was that it would not be the best signal to the world to replace the spokesperson in the middle of the negotiations. More importantly, the

Austrian ambassador to the UN discussed the issue with Chancellor Kurz, who assured that the country would support the Global Compact for Migration, as Austria had a very prominent role in the whole negotiation (Interview 12). Therefore, Austria continued to speak on behalf of all 27 Member States. This was a crucial move for the Visegrad countries,[41] as they were being pressured by Hungary to leave the Migration Compact. The countries were placing their trust in Austria's hands, as it was seen as a Member State with a good reputation (Interview 12), and Kurt's words were key to keeping them on the European side and away from the dissenting group.

And in July 2018, the co-facilitators of the UN Global Compact for Migration presented a list of 23 goals conceived as good practice guidelines (Martín Díaz and Aris Escarcena 2019, p. 273). It was a list of actions that, according to the interviewees, the EU did not need to implement, as they were part of the EU migration practices (Interview 8). In fact, it was considered that the Migration Compact as far as EU migration policy was concerned would not have made a difference, as it was actually reconfirming what the EU was already doing (Interview 8). As an example, Article 79 of the TFEU already considers that the development of a common immigration policy shall not affect the rights of Member States to determine the number of third-country nationals seeking work that they accept. Indeed, Article 79.5 states that "This Article shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed". Objective 15.e of the Global Compact for Migration restated "the sovereign right of States to determine their national migration policy and their prerogative to govern migration within their jurisdiction, in conformity with international law. Within their

[41] It is a framework for cooperation and dialogue where the Czech Republic, Hungary, Poland and Slovakia meet. It was established in 1991 and initially sought EU accession.

sovereign jurisdiction, States may distinguish between regular and irregular migration status, including as they determine their legislative and policy measures for the implementation of the Migration Compact, taking into account different national realities, policies, priorities and requirements for entry, residence and work, in accordance with international law" (United Nations 2018a).

Therefore, the novelty of the Migration Compact resided in the fact that if third parties adhered to its contents, it would facilitate the EU's engagement with third parties, going beyond, for example, bilateral agreements such as Karthoum or Rabat (Interview 12). Stated differently, if the EU and its Member States had signed the Migration Compact, managing migration would be made significantly easier, as countries of origin, transit and destination would work under a framework that would predicate European practices.

4.3.4 The Road to Marrakech (July–December 2018)

Between the last negotiating round in July 2018 and its final adoption in December 2018, the dormant political conflict over migration re-emerged. Indeed, the EU contained Hungary's contestation by designating Austria as the EU's interlocutor, supported by the EU-27 and the EU delegation in New York. Yet, the period between July and December sealed the fate of the Global Compact for Migration (interviews 4 and 6). After the agreement was concluded, all Member State ambassadors were in contact with their capitals to verify whether their respective countries remained committed to the document. Actually, during the final approval in July 2018, the missions were joined by senior officials from the capitals (interview 12). No capital opposed the agreement.

The U.S. realised that the Migration Compact was on its way to being universally adopted. At that moment, the America First policy was becoming America Alone. This was as the Migration Compact was entering its final phase. Among the institutional

developments that the Global Compact for Migration was advancing was the official insertion of the International Organization for Migration (IOM) into the UN system. Alongside this, a United Nations Migration Network was launched, composed of more than 30 UN agencies and institutions such as the World Bank Group (Kainz and Betts 2021, p. 81). The UN Network is aimed at addressing the existing governance patchwork and improving coordination and coherence in addressing migration within the UN system. In short, migration ceased to be a missing regime. And in June 2018, IOM became the site of tensions involving the EU and the U.S. The IOM had always been run by an American, and the Trump Administration sought to have Ken Isaacs fill the position of IOM director. Isaacs is an evangelical fundamentalist with no migration experience who was close to Vice-President Mike Pence. His opponent was the former commissioner of Justice and Home Affairs, Portuguese António Vitorino. On that occasion, the Europeans rallied around the candidacy of Vitorino, who was appointed to the IOM leadership. In the end, the U.S. ended up losing control of the IOM, which was no longer a so-called American agency (Interview 16). The result was that U.S. Vice-President Mike Pence decided to play a larger role. The U.S. was in very close contact with Israel and Hungary. As the country was outside the process, it regularly consulted its Hungarian counterpart, who provided an overview of the situation in Central and Eastern Europe. This is when the U.S. Vice-President started telephoning the countries of Latin America and Central and Eastern Europe to persuade them to withdraw from the Migration Compact. Such a move coincided with far right and right-wing populist networks starting to spread fake news on Twitter, Facebook and YouTube concerning the Global Compact for Migration (Colliver cited by Cerulus and Schaart 2019). Additionally, indirect US influence could be noticed as in the case of letters, ostensibly written by concerned Irish citizens but evidently sent by the network against the Migration Compact to Irish officials and

members of the Irish parliament. The letters followed a standardised format and were written in American English (Interview 12).

This marked a turning point, as it was the first time that the impact of the Global Compact for Migration had reached the citizen level.[42] The polarisation of the agreement, in other words, launched an open process of contestation. The far-right's online campaign sparked a political confrontation within the Austrian cabinet: the Foreign Minister was in favour of the agreement (and defended the diplomatic team) and Chancellor Kurz was against it. Ultimately, it was Kurz's vision of the Migration Compact that prevailed, and Austria decided, in October 2018, not to support the agreement on the grounds that "migration is not and should not become a human right" (Murphy 2018). Kurz adopted for political gain a far-right discourse in which he defended the "true" interests of the Austrian people against the supposed challenges posed by migration" (Müller and Gebauer 2021, p. 13). Comparing the Austrian and Hungarian episodes of dissidence, interviewees have stated that while Hungarian diplomats were very hostile in this respect, Austrian diplomats attempted to be as friendly as they could towards their EU colleagues (interviews 6, 7 and 8), which denotes the extent to which Hungarian diplomatic services have been used strategically to promote a populist agenda (c.f. Juncos and Pomorska 2021).

Austria's decision to withdraw triggered a new episode of dissidence, arousing a number of concerns when the agreement had been concluded. The importance of the Austrian withdrawal lies in the fact that Austria was negotiating the Global Compact for Migration on behalf of the EU and its Member States. After all, the Member State holding the rotating EU presidency usually plays a mediating role and bridges divisions within

[42] All countries involved in shaped the Migration Compact erred on the side of optimism. During those four months they did not create communication campaigns on the benefits of the new global pact. And if they did, as was the case with the EEAS in November 2018, it was already too late.

the bloc (interviews 4, 6, 7 and 8). But more importantly, Austria had been the lighthouse of the Visegrad group that had prevented them from yielding to Hungarian pressure. Hence, Austria's decision now had an immediate repercussion on the other Member States, rapidly triggering uncertainties and thus opening the door to further political conflict, which had been contained up to that point.

Following Austria's decision to withdraw, the New Flemish Alliance (NVA) walked out of the Belgian cabinet, refusing to back the Migration Compact, and the Belgian government collapsed. If Austria illustrated that civil society organisations were starting to take an active part in the Global Compact for Migration debate, the Belgian Flemish nationalist Flemish parties paved the way for popular mobilisation with a demonstration against the Migration Compact in December 2018. The NVA echoed Kurz's take on the Global Compact for Migration. They initially had supported the migration document and were now claiming that migration was a threat to Belgium. That was a surprising move. During the Migration Compact negotiations, the Belgian Interior Ministry was led by the NVA. Together with the Ministry of Foreign Affairs they had been the key ministries in drafting the Belgian position on the Global Compact for Migration. Having said that, in spite of the NVA's efforts to now overturn the Migration Compact, the Belgian Parliament voted in favour of the document. Following in Austria's footsteps, Poland and the Czech Republic declared themselves against the Global Compact for Migration. They felt that the agreement did not guarantee countries' national sovereignty, and Poland also considered that the agreement was not in line with “the priorities of the Polish government, which are the security of Polish citizens, and the maintenance of control over the migration flow” (PAP 2018), whilst the Czech Republic reasoned that the document should have stated that illegal migration was undesirable. The countries that referred to the Migration Compact as a norm creating a right to migrate that

clashed with national sovereignty were seen by their opponents as having laid the groundwork for a more hostile migration agenda (Squire 2019, p. 160).

This contestation was also echoed in the Italian government, which was divided along party lines: the Prime Minister, Giuseppe Conte (Movimento 5 Stelle), expressed his support for the Global Compact for Migration at the UN, while the former Minister of the Interior, Matteo Salvini (La Lega), announced that the government would not support it. Member States such as Germany chose to transfer the decision to approve the Migration Compact to the German Parliament due to the polarisation triggered by the far-right party Alternative for Germany. During this episode of contestation as dissidence, the only institution that openly criticised the disinformation campaign and countered the actions taken by some Member States to withdraw from the Migration Compact was the European Parliament, which voted overwhelmingly on a resolution in favour of approving the document (European Parliament 2018a). This was reflected in the European Parliament's delegation to the Marrakesh Conference being the largest European delegation.

Table 8. Member States votes on the UN Global Compact for Migration

Voting decision	**Member States**
Adopting the Compact as such	Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Luxembourg, Lithuania, Portugal, Slovenia, Spain, and Sweden
Adopting the Compact while reinvigorating national sovereignty	Denmark, Malta, the Netherlands, and the United Kingdom
Against the Compact	Czech Republic, Hungary, and Poland

Abstained from voting	Austria, Bulgaria, Italy, Latvia, and Romania
Not voting	Slovakia

Source: own elaboration

Arguably, the dynamic of dissidence erupted at a time when the Global Compact for Migration was not on the radar of the EU and its Member States. What is more important, Chancellor Kurz's decision can be categorised as a dissidence that defies several EU norms at the heart of which is sincere cooperation (c.f. Melin 2019). Sincere cooperation in external action states in Article 34.1 TEU that "Member States shall coordinate their action in international organisations and at international conferences. They shall uphold the Union's positions in such forums".

Figure 1. EU Member States vote on the UN Global Compact for Migration

Source: own elaboration

Austria, by not upholding the Union's position, created a growing tension between actors and areas regarding the expected moral scope of the migration norm, the application of which was also contested. It resulted in EU actors being divided into five major blocs according to the degree of normativity granted to the migration rule. Some sixteen Member States (Belgium, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Lithuania, Luxembourg, Portugal, Slovenia, Spain, Sweden and Finland) approved the Migration Compact without an additional note and agreed on the need to

create a migration norm. Four Member States (Denmark, Malta, the Netherlands and the United Kingdom) approved the Migration Compact with an explanatory note attached reaffirming that national sovereignty prevails over migration issues, emphasising that the migration norm had to go hand in hand with the sovereignty norm. The third bloc consisted of the three Member States opposed to the Migration Compact (Czech Republic, Hungary and Poland), which asserted that migration was merely a rule derived from the fundamental rule of sovereignty. Finally, five Member States abstained from voting (Austria, Bulgaria, Italy, Latvia and Romania), while the Slovak Foreign Minister, who helped launch the Global Compact for Migration, did not attend the vote after the Slovak Parliament voted against signing the agreement.

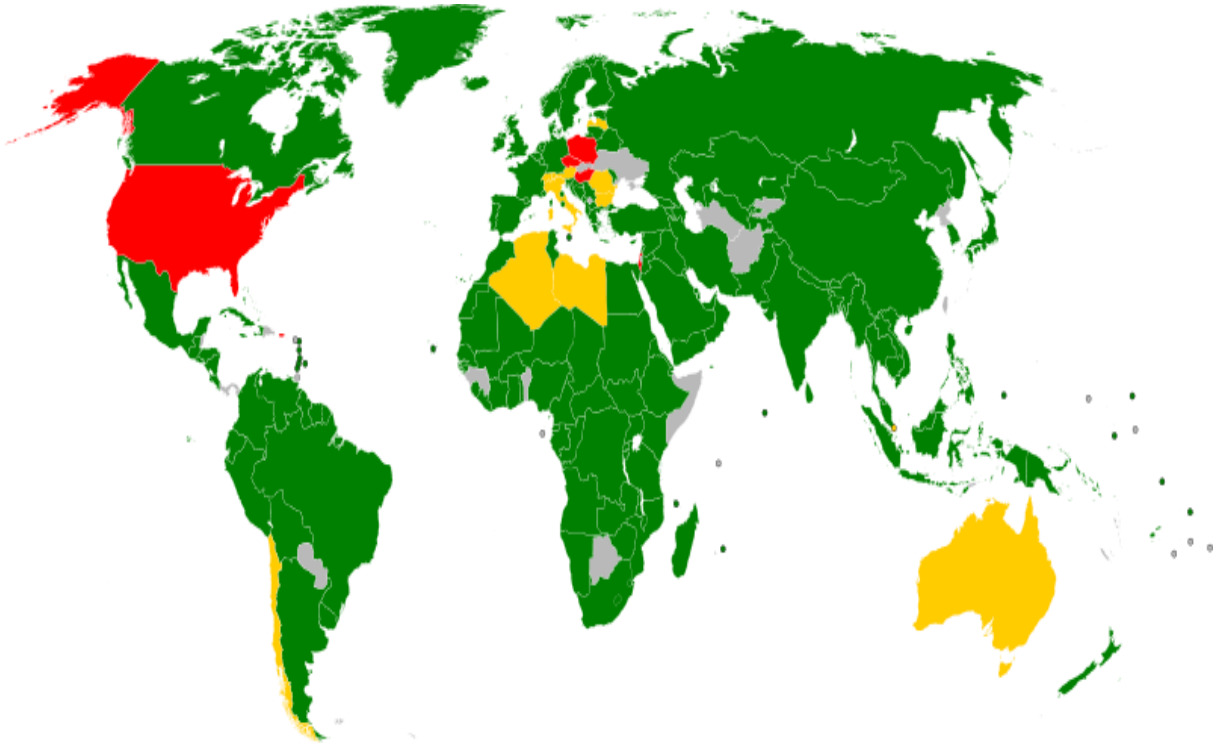
However, two facts should be noted. The first is that all the national positions of the Member States were drafted at home with the active participation of the Ministries of Foreign Affairs and Interior, and sometimes the point of view of the Ministry of Justice was also taken. Except for Hungary, the Member States endorsed the Migration Compact in July 2018. So, the point of ignorance and surprise of the content of the Global Compact for Migration, as suggested by some actors, is rather an inconsistent one. Second is that Member States claimed that the Migration Compact is a threat to national security or to a given country's existence is not a tenable argument. The Migration Compact stresses twice in the document that its nature is non-binding and reaffirms the prevalence of national sovereignty seven times. The document, in other words, leaves no door open to a possible clash between national sovereignty and migration. If at all, the normative meaning given to it indicates that national sovereignty is at the top of the normative hierarchy. And the Global Compact for Migration was drafted ambiguously to retain some flexibility. The flexibility is related to its non-binding character, as well as to the right of the State to explain its position or its vote. The document also provided for an

institutional access to the dispute, as it envisaged hosting different regional and international review conferences that could allow for dialogue, compromise and consensus on the meaning and validity of the norms.

This did not prevent the Migration Compact from witnessing a series of withdrawals and abstentions, which made it impossible for the EU to be present at the Marrakech intergovernmental conference as an actor. A conference that should have been the celebration of the first international agreement on migration became effectively brain-dead. The European Commission considered at that moment that the EU could be present speaking on behalf of the EU institutions. Underpinning the Commission's decision was that the EU did not only exist because the Member States existed. The EU had a corpus derived from the *acquis communautaire*. And in that acquis migration was not the exclusive competence of the Member States. Alongside Chancellor Merkel of Germany and Prime Minister Michel of Belgium, the conference was attended by a delegation led by the European Commissioner for Migration, Home Affairs and Citizenship, Dimitris Avramopoulos, which included EEAS officials and several MEPs. Commissioner Avramopoulos, in summary form, stated that "in our globalised world, human mobility can only be addressed effectively by the international community as a whole […] In this respect, neither a single country nor a region such as Europe, can address migratory challenges alone" (European Commission 2018). This means that the EU and its Member States missed a once in a lifetime opportunity to resolve disagreements on migration. A consensus oasis did not last long and continued to split and paralyse the EU. But a more important assessment was made by Chancellor Merkel, who considered that “at the heart of the dispute over this pact […] is the principle of multilateral cooperation” (Government of Germany 2018). Therefore, the consequences for the EU foreign policy system were more profound than simply generating paralysis or fragmentation around the migration

issue. The EU's divisions have undermined the Union's ability to promote multilateralism, something that in principle had become a constitutive norm of the Union.

Figure 2. General Assembly vote on the UN Global Compact for Migration



Source: own elaboration

As the Global Compact for Migration within the EU further polarised and fragmented the Union into multiple blocs, however, the international community voted overwhelmingly in favour of adopting the UN Global Compact for Migration. It became the first piece of the international migration regime. A piece that was shaped in line with the EU's views on migration. In December 2018, the General Assembly moved the Migration Compact from an emergence phase to the acceptance phase. To do so, a critical mass of states created a tipping point after which adoption of the Migration Compact became widespread (Finnemore and Sikkink 1998, p. 982). In fact, 152 out of 193 countries voted in favour of adopting the Migration Compact. And today, regional

conferences are being held, with the first international review conference scheduled to take place in 2022.

4.3.5. THE EU AND THE (EARLY) IMPLEMENTATION STAGE

Intra-EU divisions over the Migration Compact have also had first-hand consequences on its early implementation stage, both within the EU and in countries receiving EU development assistance.

At the UN level, Hungary expressed its dissidence by obstructing resolutions on migration in the Second Committee of the UNGA that highlighted fundamental human rights. This was the case, during the 73rd session of the UNGA, with the resolution on "International Migration and Development", while Hungary, Israel and the U.S. voted against, 177 countries, including the 27 EU countries, voted in favour. And the resolution was of major significance, as it was flagging the Global Compact for Migration as the "the first intergovernmentally negotiated outcome, prepared under the auspices of the United Nations, to cover international migration in all its dimensions" by welcoming the UN's internal reorganisation of migration through the establishment of a UN Network on Migration, and the further institutionalisation of the Global Compact for Migration through the establishment of an International Migration Review Forum that will serve "as the primary intergovernmental global platform for Member States to discuss and share progress on the implementation of all aspects of the Global Compact" (United Nations 2018b). The resolution was passed in November 2018.

But several Member States have remained committed to the Migration Compact. For example, Portugal, Denmark and Germany have submitted their national action plans. And due to the multiple bilateral commitments or fora in which the EU participates, it is,

at the end of the day, pursuing a migration policy that is in line with the Migration Compact practice.[43]

Despite the above, some features of the Migration Compact are not part of EU practice. And they are therefore the most difficult to engage with. In the Commission, and internally in the Directorates-General most committed to the Migration Compact, like DG HOME and DG DEVCO, the prevailing view is that the external dimension is the dominating one, and this directly concerns the development policy portfolio. This means that unanimity is not necessary for the implementation of the Global Compact for Migration. For example, in February 2019, an internal memo of the European Commission's Legal Service concluded that the content of the Migration Compact did fall within the scope of development policy and that the Migration Compact was consistent with the EU's previous international commitments. The same service restated this with the exact same wording when the Commission was willing to take the lead in the final stages of the Migration Compact negotiations. This prompted an immediately strong reaction in Hungary (a state that remains vigilant in its drive to ensure that the EU never refer to the Migration Compact) and in some other EU Member States, clearly signalling that the implementation of the Migration Compact has turned into a clearly political matter.

In any case, EU institutions have so far avoided making explicit the links between their action and the implementation of the Global Compact for Migration. This discreet approach to the implementation is difficult to uphold. For example, the Commission has

[43] For example, the Valletta Joint Action Plan, adopted by European and African leaders in November 2015, covers some of the same policy areas as the Migration Compact, with border management and returns constituting sub-objectives of the plan's broader agenda. Thus, progress under Valletta Pillar 2: Legal migration and mobility, which aims to 'promote regular channels for migration and mobility from and between European and African countries', could be seen as progress under the Migration Compact's Goal 5 ('Improve the availability and flexibility of channels for regular migration').

funded the UN Migration Network, one on the major milestone in the Migration Compact. And in the case of EU capacity building, initiatives have received requests for support to develop national implementation plans for the Global Compact for Migration. For example, the EU Emergency Trust Fund for Africa helped organise a consultative workshop on the Migration Compact in Kenya in 2019. It highlights how embedded EU instruments are with the Migration Compact. But it is worth noting that the person involved on the EU side was a key EU official in pushing for the Migration Compact. This leads to the following problem. That the EU's implementation of the Global Compact for Migration on migration depends not so much on the institution, but on the fortuitous fact that key officials during the Migration Compact's drafting process have the decision-making capacity to push forward milestones such as the Kenya workshop or the funding of the Network.

On top of all this, it should be added that it is true that a certain degree of normality is gradually being restored with respect to mentions of the Global Compact on Migration. In September 2021, Hungary and the Czech Republic disassociated themselves from paragraph 11 of an annual General Assembly resolution on the promotion of durable peace and sustainable development in Africa that "Reaffirms the convening of the intergovernmental conference held on 10 and 11 December 2018 in Marrakesh, Morocco, and recalls that it adopted the Global Compact for Safe, Orderly and Regular Migration, also known as the Marrakesh Pact on Migration." On the positive side, 25 of the 27 Member States did not contest such a reference. Yet, as things stand, an active EU role seems impossible to realise. And the role of a Commission or EEAS working in the shadows to push for the implementation of the Migration Compact is unsustainable in the medium to long term.

A proof of this is that the regional review of the implementation of the Migration Compact in Europe, which took place in November 2020, only mentioned the EU in passing. And that raises one important point, that non-politicised external migration governance, an area where Member States were usually united, has been the unexpected loser of the Migration Compact's contestation. In other words, the EU has shot itself in the foot.

4.4. CONCLUSIONS

It was argued in this chapter that the international migration regime had suffered a long winter until the momentum that represented the global crisis of 2015, which gave birth to the first international document on migration: the UN Global Compact for Migration. It is a non-binding document, aspirational in nature and relying on voluntary commitments for success. In spite of this, the European Union (EU) and its Member States at the time of the global crisis had already equipped themselves with a migration regime standing on feet of clay.

The chapter has argued that the 2016 New York Declaration was key to the creation of the international migration regime under the auspices of the UN. While the migration crisis in Europe was central to the entry on the agenda, the process leading to the Declaration was initially led by the U.S. with a clear focus on refugees. Eventually, international deliberations turned to both refugees and migrants. The EU and its Member States declined the invitation to lead the process on several occasions. In particular, the agenda-setting of the UN Global Compact for Migration was driven from within by UN bureaucrats. A common agreement was reached among the various UN Member States to adopt the International Organization for Migration as an agency of the UN. Despite some reluctance, the U.S. and the EU agreed, and the 2016 New York Declaration certified that the IOM would become part of the UN environment. The Migration Compact that

followed was negotiated over two years and consisted of three distinct stages. The consultation phase between April and December 2017. The stocktaking meeting in Puerto Vallarta in December 2017. And the negotiation phase between February and July 2018. The process culminated in December 2018 when the General Assembly voted overwhelmingly in favour: 152 countries adopted the Migration Compact. And at the time of writing it has begun to be implemented, so it is approaching the final stage of implementing the norm. In 2021, for example, regional conferences, such as the African one, were held to review the progress made.

During the initial process of drafting and negotiating the Migration Compact, the EU was not interested in being an active part of the process, as it was devoting its resources to resolving the migration issue at home -an issue that remains unresolved to this day. The migration issue polarised the Member States and the Commission between those in favour of a migration policy with a liberal face and those who supported a securitised migration policy. Although Member States' disagreements persisted, the Commission's position in the EU migration governance system was strengthened by putting an end to the isolated work of its Directorates General. The Commission found a pragmatic solution: combining the two approaches. Meanwhile, the foreign policy decision-making bodies in Brussels, CONUN (UN Working Group) and COREPER II (Permanent Representatives Committee), drafted and approved guidelines to be followed by the EU delegation in New York and the Member States. The 2017 European Consensus on Development institutionalised the need for the EU to adopt a UN Global Compact for Migration. It became a multilateral objective of the EU.

The Puerto Vallarta meeting in December 2017, however, marked a turning point, as the U.S., under the Trump Administration, decided to disengage from the process. This impacted the EU in at least two ways. First, it led to the EU assuming a greater role during

the process, used to transfer EU practices into the final document. Second, in February/March 2018, Hungary exerted contestation as dissidence to all that qualified as EU-labelled. It prevented the EU from speaking, even though it did not block the EU from negotiating behind closed doors. That episode was critical for the EU's foreign policy system. Although Brussels decided not to participate in the process, several options were on the table. From persuasion to legal bases to shared competences, it was the commitment of the other Member States to the EU project as a political community that saved the EU from disastrous failure. The 27 Member States decided to bypass Hungary by appointing Austria as the group's spokesperson. All this led, in July 2018, to the adoption of the UN Global Compact for Migration by all 27 Member States. More importantly, it saw the EU and willing Member States encapsulate the contestation episode in which they spurned Hungarian claims to the point that the country was symbolically expelled from the EU policy community. This illustrates how the EU and its Member States can respond to and manage internal contestation, if necessary.

But between the Migration Compact's approval in July 2018 and its adoption in December 2018, the U.S., led by the Vice-President, began reaching out to European capitals and heavily influenced an online campaign against the Global Compact for Migration. As a result, Austria, which was vested with the institutional power of the EU's rotating presidency during the negotiations, where Chancellor Kurz endorsed the country's participation several times and was aware of the role Austria was playing to keep the Visegrad group on the European side, finally decided to withdraw from the agreement. This new episode of dissidence had profound consequences for the EU, as it triggered a snowball effect of countries leaving the Migration Compact or not voting in favour of it. While Austria shifted to a discourse based on securitisation of migration to the detriment of a Migration Compact that combined the liberal and securitising approach;

the Austrian dissidence challenged the EU's principle of sincere cooperation and, by extension, eroded the EU's genetic programming to uphold multilateralism. In effect, signing the Global Compact for Migration would have facilitated migration management, as countries of origin, transit and destination would work under a Europeanised framework for action.

As things stands, the Commission and EEAS are working on the implementation of the Migration Compact without saying it out loud. Indeed, despite the fact that the Commission is funding the UN Migration Network, fractures remain as in September 2021, Hungary and the Czech Republic disassociated themselves from a General Assembly resolution that highlighted the existence of the Global Compact for Migration. On the positive side, 25 of the 27 Member States did not contest such a reference. A window of opportunity may open, and the 2022 Compact Review Conference could be seen as an opportunity to bring all Member States on board. Now it remains to be seen whether the Union will present a joint commentary at the Review Conference. That is, if the Union would be able to call a spade a spade. It would be surprising if the EU were unable to set such a milestone, given that the Commission, under the German Council Presidency, proposed in September 2020 the New Pact on Migration and Asylum, which sets out the European Commission's new approach to migration in the bloc. And that the external dimension remained unaltered, with no criticism coming from the states that left the Migration Compact. But you never know, as one interviewee said, diplomats forget they are diplomats when dealing with migration (Interview 15).

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LIST OF INTERVIEWS

#	Position	Date
1	Member State representative	7/9/20

2	EU official	4/9/20
3	Member State representative	14/9/20
4	Member State representative	30/9/20
5	EU official	6/10/20
6	EU official	30/9/20
7	EU official	7/10/20
8	EU official	22/10/20
9	Member State representative	19/10/20
10	EU official	16/10/20
11	EU official	8/10/20
12	EU official	12/11/20
13	Member State representative	4/11/20
14	EU official	30/10/20
15	Member State representative	13/11/20
16	Civil Society representative	6/11/20
17	Member State representative	6/11/20
18	Member State representative	8/12/20

CHAPTER 5

THE EUROPEAN UNION AND GENDER EQUALITY: THE CASE OF SEXUAL AND REPRODUCTIVE HEALTH AND RIGHTS (2017-2021)

5.1 INTRODUCTION

Sexual and Reproductive Health and Rights (SRHR) is a norm that refers to the application of human rights to bodily autonomy and control over reproduction and sexuality. But the norm underwent a long period of emergence, beginning at the end of World War II. Its emergence was preceded by previous developments in various agendas. We can find traces of SRHR in the Constitution of the World Health Organization (WHO) or the Convention on the Elimination of Discrimination Against All Women (CEDAW). In other words, it is part of broad norm clusters[44] (Lantis and Wunderlich 2018), ranging from the right to health to gender equality, subsumed under sustainable development. And SRHR as such, was finally endorsed during the 1994 Fifth International Conference on Population and Development (ICPD) in Cairo and the 1995 Fourth World Conference on Women in Beijing,[45] a period described as "the high point of (a) phase of liberal internationalism" (Crocker 2015, p. 10). The 1994 Cairo Program of Action defined reproductive health as a "state of complete physical, mental and social well-being, and not merely the absence of disease or infirmity, in all matters relating to the reproductive system and to its functions and processes". It also described reproductive rights as the

[44] A norm cluster is a collection of aligned, but distinct norms at the centre of a particular regime.
[45] Although reproductive health and rights were initially put forward as part of population and development policies, the term SRHR became prominent in the field of women's rights during the 1995 Beijing Conference.

“recognition of the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, as well as the right to attain the highest standard of sexual and reproductive health”.

Since then, the norm has begun to be internalised. If we take the issue of abortion, which is a core SRHR feature, from the 1994 and 1995 conferences to the present day “almost 50 countries around the world [enacted] laws expanding the circumstances in which abortion is legal” (Center for Reproductive Rights 2021). For example, 15 countries have reformed their national legislation to permit abortion (e.g., Ireland, Spain, Portugal, Mozambique), and 18 countries have repealed the total ban on abortion (e.g., Nepal, Chile, Colombia, Iran, Angola). Despite the progress made in the norm implementation, it has also come under fierce attack from a network of state and non-state actors under the leadership of the Holy See and the U.S. Republican administrations. With a critical and delegitimising discourse, they seek to build an opposition to SRHR based on three main issues: abortion, marriage/family and homosexuality, with arguments related to the country's own values (culture and religion).

At the European Union (EU) level, SRHR has been strongly internalised. Being at the core of the 2006 and 2017 European Consensus on Development, which sets out the EU's common vision for development cooperation. But SRHR is also present in plans such as the EU Action Plan on Human Rights and Democracy, which is the framework within which the EU promotes and protects human rights and democracy worldwide, and the EU Gender Action Plan, which is the tool through which EU external action promotes gender equality in all development policies. It also does so in regional accords such as Cotonou or Post-Cotonou, projecting the norm to Africa, the Caribbean and the Pacific (ACP). Yet, the EU's internalisation of SRHR has been based on the existence of a

permissive consensus (Hooghe and Marks 2009). The permissive consensus is based on a well-established characteristic of the EU relationship with human rights. The EU can be seen as a progressive player on the world stage if Member States are assured that they will not need to enforce such a norm at home, especially the abortion aspects. This has allowed the EU to push around the world for the adoption of SRHR, even resorting to abortion in humanitarian emergencies, while Malta continues to ban abortion at home.

Moreover, the interaction between the EU's willingness to promote SRHR abroad and some Member States reasserting the importance of their national sovereignty has led to the strengthening of the norm in the EU context, to the extent that SRHR is a taken-for-granted norm in all areas of the Union's external action that deal with women's rights. In fact, the Union has learned to circumvent contestation against SRHR. This can be noticed during the negotiations of the 1997 Council Regulation between the EU and its Member States on assistance to population policies and programs in developing countries with the Italian objection. And opposition subsequently emerged in the Maltese objection in 2017 during the European Consensus on Development negotiations, or the Polish objection in 2018 in relation to the new EU-ACP (post-Cotonou) partnership. But in the case of the SRHR, contestation is not a mechanism that weakens the norm, but the result of a norm that has been strengthened.

As will be revealed in this chapter, contestation in relation to SRHR is defined as opposition.[46] It is posited that, due to the actor's limited agency, the actor is unable to participate in norm change and ends up contesting the application of the norm. However, the existence within the EU of a critical stance on SRHR implies that international developments could increase the actor's agency and thus put an end to the EU's permissive

[46] Contestation as opposition means that actors "accept the ruling order as such and makes use of the institutionalized forms of political involvement to express its dissent" (Daase and Deiteholff 2019, p.12).

consensus on SRHR. The causal mechanism follows from the observation that the EU was able to achieve an internal consensus on the norm in 1995 as a result of the adoption of the norm at the international level (Elgström 2000, p. 462). This fact denotes that if a change in the international order were to occur, it would have an impact on the EU's internal consensus. In this sense, the present dissertation chapter pays attention to the SRHR development within the EU and in the UN.

The chapter shows how the EU manages to navigate the SRHR contestation exercised in the period (2017-2021) under study by Hungary and Poland, and to a lesser extent by Malta. Similarly, at the UN, the EU is able to confront the contestation exercised by the anti SRHR group, which is led by the Trump Administration. But, in October 2020, the U.S. advanced the so-called "Geneva Consensus Declaration." The Declaration advocates continuing to uphold reproductive health as an international norm, while calling for the renationalisation of the reproductive rights norm. This international breakthrough was, within the EU, co-sponsored by Hungary and signed by Poland. And it had immediate effects on the EU's commitment to SRHR, as these two Member States, for the first time, weakened the EU consensus on SRHR by opposing in December 2020 the adoption of the Gender Action Plan III as Council Conclusions, which led to downgrading the document in the form of Presidency Conclusions. But, in 2021 in a less polarised international environment, the EU was able to return SRHR to its previous normative consensus. It is the case of the 2021 April Team Europe Conclusions reinstating SRHR.[47] All in all, the EU foreign policy vis-à-vis SRHR has been more robust than we could have initially expected. Yet, looking at the norm with a broader

[47] Team Europe is an approach that initially started as the Union's response to the COVID-19 pandemic and has gained traction and could be becoming a new approach to international development.

perspective the chapter lays out that SRHR can indeed be weakened within the EU when there is a close interaction between the international level and the domestic level.

The next section first explores the evolution of the SRHR norm at the international level, alongside with its development at the European level. A third section is presenting the case study on SRHR, in which documents and 32 semi-structured interviews are used to trace between 2017 (adoption of the European Consensus on Development) and 2021 (adoption of the Team Europe Conclusions) the contestation of the norm and the effects it had on the EU foreign policy system. Conclusions and future avenues for research are addressed in the fourth section.

5.2 The Making Of SRHR At The UN And The EU

5.2.1 SRHR: The Long and Winding Road

The preamble of the UN Charter establishes "the equal rights of men and women" as a foundational element.[48] The insertion of equal rights for men and women in the Charter led to the setting up, in 1946, of the Sub-Commission on the Status of Women (CSW), as a subsidiary institution of the Commission on Human Rights, although it became a full-fledged commission in 1947. An institution that over time would become the beacon of women's rights and the catalyst for the implementation of the 1995 Beijing Platform for Action.

In parallel, the 1948 Universal Declaration of Human Rights recognised the "equal rights of men and women" while identifying the existence of a standard of living adequate for health. The right to health was defined by the Constitution of the World Health Organization (WHO) in 1948 as "a state of complete physical, mental and social well-

[48] Its inclusion in the Charter was the result of three factors: the mobilisation of civil society in favour of women's rights, the presence of women on the negotiating teams of the fifty national delegations, and advocacy by the Inter-American Commission on Women

being and not merely the absence of disease or infirmity". This definition forms the basis of the subsequent definition of sexual and reproductive health, included in the Cairo Program of Action (1994). And from a human rights perspective, the International Covenant on Economic, Social and Cultural Rights (1966) is one of the landmarks of SRHR, stating in Article 12.1 that "the States Parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

More significantly, in the 1960s, the United Nations underwent a profound change with decolonisation. The considerable influx of African and Asian states shifted the organisation from two main pillars (peace and security and human rights) to three, with the pillar of development. The changes affected the CSW, as it now addressed women's socioeconomic inequalities and the conditions for their development. But the Second Population Conference in 1965 already revealed the difference between U.S. and Third World countries' views on population (women) and development. While the U.S. linked development to the control of population growth, Third World countries focused development on improving the socioeconomic conditions of the population, including those of women. The Conference approved the creation of the United Nations Fund for Population Activities (UNFPA, renamed the United Nations Population Fund in 1987), which would later become a central component of the United Nations architecture for women and health. A turning point was subsequently marked by the Third Population Conference, held in Bucharest in 1974, which introduced a new vision of population policy, no longer focused on population control, but on economic and social development, as expressed in the slogan circulated during the Conference "the best contraceptive is economic development". This approach would not be endorsed until the Fifth Conference in 1994, which would be renamed the Conference on Population and Development.

During the Women's Decade 1976-1986, SRHR were put high on the agenda again. The Decade fostered dialogue between civil society, Member States and UN agencies such as the CSW. The 1979 Convention on the Elimination of Discrimination Against All Women (CEDAW) was one of the most important outcomes of the Decade and the first international agreement to comprehensively address women's rights. [49] It is the first legally binding agreement to address the existence of reproductive rights for women (Articles 5.b and 16.e) and to contextualise the concept of family planning (Articles 12.1 and 14.b). But it was the subject of a fundamental criticism of the Convention related to the existence of a gap between what was agreed upon in CEDAW and the socio-cultural customs of certain countries.[50] This calls into question the universal value of the rights enshrined in the Convention, thus opening the way to norm contestation. In any case, Article 16.e is fundamental, as it addresses both reproductive rights (deciding freely and responsibly on the number and spacing of their children) and access to "services" to give effect to these rights. There were only two reservations on this article. Malta and Monaco, under pressure from the Holy See, with which they have a close relationship, entered reservations on the grounds that Article 16.e could be interpreted as an obligation for States Parties to the Convention to legalise abortion.

Just when it seemed that the Decade was finally allowing women's rights and SRHR to emerge after a long and winding road, the Third Population Conference in Mexico in 1984 put a brake on their normative development. At the Conference, the

[49] This Convention is, to date, one of the few international treaties that has been ratified almost universally, with 189 states parties (among the exceptions is the U.S.). It should also be noted that the Convention is one of the conventions with the highest number of reservations submitted by states parties.
[50] The contestation of the norm in terms of a mismatch between the global norm and local customs has been picked up in the localisation literature. A prominent work on norm localisation is Acharya (2004).

Reagan administration stepped away from the population policy pursued by its predecessors (including Republican Presidents Nixon and Ford), which focused on the application of mechanisms to control population growth. Prior to the Conference, Reagan announced the adoption of the so-called Global Gag Rule or Mexico City policy, which stipulates that all NGOs receiving federal funds must refrain from promoting or performing any abortion-related services in third countries. Yet, the U.S. position, marked by the ultra-conservative religious lobby, clashed from 1981 onwards with the pandemic caused by the Human Immunodeficiency Virus (HIV), which particularly affected women in Third World countries. As a consequence, both NGOs (International Women's Health Coalition, IWHC) and international organisations (WHO) advocated for improved health services related to family planning, including a greater presence of sex education (IWHC 1991). In fact, the IWHC was instrumental in changing the WHO's approach and reframing the issue of contraception no longer in quantitative terms (population growth) but in qualitative terms (women's needs).

In any case, SRHR validates the point that norms do not evolve in a linear manner. And the momentum for SRHR to be accepted as a new international norm had to wait until the 1990s. Four decades elapsed between the inception of the norm and its birth. The SRHR was finally born in a decade that has been described as a liberal internationalist decade, marked by a series of major international conferences of the United Nations, with different themes: Environment and Development (1992), Human Rights (1993), Human Settlements (1996) or Food (1996), among others. In all of them, the role of women in the agenda was addressed in a cross-cutting manner. Women's rights, and in particular SRHR, played a central role in two cases, at the Fifth International Conference on Population and Development in Cairo (1994) and at the Fourth World Conference on Women in Beijing (1995). The Cairo and Beijing meetings are the two major milestones

in terms of the emergence of the norm as such and its acceptance (with reservations). The outcomes of these conferences, declarations and action plans were made possible by progress on three fronts: persuading states to make ambitious commitments; solving internal disputes within the women's rights movement; and overcoming the activism of the Holy See in its attempt to torpedo any progress on SRHR.

The Fifth Conference on Population and Development, held in Cairo in 1994, is identified as the moment of emergence of the SRHR norm. The entrepreneurs of the norm are diverse (States, civil society, UN agencies), but the role played by NGOs and the women's movement in general was fundamental. In fact, feminist organisations pushed for reproductive health and rights to be presented as the result of international instruments already in force. They succeeded in getting the Program of Action to include the definition of reproductive health in line with the concept of quality care recognised by WHO in paragraph 7.2, but above all it was recognised in paragraph 7.3 that reproductive rights encompass human rights already recognised in national laws and international human rights documents, adopted by consensus. Reproductive rights were thus linked to the Universal Declaration of Human Rights and CEDAW. These references made it possible to argue that the SRHR norm is nothing new but was already present in earlier human rights documents.[51]

Regarding the acceptance of the norm, attention should be paid to practices, which are highly important in international institutions, determinant both in the processes of change and in the processes of normative consolidation (Barbé 2016). It is thus worth highlighting the role played by the Secretary General of the Cairo Conference, the Indian

[51] Yet, the Holy See immediately reacted against the process of recognising SRHR as a human right, raising reservations about the text that was to be adopted in Cairo with regard to reproductive health and rights. By labelling the Women's Alliance as a group seeking the legalisation of abortion without any restrictions, the Holy See attempted to fragment the ongoing social movement and thus slow down its dynamism. In the end, the social organisations established a shared roadmap for the Conference.

diplomat Nafis Sadik. On the one hand, she created spaces for dialogue prior to the Cairo meeting in which reluctant governments could cast their doubts and, on the other, she used her status as a gynaecologist from a developing country to defend the need to incorporate sexual and reproductive rights, including abortion, in the Program of Action. Also instrumental was the role of the chair of the negotiations of Chapters VII (Reproductive Rights and Reproductive Health) and VIII (Health, Morbidity and Mortality) of the Program of Action, a Dutch diplomat. He used the rules and procedures of the Conference to achieve the adoption by consensus of the section on abortion (point 8.25), which had, in principle, the reservations of more than seventy countries. This consensus led the Holy See, for the first time in the history of UN Population Conferences, to vote in favour of the Program of Action, but with reservations on Chapters VII and VIII. And the resulting Program of Action makes three fundamental contributions to the SRHR norm: the definition of reproductive and sexual health, the definition of reproductive rights and the mention of abortion in terms that take into account the concern already raised by the Swedish delegation at the 1984 Population Conference, namely, the negative effects of unsafe abortion on women's health.

The Cairo Conference was a turning point in terms of the emergence and acceptance of the norm. It became, the benchmark for the norm in the field of development. Along with the definition of the norm, there was an institutional breakthrough at the UN; the Commission on Population and Development, together with the UN Population Fund, went on to develop international programs on reproductive health. In the U.S., the U.S. Agency for International Development (USAID) also created specific programs on reproductive health. As for civil society, the International Planned Parenthood Federation (IPPF), which had been known for specifically promoting family planning policies, also reformed its programs to focus on women's reproductive health.

More notably, the Fourth World Conference on Women, held in Beijing in 1995, was in fact the point of convergence of two previous major international conferences. On the one hand, the 1994 Cairo Conference, which had defined both reproductive health and reproductive rights, and, on the other, the 1993 Vienna Conference on Human Rights. The objective of Beijing 1995 was very clearly defined by the then First Lady of the U.S., Hillary Clinton, who proclaimed in her opening speech at the Conference that "women's rights are human rights, and human rights are women's rights". The Beijing Declaration and Platform for Action not only included mention of reproductive health and rights, as defined in the Cairo document, but expanded them in terms of women's empowerment, with references to women's autonomy over control of their bodies. The demands of the more progressive bloc regarding the strengthening of women's rights were reflected in the section "Women and Health" and, specifically, in epigraphs 96 on control of sexuality and 97 on control of fertility. The former recognises that "women's human rights include their right to have control over matters related to their sexuality, including their sexual and reproductive health" and the latter further articulates this concept by conceiving that women's enjoyment of any rights depends on their "ability to [...] control their own fertility". The inclusion of the headings relating to women's autonomy to decide over their own bodies was hailed as a victory for the feminist movement.

However, the Holy See developed an antipreneurship strategy, focused on preventing the approval of the document because of its reference to abortion. The Holy See followed the usual procedure of liberal normative entrepreneurs, networking with non-governmental organisations and with very diverse states, such as Saudi Arabia, Iran, Russia and Latin American countries (Argentina, Nicaragua); in the latter case it pressured them to include conservative Catholics in their delegations (Guzman 2001). Given the diversity of members, from traditional Catholic countries to Islamic

fundamentalists, the network became known by its detractors as the Unholy Alliance. The opposition to the norm is based on three main issues: abortion, marriage/family and homosexuality, with arguments related to given countries' values (culture and religion).

In short, the SRHR norm, as reflected in the Cairo and Beijing documents, arose in the context of the first half of the 1990s, the peak of Western-led liberal internationalism. Despite this, its acceptance is based on multiple reservations, which lay the foundations for the contestation that the norm will undergo as a universal women's right. And it should not be forgotten that the 1994 Cairo and 1995 Beijing outcomes are not legally binding instruments. This may explain the acceptance of many countries despite their reluctance throughout the process.[52] Thus, the normative emergence of SRHR was only possible because of the political and non-binding nature of the agreement. The normative development of the Beijing (and Cairo) agenda is expected to be conflictive, as will be seen in the successive follow-up conferences (every five years). And the case with the Millennium Development Goals (2000) proved this. By focusing in its Goal 5.B. on universal access to reproductive health (reduction of maternal deaths), without any reference to reproductive rights. And Beijing+5 turned out to be more of a meeting to ensure the survival of SRHR than anything else. At both Cairo+5 in 1999 and Beijing+5 in 2000, States opposed to reproductive rights began to present amendments aimed at weakening the commitments made at Cairo 1994 and Beijing 1995. This led states and organisations most committed to the norm, such as the European Union (EU), to decide to abandon any attempt at normative progress, to the point that Beijing+5 was labelled by NGOs as "Beijing minus 5" (Chappell 2006).

The following years confirmed this trend. Internalising and implementing SRHR was proving to be a very challenging and difficult endeavour. In 2005, Beijing+10 was

[52] Alongside the Holy See, Argentina, Honduras, Benin, Ecuador and Malta had been particularly reticent.

the first review of the 1995 agreements under the Republican Bush administration. Given the position on the political spectrum of the U.S. government and the reinstatement of the Reagan-era Gag Rule, NGOs and states committed to sexual and reproductive rights opted to further tone down the diplomatic profile of the meetings as the only way to preserve the hard-won gains made in Cairo and Beijing. In that sense, the best course of action was not to open negotiations in any area (DAWN 2003). In fact, the U.S., together with Egypt, Qatar, Costa Rica, Nicaragua and Panama, submitted an amendment to revise the 1995 agreements, stressing that the 1995 Declaration and Platform for Action could not be considered instruments of international law. Due to the rejection by the vast majority of delegations, the amendment was withdrawn. Beijing +10 thus maintained the status quo of the norm and paved the way for the new leitmotif of the pro-SRHR group, based on the need to "hold the fort" (Interview 17 and 20).

While "hold the fort" was the new guiding framework, the following decade also saw some advances in the SRHR norm. Of particular note was the role played by the then Secretary of State Hillary Clinton in unlocking, after years of negotiations between civil society and UN Member States, the creation in 2010 of UN Women. The agency was a central player in the formulation of the Sustainable Development Goals (SDGs), adopted in 2015 by the UN General Assembly. Following the proposals of many civil society organisations in the liberal world, the SDGs represent a radical departure from the MDGs, adopted in 2000. The vision of the MDGs, reduced to targets applicable to the developing world and focused on poverty reduction, is abandoned in favour of a global pact for development of universal scope that incorporates all dimensions: economic, social and environmental. Thus, equality and social inclusion become central to the new SDGs, and gender equality, which in the MDGs was linked exclusively to education,[53] now becomes

[53] Goal 3 of the Millennium Development Goals, Promote gender equality and empower women, focused on eliminating gender disparities in primary and secondary education.

a cross-cutting objective. Goal 5 of the SDGs, "Gender equality and women's empowerment," was a turning point in terms of reproductive rights, if we go back to the previous decade, as point 5.6 includes the need to improve access to sexual and reproductive health services and reproductive rights, as defined in the Cairo and Beijing documents. The SDGs also strengthen the norm through the institutional empowerment that came with the appointment of a powerful agency, such as UN Women,[54] as responsible for promoting Goal 5.

At the same time that the SRHR agenda was being normatively and institutionally strengthened through the SDGs, the coalition of states and NGOs opposing the SRHR norm continued to work on building a movement that not only showed its opposition to the norm, but also began to actively act as antipreneur (Bob 2012), raising questions about the normative basis for the human rights of SRHR and women's rights. In this regard, the broad movement led by Russia in the Human Rights Council is important. In 2012, it proposed a resolution calling for a review of human rights on the basis of traditional values. The adoption of resolution A/HRC/RES/21/3, with 25 votes in favour, 15 against and 7 abstentions, received the support of states such as Cuba, Libya, Saudi Arabia, India, China and Uganda. The resolution advocates the need for "a better understanding and appreciation of the traditional values shared by all humanity and enshrined in universal human rights instruments" and which "contribute to the promotion and protection of human rights and fundamental freedoms throughout the world" (Vivanco and de Rivero 2012). The resolution was interpreted by the feminist movement as potentially dangerous to the advancement of women's rights by referring to the existence of traditional rights that can serve as an umbrella to reinforce the idea of concepts such as the traditional

[54] UN Women was born from the merger in 2010 of the extensive network of UN agencies related to women: OSAGI, UNIFEM, INSTRAW. It has delegations in all regions of the world (two in Africa), which brings it closer to local problems and facilitates the development of action programmes. It also has strong support from civil society (women's rights organisations).

family and the right to life of the unborn child (Sanders 2018). In fact, the Human Rights Council Resolution, pushed by Russia in 2012, clashes with the Declaration of the 1993 Vienna Conference on Human Rights, which unequivocally recognised that women's rights are human rights with universal validity, regardless of traditional practices, customs and cultural prejudices (paragraph 38 of the Declaration).

In a further development, the World Congress of Families (a network of organisations against sexual and reproductive rights) was institutionally strengthened with the creation of a secretariat and in 2016 was renamed the World Family Organization (WFO). That same year, Belarus, Egypt and Qatar created the Group of Friends of the Family, which under the umbrella of ECOSOC gave rise to the Union of Nations for a Family-Friendly World,[55] a coalition of 25 countries (including Russia) that has a permanent presence at the United Nations. It emphasises the family as the natural and fundamental unit of society and reminds the United Nations of its obligation to protect families formed by the union of a man and a woman consecrated by marriage. The WFO has characterised the pro-family movement and coalitions as a group that "has no language, culture or creed of its own. It is divided by history and geography, by social customs and traditions, and by government. But it is united by a foundational element. This foundational element is the basis of society; it is a community called family" (The Natural Family 2016). In other words, the cultural diversity of the group is an element of its strength.

And up to Trump's arrival in the White House, the challenge to the SRHR norm consisted of a critical and delegitimising discourse. Motivated by his domestic supporters (the religious right), and those of Vice-President Pence, Trump adopted a radical position

[55] The following states are members: Bangladesh, Belarus, Comoros, Egypt, Indonesia, Iran, Iraq, Kuwait, Kyrgyzstan, Libya, Malaysia, Nicaragua, Nigeria, Oman, Pakistan, Qatar, Russian Federation, Saudi Arabia, Somalia, Sudan, Tajikistan, Turkmenistan, Yemen, Uganda, Zimbabwe.

on reproductive rights, calling himself a “defender of the unborn in the White House” (NPR 2018). He reintroduced the Global Gag Rule, but in a more radical way than Bush. The new Global Gag Rule affected all types of health care linked to sexual and reproductive rights, cutting funds to the tune of $9 billion, while the Bush administration had cut $500 million focused on family planning services. On foreign policy, the Trump presidency's strategy was well outlined. The Secretary of State, Mike Pompeo excluded indicators linked to sexual and reproductive rights from annual human rights reports. Thus, any state violating these rights would not, by definition, be susceptible to U.S. diplomatic pressure or economic sanctions.

Indeed, U.S. activism on this issue reinforced the antipreneurship bloc in international institutions, whether development or human rights. For instance, during Cairo+25 on Population and Development in 2019, no document was adopted. Pro-SRHR organisations and states, which had envisioned the adoption of a revised program of action, felt that this could be counterproductive to what was already set out in the 1994 Plan of Action. And the most symbolic breakthrough in the erosion of the SRHR norm came at the UN Security Council in April 2019 in relation to the Women, Peace and Security (WPS) agenda. The Security Council had adopted Resolution 1325 on WPS in 2000, which was a normative turning point for the Council; indeed, Resolution 1325 “has provided the impetus and mechanisms to include gender as a factor in international peace and security” (Guerrina and Wright 2016, p. 293). The new wording speaks of providing victims of sexual violence in conflict with access to “health care.” In normative terms, Resolution 2467 opens the door to a new meaning of the norm, as the actors challenging SRHR identify the term “care” with the prohibition of abortion. In addition, the attitude of the U.S., with the threat of veto, made it easier for Russia and China to abstain, for the

first time, from voting on a resolution on WPS. Thus, the WPS agenda and its relevance to women's rights in the security arena is clearly weakened. France considered this to be 'intolerable and incomprehensible', even more when resolutions 1889 (2009) and 2106 (2013) already recognised sexual and reproductive health (UN Security Council 2019, p. 32).

The move to successfully challenge and erode the norm was reinforced in the context of the COVID-19 pandemic. Whereas Bush once acted pragmatically on reproductive health in the face of the HIV pandemic, Trump, in contrast, redoubled his attacks on the norm in the context of COVID-19. In the midst of the pandemic, whose impact on reproductive health was increasingly evident due to the reduction in health services, the Geneva Consensus Declaration was presented on October 22, 2020. This document is the normative reference for the anti-sexual and reproductive rights movement. It is a non-binding political document that has been endorsed by 34 states and co-sponsored by Brazil, Egypt, Hungary, Indonesia, Uganda and the U.S.[56] The Consensus draws on the Universal Declaration of Human Rights to defend the existence of a right to life based on the traditional values represented by the family as the basic unit of society. And the novel element of the Geneva Consensus is its re-reading of Cairo 1994 and Beijing 1995 in a double sense: on the one hand, to give a new meaning to reproductive health and, on the other, to deny the existence of reproductive rights recognised as such at the international level.

In short, the Geneva Consensus Declaration, presented in October 2020, is the most elaborate formulation of a response to the SRHR norm. The year 2020 was an important date for the women's rights agenda: the 25th anniversary of Beijing, the 20th

[56] The signatory countries are: Bahrain, Belarus, Benin, Brazil, Burkina Faso, Cameroon, Democratic Republic of Congo, Republic of Congo, Djibouti, Egypt, Eswatini, Gambia, Georgia, Haiti, Hungary, Indonesia, Iraq, Kenya, Kuwait, Libya, Nauru, Niger, Oman, Pakistan, Paraguay, Poland, Saudi Arabia, Senegal, South Sudan, Sudan, Uganda, United Arab Emirates, U.S. and Zambia.

anniversary of Resolution 1325 and the 10th anniversary of UN Women. In this context of celebrations, aborted by the pandemic, it is worth noting the launching of a joint initiative by UN Women, Mexico and France, with the support of liberal civil society organisations and the European Commission, to organise the Generational Equality Forum, within the framework of the campaign "Generational Equality: For Women's Rights and an Equal Future" campaign. The aim of the Forum, held in Mexico and Paris in March and July 2021 respectively, is to advance the Beijing agenda and, with it, SRHR. And the competing initiatives (Geneva Consensus vs. Generation Equality Forum) are indicative of the polarisation and fragmentation of SRHR. Although the initiatives are antagonistic in that they want to roll back or advance the SRHR norm, both share a common feature: developing the framework outside the UN.

5.2.2 The EU and SRHR: A Strong Actor Abroad, A Missing Actor At Home

In 2015, the European Union (EU) stated that it has promoted gender equality norms since 1957 and that they are now "part of the EU's DNA" (EEAS 2015). Indeed, as stated by the Ambassador for Gender and Diversity of the European External Action Service (EEAS), Stella Ronner-Grubacic, "gender equality, the human rights of all women and girls and their empowerment are core values and political priorities for the European Union" (UN Security Council 2021: 29). These statements echo the idea of an EU gender myth (Macrae 2010), in which, at the international level, the EU projects itself as a normative leader seeking to upload gender values into multilateral institutions in areas such as human rights. These circumstances have led scholars to speak of the EU as a gendered actor (Guerrina and Wright 2016; Elgström 2017). To be more precise, the EU states in Article 8 of the Treaty on the Functioning of the European Union (TFEU) that "in all its activities, the Union shall aim to eliminate inequalities, and to promote equality,

between men and women." Reducing gender disparities has been considered a fundamental norm since the 1995 Council Resolution on integrating gender issues in development cooperation. More importantly, if the EU was developing a gender policy with a particular focus on gender and development it was because the norm was already being developed at the international level (Elgström 2000, p. 462). The accession in 1995 of Nordic countries such as Sweden and Finland led to the Union having a critical mass of states in favour of gender policies. And the catalyst for the inclusion of gender as an EU policy was the 1995 Beijing Conference. Such an assessment illustrates the existence of an internal consensus that depends on the whereabouts of the norm at the international level.

Delving deeper into the key actors that settled gender policies as part of the EU agenda, scholars have considered, also for SRHR, that its inclusion was a successful case of bottom-up Europeanisation by the Nordic countries with Denmark leading the way (Elsgtröm and Delputte 2016). These Member States also met with the will of the Commission which also considered that the EU should have a gender policy, if possible, present at the 1995 Beijing Conference (Elgström 2000). Within the Commission, two Directorates General (DG) pushed in this direction. DG IB (responsible for aid to Latin America and Asia), and DG VIII (responsible for aid to African, the Caribbean and Pacific countries). To this end, the Commission renamed the Women in Development Desk (focused on women's projects) as the Gender and Development Desk (focused on gender role analysis in all development aid projects). However, it became clear that any engagement with gender equality norms, including SRHR, would only take place with the outside world. For instance, it was part of the 2004 Malta accession agreement that the EU would never interfere in Malta's choice on banning abortion.

Following on the duality exemplified by the Malta case, the 2006 and 2017 European Consensus on Development (ECD) have become strategic documents that have strongly internalised the EU's commitment to support the global advancement of SRHR while mechanisms and tools for the same goal within the Union were absent. The ECDs have been instrumental in further institutionalising the norm on SRHR within the EU. The Consensus provides the agreed language that is then referred to in Council Conclusions, such as the annual Conclusions of the Human Rights Council or Commission on the Status of Women (CSW) sessions, but also in thematic documents such as the EU Gender Action Plans. The existence of strategic documents on SRHR can be understood as a manifestation of the EU's identity as a liberal normative power (Wagner 2017). But the 2006 ECD was not the first document to internalise the norm; the first signs of institutionalisation of the norm are to be found before the ECD release. SRHR was already addressed in the 1997 Council Regulation 1484/97 on aid for population and programs in developing countries (Council of the EU 1997).

If the norm that was advanced in 1994 in Cairo and in 1995 in Beijing anchored SRHR in two international regimes: development and human rights, the EU decision-making system would do the same. This is why SRHR are addressed in two Working Groups: the Working Group on Human Rights (COHOM) and the Working Group on Development Cooperation (CODEV). These are then implemented in two broad external action documents: the EU Action Plan on Human Rights and Democracy, and the Gender Action Plan. Overall, the Union’s support for SRHR is mainly expressed in the form of financial commitments to improve access to reproductive health services abroad. In addressing SRHR, EU development policies in Africa aim to ensure equality between women and men and, in turn, empower women by providing them with skills that match the needs of the labour market. SRHR is seen as a way to ensure stability and development

in the region (Council of the EU 2017). In strategic terms, the EU has two key points to promote and advocate for SRHR: establishing close links with Civil Society Organizations (CSOs) and identifying international institutions to advance the norm. In the case of building links with CSOs, DG DEVCO/DG INTPA[57] (which is the Commission DG responsible for development aid and cooperation) works with CSO representatives (e.g., ACT Alliance EU and Women in Development Europe) to address gender issues (Woodward and van der Vleuten 2014, p. 76). To this end, the Commission holds annual European Development Days in Brussels. In parallel, in its gender action plans, the EU specifies the areas in which the SRHR norm should be applied (European Commission 2016) and identifies several UN fora in which SRHR should be expanded: the UN General Assembly, the UN Human Rights Council and the UN Security Council, among others. More specifically, the EU considers the UN Security Council as a key institution for the promotion of gender equality norms, where it intends to pursue the implementation of resolution 1325 on Women, Peace and Security (WPS). The EU WPS Strategy emphasises the need to introduce mechanisms to provide access to reproductive health for anyone who has experienced sexual violence in future UN Security Council resolutions on WPS (Council of the EU 2018).

Finally, and in line with EU objectives to expand SRHR in international institutions, it is worth noting, as highlighted by an EU representative, that the EU promotes, at the international level, more progressive language on SRHR than that agreed by the UN (Interview 3). While the EU promotes "sexual and reproductive health and rights," which includes elements of bodily autonomy such as contraception and abortion, the UN speaks of "sexual and reproductive health and reproductive rights," where the

[57] Prior to the 2019 Von der Leyen Comission, the current DG for International Partnerships was called DG for Development and Cooperation.

differentiation of sexual and reproductive health from reproductive rights is seen as a way of clarifying that, at the UN level, abortion is not promoted as part of bodily autonomy rights (Interviews 1 and 2). It seems clear that the EU is aware that promoting abortion rights at the UN would be counterproductive, as it would risk losing existing support for the norm (Interview 3). At the same time, it prides itself on advocating for more progressive SRHR language at the UN. In the past, such a role has served the purpose of standing up for the norm when it came under attack. This was the case in Beijing +5 (2000), when growing animosity towards SRHR led the EU to clearly defend the norm, in which it managed to preserve its status quo. Such a role, which could be described as a pragmatic actor at the international level, as it can embed different degrees of commitment to SRHR, is also identifiable at the internal level. When members express their disagreement with SRHR, the EU refers to the agreed language to resolve the opposition of a few Member States or makes use of the channels created to mitigate the contestation, as in the case of Malta and its accession agreement.

Over the years, the EU has become a key player in the international architecture of the norm. That performance, however, has been built under a permissive consensus at home, with the ever-present risk that it will one day turn into restrictive dissensus. Efforts have been made to make the EU a two-legged actor on SRHR: one leg being place externally and one internally. The European Parliament has for a long time been an advocate of this approach to SRHR, and it was notably shared by President Macron in his speech to the EU Parliament during France's 2022 Council Presidency in which he stated his commitment to the inclusion of abortion as part of the EU's Charter of Fundamental

Rights.[58] But as things stand, the external leg is robust, while the internal leg is rather thin.

5.3. The EU and The contestation of Sexual and Reproductive Health and Rights (2017-2021)

5.3.1 EU Decision-Making Bodies And Sexual And Reproductive Health And Rights

Sexual and Reproductive Health and Rights (SRHR) is a norm with global roots shaping national-level policy and practices. At the international level, the norm has long been an area described as conflictual where a line divides states that frame women's rights as an acquired right according to the 1994 Cairo Conference and the 1995 Beijing Conference, and states that oppose the norm as they often associate such policies with an international norm linked to the promotion of abortion as a right. In international deliberations on the issue, we tend to identify EU Member States, Norway or Canada on the side of promoting SRHR rights, and actors such as the Holy See, Saudi Arabia or Russia on the opposing side. And depending on whether Democrats or Republicans govern in the U.S., we find the country on one side or the other. While this is a long-standing division in the international arena, it is worth asking what the state of play is in the EU.

And it should come as no surprise that the dividing line also applies within the EU. On the side of the more progressive actors, one can place the Nordic group (i.e., Sweden, Denmark and Finland) together with Germany, France and the Netherlands, and to a lesser extent Spain, Portugal and Italy. On the side of the reluctant actors, the

[58] The Charter of Fundamental Rights of the European Union came into force in December 2009 together with the Lisbon Treaty. The Charter is legally binding.

following countries can be placed: Poland, Hungary and Malta (Interview 22, 23 and 30). It is worth noting that since the 2018 referendum legalising abortion, Ireland is part of the progressive group. While Malta, as we will see, came close, in 2017, to eroding the common position on SRHR is also slowly moving closer towards the progressive group.

Although this picture of a growing majority in favour of SRHR is becoming clearer by the day. There is a shared perception among Member States representatives that something has changed over the past two decades. As one interviewee pointed out, this Union at 27 is no longer the same as the Union at 15. Perceptively, some interviewees have referred to the Eastern enlargement as a turning point. In this line of thought, the same was shared by the current Deputy Secretary General/Political Director of the European External Action Service, Enrique Mora, when he indicated, in 2019, that "Romania is the EU presidency this semester [...] Its representative in the UN Commission on the Status of Women, speaking on behalf of the EU, omits paragraphs agreed at 28 on sexual freedom. It is another EU. Of identity populisms. Let's think about refounding".

But if we contextualise, as has been said by representatives of EU Member States and officials, there has always been normative opposition to SRHR in the EU. And that contestation precedes the Eastern enlargement. For example, the process of internalisation of the norm began in 1997. In that process, the Italian Republic objected to the term "sexual and reproductive health", presumably on the grounds that it could be interpreted as taking a position on the issue of abortion. Right up to the end, the Italian representative threatened to enter a reservation on the wording, but finally withdrew the threat after consultation with the national capital (Elgstrom 2000, p. 468).

The Italian case has served as a lesson for how the EU can strengthen its adherence to the SRHR norm despite internal contestation. This agreement has made it possible, for

example, for SRHR to have a predominant position in the 2006 European Consensus on Development. And compromise has been achieved as in the case of Malta, where its accession to the European bloc in 2004 was forged by the signing of an accession agreement stipulating that the EU would never interfere in Maltese policy on women's reproductive rights. In fact, the EU emphasises its respect for the positions of these opposing countries, noting that in no case are they required to change their own national laws and policies. This way of negotiating has also helped the EU to develop a policy towards women and girls who are victims of sexual violence in conflict.

Once the norm was internalised, with the 2006 European Consensus on Development (ECD) an indicator of this, the EU equipped itself with a new mechanism to overcome the opposition of a few Member States. If at the very beginning it was noted that the norm is of an external nature, and has no restrictive effects at the domestic level, today the EU reminds the different parties that the SRHR has also been strengthened through respective inclusions in agreed common positions to the point of being part of the agreed language. This suggests that the opposition has ultimately strengthened the norm. In this line, the EU adopted, the 2015 Council Conclusions on Gender and Development that has become the agreed language on SRHR. If the 2006 ECD served as a way of embedding the new Member States into SRHR language, the 2015 language served the same purpose as it was endorsed by all 28 Member States.

This working dynamic was the predominant one until 2017. Up to this date, opposition to SRHR was mainly advocated by Ireland and Malta. Ireland recognised that the country could not adhere to the SRHR promoted policies due to its national policy on abortion; Malta allowed the EU to move towards a more ambitious SRHR agenda while channelling its disengagement from the common positions by introducing addendums or footnotes explaining the country's position in which national sovereignty was at the

centre. This resulted in an institutionalised process in which, on the one hand, the progressive group welcomes the activity reports of the European Commission and, on the other hand, the group of reluctant actors takes note of it. In addition, this lesson was taken on by the more progressive group of countries that were in favour of the inclusion of SRHR language. Countries began to meet in informal meetings to the point of creating an informal network of like-minded countries. The main point was to agree on a common agenda for action that would then be taken to the Council (Interview 22, 25 and 30). The idea was, before the meeting, to have a consensus position on the issue to avoid the surprise of deadly blows from the other side. In fact, the informal network had a good reason to start mobilising resources to protect SRHR from possible undermining action.

Indeed, the European Parliament, the most progressive European human rights institution and true champion of SRHR, has sent two worrying signals. The first one was in 2012, when the first European Citizens' Initiative,[59] introduced as part of the Lisbon Treaty, targeted SRHR. For example, they intended to cut off EU funding to organisations such as the International Planned Parenthood Federation, the most prominent CSO dealing with these rights. The initiative was called "One of Us" and was coordinated by the European Religious Right (Mos 2018). The measure mirrored the U.S. Gag Rule by targeting funding activities of organisations with a known portfolio and expertise in SRHR. Following a public hearing in Parliament, the Commission rejected their claim noting that "The Commission has concluded that the existing funding framework, which was recently debated and agreed by EU Member States and the European Parliament, is the appropriate one" (European Commission 2014). The second worrying signal was sent

[59] The European Citizens' Initiative was introduced in the Lisbon Treaty enabling citizens to call directly on the European Commission to shape EU's Directive or Regulation in area of the competence of the EU. Once an initiative has reached 1 million signatures of nationals of at least seven Member States, the Commission will decide on what action to take.

in 2013 when the Estrela Report was not adopted. The report was addressing both SRHR legs, the external and internal one. The Report recommended to Member States that "as a human rights and public health concern, high-quality abortion services should be made legal, safe, and accessible to all within the public health systems of the Member States", while also urging the EU "to ensure that European development cooperation adopts a human-rights-based approach and that it has a strong and explicit focus, and concrete targets on SRHRs, paying particular attention to family planning services, maternal and infant mortality, safe abortion, contraceptives" (European Parliament 2013a). The alternative report drafted by the far right and the right passed instead, and it just consisted of three operative clauses, all which reinvigorated that action related to SRHR is a competence of the Member States (European Parliament 2013b). It did not trigger any change in the way the Commission dealt with SRHR.

But all of this created a momentum that reached its tipping point in 2017, when Malta proved that channelling SRHR contestation could not always be taken for granted. During the Maltese presidency the new ECD was negotiated. As chair of the Working Party on Development Cooperation (CODEV), Malta opened the pandora's box of redefining the common position on SRHR. The ECD making process set out EU policy on SRHR in the field of development and cooperation and led Member States to address two plausible options. As a matter of fact, the ECD was described as a very traumatic process (Interview 21). The first option, backed by Malta, was willing to push for a less ambitious SRHR language. This led progressive parties to push for a significantly more progressive SRHR language. Facing the risk of reaching a deadlock with profound consequences for the EU's commitment to the norm, it was decided to go back to the language agreed in 2015. The 2015 Council Conclusions on Gender and Development read as follows:

> ‘The Council remains committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the ICPD and the outcomes of their review conferences and remains committed to sexual and reproductive health and rights (SRHR), in this context. Having that in mind, the Council reaffirms the EU’s commitment to the promotion, protection and fulfilment of the right of every individual to have full control over, and decide freely and responsibly on matters related to their sexuality and sexual and reproductive health, free from discrimination, coercion and violence. The Council further stresses the need for universal access to quality and affordable comprehensive sexual and reproductive health information, education, including comprehensive sexuality education, and health-care services. The Council invites all EU institutions to continue their work on these issues in line with the Policy Coherence for Development principles. The Council stresses the importance of advancing understanding of the components and elements related to SRHR in EU’s development policy and invites the Commission to report back to the Council within a year on that matter.’

And the 2017 ECD replicated the Council Conclusions SRHR language stating the following:

> ‘The EU remains committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the ICPD and the outcomes of their review conferences and remains committed to sexual and reproductive health and rights (SRHR), in this context. Having that in mind, the EU reaffirms its commitment to the promotion, protection and fulfilment of the right of every individual to have full control over, and decide freely and responsibly on matters related to their sexuality and sexual and reproductive health, free from discrimination, coercion and violence. The EU further stresses the need for universal access to quality and affordable comprehensive sexual and reproductive health information, education, including comprehensive sexuality education, and health-care services.’

Despite Malta's efforts to revise EU policy toward SRHR, the norm preserved its status. But the diplomatic resources that went into securing such an agreement have led in the opinion of some interviewees to have an EU that when dealing with SRHR thinks more about possible internal conflict than about diffusing the norm to the outside world (Interview 25 and 30). In any case, what Malta ended up achieving was that SRHR did not move backwards or forwards. Since then, successive meetings have been discussing the reinstatement of the status quo of the norm. In other words, Malta's contestation of the SRHR ended up further strengthening the norm, but with SRHR skating on thin ice.

The case of Malta is particularly interesting since it grounded its opposition to SRHR on the existence of an internal EU movement that aimed to redefine the norm.

Nonetheless, Ireland which had been Malta's biggest ally in its opposition to SRHR changed its position by 180 degrees following the referendum that legalised abortion in the country in May 2018. In parallel, Malta had also started on a path towards a more proactive role in the SRHR arena with the July 2017 legalisation of same sex marriage. It is true that abortion is still prohibited, but the country's shift towards sexual rights made it easier for the country to abandon the role of obstructionist force in such debates. All appeared to indicate that the winds of change could lead to the EU having a SRHR policy that would stand on both legs: external and internal. But changes at the international level in January 2017 led to the winds of change turning into a biting blizzard.

Indeed, the election of Donald Trump as U.S. president was a fatal blow to the slow but consistent evolution of the EU to become a true global actor in the field of SRHR. Trump's strategy was to polarise SRHR at the international level, as he systematically attacked the universalism aspect of the norm with the aim of building an illiberal alternative. This will gravely affect the new EU Gender Action Plan III. The first actions he took when he assumed office were to reinstate the Global Gag Rule, and to send clear instructions to the U.S. mission to the UN to remove the SRHR language from resolutions and official documents. His actions had an impact on the various EU policy and decision-making bodies addressing SRHR. As interviewees noted, the new U.S. role of becoming a willing actor to weaken the norm caused polarisation in the CODEV Working Group. Surprisingly, it had a positive effect, as it caused the silent actors, i.e., actors whose foreign policy agenda does not include women's rights as a priority, to choose sides. So much so as to show that a majority of Member States, including the silent ones such as Romania or Cyprus, sided with the agreed EU language on SRHR (Interview 27 and 28). In the following CODEV Working Group meetings, when SRHR is on the agenda, the tendency is for 25 countries to be in favour of the agreed language and two against:

Hungary and Poland. But at the end of the meeting, Hungary and Poland sided with the majority. To put it another way, the U.S. actions seemed to trigger a new episode of contestation that strengthened the norm in the EU. This time, Member States were increasingly vocal in defending the norm.

Nevertheless, not all that glitters is gold. As mentioned by some interviewees, the arrival in the White House of an actor radically opposed to the SRHR coincided with the withdrawal of the United Kingdom. An actor that had been defined by some interviewees as a key partner to build consensus and bridges with Hungary and Poland in the SRHR field (Interviews 17, 28). And the reality with which the EU had to deal with was the following: On the one hand, the departure of a key player in the field, and on the other, the ongoing international offensive led by Trump. In short, the foundations were laid for a contestation that went beyond opposition.

More importantly, Hungary and Poland have been described as undertaking the opposite of the performance shown by Ireland and Malta in the past. The Irish and Maltese contestation was channelled to, indeed limited to, ensuring that the Member States had no obligation to enforce the norm at home. Now, systematically, whenever COHOM (Working Group on Human Rights) or CODEV working groups address SRHR as part of their agenda, Hungary and Poland fiercely oppose the issue (Interview 21, 23, 28 and 30). For example, the negotiations of the post-Cotonou agreements (signed in April 2021) were a scenario of such tension, with the SRHR-opposed group seeking domestic guarantees. On the one hand, progressive countries such as Finland, Sweden and Denmark wanted to expand women's rights with a refreshed section on SRHR, while Hungary, Malta and Poland shared concerns about the link between reproductive rights and abortion. Poland entered a reservation on the EU mandate that was lifted following a statement in the official minutes that the SRHR clauses would not entail a change in

Member States' legislation (Carbone 2019, p. 145). At first glance, the EU position on SRHR remained robust and managed to channel opposition.

Although the EU remained flexible enough to accommodate contestation without hindering the role of the Union on the international stage, several delegations clearly stated that Poland and Hungary are no longer trustworthy as they play out domestic issues at the EU level in order to reach their domestic audience (Interviews 40, 43, 44 and 45). In this sense, it is necessary not to generalise and to distinguish Poland's actions from Hungary's. Following in the footsteps of Ireland and Malta, Poland wants to protect its conservative or traditional view regarding women's rights but has not hindered the role of the EU in speaking out and addressing SRHR issues internationally. Hungary, in turn, has been described as a much more dogmatic and unwieldy country since the emergence of a U.S.-led international contestation under Trump that seeks, at all costs, to erode the norm. In this regard, Hungary has developed close ties with organisations that oppose SRHR. This is the case of the World Congress of Families (WCF) which brings together opponents of SRHR from Islamic, Catholic and post-Soviet states. For example, Hungary hosted the 11th WCF in 2017. On that occasion, Hungarian Prime Minister Viktor Orbán stated that "Central Europe [...] has a special culture. It is different from Western Europe." In his opinion, "every European country has the right to defend its Christian culture, and the right to reject the ideology of multiculturalism [...] and to defend the traditional family model." Therefore, Hungary seeks to transform the European policy towards SRHR, something that Ireland and Malta did not seek.

Despite this, deliberations within CODEV and COHOM remained consensual and have rarely reached the level of PSC (Political and Security Committee) and/or

COREPER II (Committee of Permanent Representatives)[60], which is usually the case for item 4 related to human rights and the Human Rights Council. For example, the COHOM working group adopted without any strong opposition, in November 2020, the EU Action Plan on Human Rights and Democracy for 2020-2024, which included a chapter on SRHR. Taking this fact into account, it has been highlighted that the common understanding reached at working group level would not have been reached if the topic had been discussed at COREPER II level (Interview 22, 24, 25 and 29). Therefore, it would appear that SRHR at the EU level is well protected from attacks coming from the national or international level.

More importantly, representatives of delegations to the EU have repeated on several occasions that while unity and compromise in regard to the EU position on SRHR have been possible at the EU level, they consider that the same is not the case at the UN level (interviews 23, 28 and 32). Therefore, the question of what role the EU plays at the UN in relation to SRHR is of relevance. It is relevant mainly as it is a strategic area for the EU to make progress on SRHR. And, as will be implied in the following lines, this assessment raises problems, mainly related to the lack of communication between EU-based and UN-based diplomats.

5.3.2 The EU, Sexual And Reproductive Health And Rights, and the UN

As noted by some interviewees, the UN arena has been described as the arena where a fierce battle for the survival of SRHR is being fought (Interview 1, 2, 3, 4, 6, 7, 8, 9 and 10). The U.S. under the Trump Administration broke several consensuses within the UN system and some of them were a first. In the UN Security Council (UNSC), the U.S. has

[60] The EU's decision-making system since the Lisbon Treaty of 2009 is organised as follows. At the lowest level are the Working Parties, at a higher level is the PSC, which in turn sits below COREPER II. Above COREPER II there are only two additional levels. The Foreign Affairs Council, which is hierarchically below the European Council.

succeeded in resolution 2467 on Women, Peace and Security to erode the SRHR by removing references in the operative clauses. The previous UNSC resolution (2106, adopted in 2013) recognised the importance of providing victims of sexual violence with "comprehensive health services, including sexual and reproductive health," while resolution 2467 only stated that victims of sexual violence should have access to "health care." To achieve this outcome, the country threatened to use its veto power, which caused the other p-5 countries and non-permanent members, including France and Germany, to accommodate the U.S. position (Interview 2 and 6). In addition, the country also managed to put an end to the practice of reverting to agreed language when there was no consensus. The EU was aware that accommodating U.S. views on SRHR would affect the fate of the norm, as one EU diplomat acknowledged, "if we let the Americans do this and remove this language, it will be watered down for a long time" (quoted in Borger 2019). This assessment was echoed in statements by the Belgian and French representatives, while the Polish made no reference to it (UN Security Council 2019, p. 32).[61] But overall, the EU stood firm in its defence of the norm.

In a similar vein, the U.S. has also attempted to dilute CSW conclusions containing references to SRHR. In that case, its role has been rather passive, relying on like-minded states such as Saudi Arabia or Bahrain to remove language. This dynamic was notable during the 63rd session of the Commission on the Status of Women (CSW, 2019), where Saudi Arabia decided at the last moment to disassociate itself from the agreed conclusions. This was countered by the Chair, at the time Ireland, employing procedural mechanisms that inhibited the challenge exercised by Saudi Arabia (Interview 1 and 2). Turning to the EU's actions against the SRHR attacks, the Union was able to counter them. In addition to that, the COVID-19 pandemic has also strained the role of

[61] In 2019, France, Germany, Belgium and Poland were sitting as members of the UN Security Council.

the SRHR services. For example, during the negotiation of the COVID-19 omnibus resolution in September 2020 at the UN General Assembly, the U.S. called for a vote on removing the operative paragraph addressing SRHR. The vote was lost by 123 countries in favour of keeping the paragraph and 3 against, while Hungary extraordinarily decided to abstain.

Taking into account the role played by Poland in UNSC Resolution 2467, and by Hungary in the September 2020 omnibus resolution of the UN General Assembly, it is necessary to delve deeper into the role played by the EU and its Member States and to what extent the Council conclusions on SRHR agreed in Brussels are implemented at the UN. One of the fora in which the extent to which the EU and its Member States accommodate or entrench US actions that can be assessed is the UN General Assembly Third Committee. In every session since the 72nd session (2017), the Trump administration called for a vote on the preambular and operative paragraphs of resolutions addressing SRHR issues. All U.S. amendments have been rejected, rallying more than 100 countries around SRHR language. Throughout the sessions, the EU has stood united by voting against U.S. amendments on resolutions covering issues such as the annual resolution on African fistula, domestic violence, genital mutilation, children's rights and trafficking in women. And the ultimate responsibility for this common voice lies with the EU delegation in New York (Interview 1, 2, 3, 4, 5, 6 and 7).

The EU containment strategy has been achieved through regular meetings and consultations with EU Member States during sessions chaired by the EU delegation in New York. There is a shared agreement that without the logistical support and commitment of the EU chair in charge of the human rights and gender equality portfolio, unity of action in the face of the attacks perpetrated by the U.S., and pressures from certain Member States to break such unity, would have been deemed impossible (Interview 1, 2,

4, 5, and 6). It is widely acknowledged that the chair is the guardian of the Council conclusions adopted in Brussels. Indeed, its skills have been described as those of a proactive listener, combined with a skill for bridging divisions. This has allowed member state delegations to avoid reopening, in New York, the 2015 common position[62] debate, as some member state representatives from both sides of the spectrum have been suggesting.

The regular meetings are also seen as a tool to engage with each other's views on SRHR, to the extent that there is sufficient leeway to accommodate Poland and Hungary in the discussion (interviews 5 and 7). It is true, as seen in the fact that both countries have at times endorsed or aligned themselves with U.S. views on SRHR, but when it came to casting their votes, during the UN Third Committee, they voted in line with the agreed EU position. During interviews, one issue that has been referred to in order to shed light on this dual behaviour has been which representative has spoken on behalf of the country. It has been mentioned that when the Polish or Hungarian ambassador intervenes, it is plausible that a break with the European bloc may take shape, but not so when the technical level intervenes, that is, when the person who participates in the sessions is the expert on the subject and the person responsible for attending the meetings with his or her counterparts in the EU delegation. In fact, on several occasions the group has been discussed as a family through formal and informal social meetings, which reduced the likelihood of normative clashes (Interview 3, 5, 6 and 7). For example, the role of the Polish counsellor was highly appreciated, as she continued to work along the lines of coordination and consensus, despite instructions from the capital to do otherwise (Interview 3). For these reasons, the EU can speak out and counter polarising actions on

[62] The 2015 Council Conclusions on Gender and Development that has become the agreed language on SRHR. It has served to embed all 28 Member States into SRHR language.

SRHR in New York. However, when it comes to the promotion of the norm, the EU is often divided. The practice of advocating for SRHR when we must and promoting it when we can is becoming a well embedded practice, as was the case during the 2020 High Level Panel on Global Health and Women's Rights or Beijing +25. However, unity and a common EU voice in Geneva and at the Human Rights Council is more difficult to achieve. The main reason lies in the proximity of national capitals, which leads to a greater presence of domestic politics (Interview 8 and 9). Undoubtedly, as noted above with the example of how human rights are addressed in COHOM, the deliberations on which issues are included in the common agenda for the Human Rights Council (based in Geneva) are far more polarising than when addressing the agenda of the New York bodies.

Delving into the international backlash, the EU has not only been able to placate the internal contestation, or to stand firm in the face of the willingness to remove references to the norm in various UN resolutions. In fact, the Commission also has a certain transfer of authority in this field and has exercised its power in defending the norm. In this regard, the Juncker Commission (2014-2019) worked on the implementation of initiatives such as the Spotlight Initiative, which is a joint EU-UN initiative seeking to curtail the impact of U.S. actions through the Gag Rule[63] against women's rights, and SRHR in particular. In a similar vein, the Netherlands, Belgium and the Nordic countries (i.e. Denmark, Finland, Sweden, Norway and Iceland) have launched different initiatives, such as She Decides, also aimed at countering the U.S. Gag Rule, or the Nexus Initiative[64]

[63] The Global Gag Rule is a policy implemented by every US Republican Administration. It started with Reagan in 1984. And it seeks to prevent foreign organisations receiving US global health assistance from providing information, referrals, or services for legal abortion or advocating for access to abortion services in their country.

[64] The SRHR Nexus Initiative is an independent initiative of like-minded states designed to support and foster the SRHR agenda at the UN. It seeks to mobilise and increase the political support for SRHR in international negotiations by mobilising, coordinating and supporting a group of governmental senior-level

(a formal alliance of like-minded states at the UN), which works side by side with civil society organisations such as International Planned Parenthood Federation or International Women's Health Coalition, to reach out to third countries and express their support for SRHR. While much of this work was focusing on the UN dynamics, in light of the 25th anniversary of the Beijing Conference, a common diagnosis was shared among states and CSOs. It was time to stop pouring resources only into defending the status quo based on safeguarding agreed language. This diagnosis is shared by the European Commission and EU Member States such as France, Germany, Sweden, Spain, the Netherlands and Finland. It was decided to hold in 2021, outside the UN framework, the Generation Equality Forum with the support of UN Women and two co-facilitators, France and Mexico. President Macron described the format of the forum as a coalition of the willing[65] bringing together progressive states and CSOs. For example, the Generational Equality Forum agreed to develop a Compact on Women, Peace and Security and Humanitarian Action. As stated in the outcome document, the Compact "will go beyond protection and sexual and reproductive health and rights, but will take into account all the rights and needs of women and girls" (Generational Equality Forum 2020). The Compact was prepared to avoid the impact of future cuts such as the one introduced by the Trump Administration, it was also agreed to increase funding for the UN Population Fund to support sexual and reproductive health services.

SRHR champions from all regions. The Initiative was formalized in June 2018. The Nexus Secretariat in New York was established in December 2018. Its membership has grown from 19 countries: Argentina, Australia, Belgium, Bulgaria, Canada, Denmark, Finland, France, Germany, Guinea, Mexico, Netherlands, Norway, Peru, Philippines, South Africa, Spain, Sweden, and the United Kingdom.

[65] The Generation Equality Forum work was divided in six action coalition. And European Commission led the gender-based violence coalition, while Denmark and France together with Burkina Faso and Argentina, but also the UNFPA or CSO like IPPF and IWHCE led the 'bodily autonomy and SRHR coalition'.

5.3.3. From The EU Gender Action Plan III to Team Europe Conclusions

The international polarisation of SRHR first made itself felt in the EU in December 2020. The US presented its revision of the norm in October 2020. The so-called Geneva Consensus advocated for the norm fragmentation. It continued to uphold reproductive health as an international norm, while calling for the norm on reproductive rights to be renationalised. To be more exact, in the area of reproductive health, upholding it as an international norm was accompanied by an illiberal revision. The Geneva Consensus called for a reframing of the norm based on reproductive health as care rather than services (the existing norm). This means stripping individuals of their rights. In the field of reproductive rights, the renationalisation of the norm implied a revision of the norm based on an anti-multilateralism sentiment. This anti-multilateralism consisted in the argument that such rights can only be provided by the sovereign state and in no case be the object of discussion at the international level. In other words, the U.S. created an illiberal international alternative to the norm. And this fragmentation of SRHR between the existing liberal and the emerging illiberal alternative led Hungary and Poland to exert dissidence from their commitment to SRHR. In fact, Hungary co-sponsored the document and Poland signed it. Such a dissidence was clearly perceptible at the EU level.

Being shielded by an illiberal international norm led the two countries to attack the Gender Action Plan III, which includes a specific chapter on SRHR. The negotiations of the Gender Action Plan took place at a time when not only SRHR was relevant at the international level (Geneva Consensus), but also very salient in Poland with the ruling of the Constitutional Tribunal enforcing an almost total ban on abortion. At the meeting that was virtually held due to the COVID-19 pandemic, Poland, and to a greater extent Hungary (which was noted to be constantly negotiating with colleagues while receiving

instructions by phone from Budapest) blocked CODEV from adopting the Gender Action Plan III as Council Conclusions.

While it is true that the foundations for the norm contestation lie in the existence of an external actor and its proposal for an alternative norm facilitating the Hungarian and Polish decision, there is an element that went unnoticed and is also a key factor in the emergence of dissidence. This is to be found within the Commission, and more specifically in DG INTPA. The Gender Action Plans are drafted by the Commission since Member States have partially transferred competences in the field of development policies. However, in the initial drafts, as mentioned by interviewees from civil society and Member States, the position given to the SRHR was very flimsy (Interview 23, 18, and 19). It should be noted that the Commissioner in charge of this portfolio is the Finnish Jutta Urpilainen.[66] She comes from a country where SRHR play a prominent role in foreign policy. Complaints from progressive states led the Commission to correct this wrongdoing. They were astonished by this episode of self-censorship.[67] But it was too late, the groundwork for the contestation had been already laid.

This led Germany, at that time chair of the Working Group, to downgrade the final document by adopting the Gender Action Plan as Chair Conclusions. It was a bold move, as the German delegate had intended to raise the issue at the ambassadorial level but feared that at that level it would have been necessary to accommodate the views of the two opposing countries. It also helped that in the upper echelons the agenda was already busy with discussions on the EU recovery plan. In the end, the adoption of Gender Action Plan III as Presidency Conclusions was seen as the only option Germany found to

[66] Urpalinain is the Commissioner for International Partnerships, under the Von der Leyen's Commission (2019-2024).
[67] It is also worth noting that within the Commission there is DG ECHO, which has not seen its role in providing SRHR services in humanitarian aid cases contested. However, the European Parliament has criticised the fact that DG ECHO also provides funding to anti-SRHR CSOs.

safeguard the content of the Action Plan without accommodating the views of the two opposing countries. Gender Action Plan III echoes the 2015 common position on SRHR and reads as follows:

> 'The EU remains committed to the promotion, protection and fulfilment of all human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development and the outcomes of their review conferences and remains committed to sexual and reproductive health and rights (SRHR), in this context. Each individual has the right to have full control over and decide freely and responsibly on matters affecting their sexuality and sexual and reproductive health, free from discrimination, coercion and violence, to lead healthy lives, and to participate in the economy and in social and political life. Access to quality and affordable comprehensive sexual and reproductive health information, education, including comprehensive sexuality education, and healthcare services is needed'

These events can be seen as further evidence of the strength of norms within the EU. And this time contestation did not consist in opposition, but in dissidence. That is, contestation did not strengthen the norm by reaffirming the norm's content, but contestation showed that the norm was robust by expelling those who did not want to adhere to it. As in the case of the Hungarian dissidence during the negotiations of the UN Global Compact for Migration, the EU symbolically expelled Poland and Hungary from the EU normative community. As one interviewee noted, it was felt that Hungarian and Polish opposition to the adoption of Gender Action Plan III would have had no impact on the implementation phase, as both countries have a tiny development budget. The expulsion of Poland and Hungary was noted in the Presidency Conclusions when for the first time an analysis was made of the current state of the norm. This analysis was signed by 24 Member States, as Bulgaria also did not adhere to the content of the norm. Bulgaria's motives had nothing to do with those of Poland and Hungary. The country alluded to domestic and not international elements since its Constitutional Court had declared the Istanbul Convention on Violence against Women unconstitutional. This fact may be a future source of conflict as far as SRHR are concerned. All of the above led to

the Conclusions to assert that "achievements made on gender equality and women and girls' full enjoyment of all human rights and their empowerment must be safeguarded against any deterioration and backlash. We express our deep concern and regret that gender equality, the empowerment of women and girls and their full enjoyment of all human rights, including sexual and reproductive health and rights […] are threatened, questioned and pushed back against amid shrinking civil, democratic and civic space globally" (Council of the EU 2020). In other words, the Presidency Conclusions showed the readiness of the vast majority of Member States, where we have to include the European Commission and the European Parliament, to defend and protect SRHR. It was the first (and last) case of contestation as dissidence. It remains to be seen what the long-term impact will be as with the Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the Istanbul Convention) a considerable number of Member States (i.e. Bulgaria, Hungary, Poland, Lithuania, Latvia, Czech Republic, Slovakia) are not willing to ratify a Convention that covers a broad spectrum of norms, including SRHR.

In 2021 the international scenario changed course. The Trump factor disappeared. In January 2021, Joseph Biden assumed the presidency of the U.S. and, in his willingness to recommit to multilateralism, re-established the country's commitment to the SRHR. In other words, the illiberal alternative to the SRHR lost its great supporter, and with it, Poland and Hungary ceased to have this international protection. One could argue that it is very cold outside the EU, and even colder without international protection. With a less polarised international environment, the EU was able to return the SRHR to its former normative consensus. This is the case with the unanimously adopted Team Europe 2021 Conclusions, which stated the following:

> 'The Council recalls the EU's commitment, under the European Consensus on Development, to remain committed to the promotion, protection and fulfilment of all

> human rights and to the full and effective implementation of the Beijing Platform for Action and the Programme of Action of the International Conference on Population and Development (ICPD) and the outcomes of their review conferences and remains committed to sexual and reproductive health and rights (SRHR), in this context'

Team Europe's Conclusions show that EU foreign policy on SRHR has been stronger than initially expected. While it is clear that within the EU there has always been an ongoing dispute about SRHR, the movement of opponents from the December 2020 Gender Action Plan III to the April 2021 Team Europe shows that contestation does not always weaken the SRHR but is the result of a norm that grows stronger by the day. Furthermore, the Conclusions are relevant as Team Europe is an approach that initially started as the Union's response to the COVID-19 pandemic and has gained traction to the point that it could be evolving into a new approach to international development.

In this more favourable scenario, with a less polarising international scenario, and with the EU restoring consensus in its international policies to promote SRHR, the European Parliament once again voted on a resolution on SRHR. The first since the failed 2013 Estrela Report, which had been the first major victory of the anti-SRHR group in Europe. Now instead, with a 56% majority in favour, the Parliament urged to strengthen the external leg[68] and build on solid foundations the internal leg (European Parliament 2021c). The gauntlet was taken up by Equality Commissioner, Helena Dalli, when she pointed out that further attention will be paid in the external action in regard to gender-based violence, including female genital mutilation. Despite the limited competence at internal level, she opened up the possibility of greater involvement of the Commission by

[68] In 2021, the European Parliament also passed two resolutions further addressing the external leg (European Parliament 2021a; 2021b). One addressing the 25th Anniversary of the International Conference on Population and Development. 65% of the European Parliament voted in favour. And another on the challenges ahead on the 25th Anniversary of the Beijing Declaration and Platform for Action, which was passed with 73% of the votes in favour. It was the first time in 11 years that the Parliament adopted thematic resolutions on the matter.

stressing that “Sexual and reproductive health is integral to our general health. Sometimes sexual and reproductive health services are not considered as relevant or essential as other healthcare services. This is wrong. While healthcare, including sexual and reproductive healthcare, is a Member State responsibility, the Commission fully recognises every person’s fundamental right of access to healthcare as enshrined in the Charter of Fundamental Rights and the pillar of social rights. And we are always ready to support our Member States’ needs and actions here” (European Parliament 2021d). In this same line, President Macron, one of the champions of the revitalisation of gender equality at the international level, including SRHR, with the launch of the Generation Equality Forum declared his plan to include abortion as part of the Charter of Fundamental Rights. The speech was delivered, in January 2022, at the European Parliament during the presentation of the objectives of the French Council Presidency.

5.4. CONCLUSIONS

This chapter has argued that the norm on Sexual and Reproductive Health and Rights (SRHR) has undergone a long and winding road to its emergence in the liberal decade of the 1990s. Adopted at the Fifth International Conference on Population and Development in Cairo (1994) and the Fourth World Conference on Women in Beijing (1995), the norm has moved into the internalisation phase. Despite this, it is fiercely contested by a group of actors with the Holy See at the forefront. In the case of the European Union (EU), SRHR was not proactively promoted until the Nordic enlargement, in 1995, with Finland and Sweden, and the acceptance of SRHR at the international level. These facts have not prevented the EU from quickly internalising the norm in the field of external action, to the point of it becoming highly robust to episodes of contestation.

In fact, the EU has always given the SRHR a certain degree of contestation, something necessary for the norm's legitimacy (Wiener 2014). And the contestation was

based on the concept of permissive consensus. The EU could be seen as a progressive player on the world stage if Member States were assured that they would not have to implement such a norm, especially the abortion aspects. This has allowed the EU to institutionalise the norm in different EU external action documents such as the European Consensus on Development and plans such as the EU Action Plan on Human Rights and Democracy.

The constant interplay between the EU's willingness to promote these rights abroad, and a few Member States re-establishing the importance of their national sovereignty have already been at the heart of negotiations between the EU and its Member States. This was the case in 1997 with the Italian objection against the Conclusions on Population and Aid. And it subsequently resurfaced with the Maltese objection in 2017 in the European Consensus on Development and the Polish one in 2018 in the new EU-ACP (post-Cotonou) partnership. This leads to consider that the challenge in the case of SRHR is not a mechanism that weakens the norm, but the result of a norm that has been strengthened.

In this sense, the chapter has defined contestation as an opposition in which actors "accept the prevailing order as such and make use of institutionalized forms of political participation to express their dissent" (Daase and Deiteholff 2019, p.12). It has been also posited that actors who oppose the norm cannot participate in changing the institutional norm and end up contesting the application of the norm. However, the existence within the EU of a critical stance on SRHR implies that there is room for contestation to move beyond opposition. And a triggering factor could be found in the unfolding of international events. This causal mechanism follows from the observation that the EU was able to present a consensus on the norm in 1995 when it was already endorsed at the

international level (Elgström 2000, p. 462). Therefore, changes at the international level may have an impact at the EU level.

In this regard, the U.S., under the Trump Administration proclaimed itself as that actor that would seek to weaken the norm at the international level. However, at the United Nations, we find an EU willing to counter U.S. wheeling and dealing, if not always with the capacity to stand up to the U.S., as reflected in the fact that in the Security Council, France and Germany had to accommodate U.S. views on SRHR. But it is an important fact that unity of action has been achieved as a direct result of the existence of a common EU position on the SRHR issue and that the chairman of the EU delegation in New York has been able to bridge the divisions, as well as becoming the guardian of EU language. For example, in the Third Committee of the UN General Assembly, the EU has always voted against U.S. amendments to remove or change the SRHR language.

At the EU level, attempts by Poland and Hungary to undermine the SRHR were also stopped. The norm continued to prove strong. However, in October 2020 the so-called "Geneva Consensus Declaration," which was the latest step in the SRHR revisionism launched by the U.S., marked a turning point for the EU and its commitment to the norm. The Geneva Consensus can be considered a "landmark document that clearly states where we stand as nations when it comes to women's health, the family, honoring life, and defending national sovereignty" (United States 2020). The document aims to carry out an illiberal revisionism of the norm, on the one hand, in the area of reproductive health by opting for the dismantling of individual rights and, on the other hand, in the area of reproductive rights by opting for an anti-multilateral vision by devolving all authority back to the sovereign state. At the EU level, it has been co-sponsored by Hungary and signed by Poland. The emergence of this international illiberal norm led these two Member States to weaken the EU consensus on SRHR in the narrow sense, and

on gender equality in the broad sense. For the first time, in December 2020, the Gender Action Plan III was not adopted as Council Conclusions. And yet Germany, which held the rotating presidency at the time, decided to bypass the Hungarian and Polish demands and opted for a strategy of normative entrenchment. Indeed, the two countries were symbolically expelled from the EU normative community. In the end, the Gender Action Plan was adopted as Presidency Conclusions. And in 2021, against the backdrop of a less polarising international environment, the EU was able to return the SRHR to its previous normative consensus. This is the case of the Team Europe 2021 Conclusions, in which mentions of SRHR were again adopted unanimously.

Overall, this chapter has shown how the EU's external policy in the area of sexual and reproductive health and rights has been stronger than initially expected: the EU is committed to and advocates for SRHR. Opposition by some Member States has not triggered a change in the SRHR norm, as opponents risked being left out of the EU normative consensus. Indeed, the EU foreign policy system has proven to be able to encapsulate contestation by turning into a factor of norm reinforcement. However, looking at the norm from a broader perspective, the chapter highlights that SRHR can indeed be weakened within the EU when there is an interplay between the international and national level. In other words, when an international or potential international norm walks away from the established norm meaning, making it easier for opponents to drop out of the established consensus.

And although the Trump factor is gone, it can be taken for granted that the U.S. under a Republican Administration will again adopt a discourse contrary to the SRHR. The EU, institutionally speaking, is well prepared to counter and defend the norm. The problem hindering the EU's commitment to SRHR is within the EU. And it is mainly related to the reluctant Member States and to what extent they will jump on the

bandwagon of the U.S. discourse. France's willingness to include abortion as a fundamental right within the Charter of the EU can be read as a readiness for this possible event. In this way it wants to avoid further episodes of internal dissidence, and in turn seeks to construct a powerful actor in the field of women's rights.

In the same vein, although the Commission has no internal competencies in SRHR, it is gaining powers in the area of implementing the norm. One example is President Von der Leyen's willingness to make gender equality a reality in the EU. That will is to be found in the appointment of Helena Dalli, backed by Malta, as Commissioner for Equality. And that connects to an important feature for SRHR and gender equality: the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (known as the Istanbul Convention). Commissioner Dalli is tasked with achieving EU accession to the Istanbul Convention, and if she succeeds, she could begin to address internal issues such as sexual and reproductive health, thus, constraining the agency of reluctant governments and forcing them to comply with the norm. But this goal cannot be achieved without an active liberal civil society capable of pressuring, for example, the government of Bulgaria, where the Constitutional Court declared the Convention contrary to the country's Constitution.

Another risk arises, and it lies within the group of progressive Member States. An example of this point can be found in Cyprus. Although the country has downloaded the entire EU SRHR acquis and is projecting the norm to its neighbours, mainly Egypt and Lebanon, the country has a sense that it lacks a certain degree of ownership of the norm. It speaks to strong supporters of the norm, such as Finland and Sweden. For these two countries, SRHR is a key foreign policy, not to say their key foreign policy, while in Cyprus, but also in countries like Austria, there is a perception that when the norm is addressed in the external action agenda, Member States are expected take the Nordic path

– a situation that may trigger disengagement within the EU SRHR advocacy group. This points to the need for pragmatism among the norm's advocates. New spaces need to be built that give more ownership to Member States that have previously downloaded the full contents of SRHR, as they could provide new and fresh understandings of SRHR.

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LIST OF INTERVIEWS

#	**Position**	**Date**
1.	Member State representative (UN in New York)	11/9/2020
2.	Member State representative (UN in New York)	15/9/2020
3.	EU Official (UN in New York)	18/9/2020
4.	Member State representative (UN in New York)	22/9/2020
5.	Member State representative (UN in New York)	2/10/2020
6.	Member State representative (UN in New York)	12/11/2020
7.	Member State representative (UN in New York)	26/10/2020
8.	Member State representative (UN in Geneva)	16/10/2020
9.	Member State representative (UN in Geneva)	23/10/2020
10.	EU official	10/11/2020
11.	EU official	2/10/2020
12.	EU official	2/10/2020
13.	EU official	2/10/2020
14.	EU official	10/11/2020
15.	EU official	10/11/2020
16.	EU official	10/11/2020
17.	CSO	23/9/2020
18.	CSO	19/10/2020
19.	CSO	19/10/2020
20.	CSO	22/10/2020
21.	Member State representative in the EU	22/9/2020
22.	Member State representative in the EU	8/10/2020
23.	Member State representative in the EU	15/10/2020
24.	Member State representative in the EU	16/10/2020

25.	Member State representative in the EU	30/10/2020
26.	Member State representative in the EU	23/11/2020
27.	Member State representative in the EU	26/11/2020
28.	Member State representative in the EU	26/11/2020
29.	Member State representative in the EU	15/1/2021
30.	Member State representative in the EU	1/2/2021
31.	Member State representative in the EU	9/2/2021
32.	Member State representative in the EU	7/5/2021

CHAPTER 6

CONCLUSIONS

6.1 INTRODUCTION

The doctoral dissertation entitled *Normative contestation in EU foreign policy. Lessons from the arms control, migration and gender equality regimes* had the goal to produce a clear understanding of the effects of normative contestation on the EU foreign policy. Such an interest in conducting this research lies in the fact that the EU is the poster child of the so-called post-national liberal order. And it is on this basis that it has been inferred that if the international order and/or norms are under contestation, the EU would also be a locus and focus of contestation.

The doctoral dissertation has traced the normative contestation of the EU foreign policy from within and without. The thesis has addressed this point through the interplay between two bodies of literature, norms research in International Relations (IR) and EU studies focusing on the concept of the Europe Normative Power (Finnemore and Sikkink 2000; Manners 2002). The interplay paved the way for presenting the added value of this dissertation. Such an added value has built upon the conceptualisation of the EU as a normative community, where contestation can take the form of applicatory and validity contestation (Deitelhoff and Zimmermann 2018).

This has resulted in an empirical contribution to the study of the relationship between the EU's foreign policy and norms – more concretely, in norms related to arms control, migration and gender equality. The doctoral dissertation has posed two interrelated questions. Firstly, how does normative contestation emerge in EU foreign policy? This research question was a two-fold question. On the one hand, it sought to

understand the extent to which external actors have triggered episodes of normative contestation within the EU. On the other hand, the dissertation also examined the extent to which normative contestation of EU foreign policy was triggered by internal actors. This resulted in the construction of a two-level analysis, which has been framed as the glocal level (Johansson-Nogués, Vlaskamp and Barbé 2020, p. 1). It suggests that the boundary between the external and the internal is blurred and external contestation can trigger internal contestation and vice versa (Thevenin, Liedlbauer and Petri 2020, p. 456). Secondly, the dissertation has asked what the implications of normative contestation are for the EU foreign policy system. The aim of this research question was to explain the effects of contestation on the EU foreign policy system and its methods through the elaboration of three case studies. The answer to this research question provides the state of the art of each case study and highlights the nature, structure and mechanisms of EU decision-making and policymaking when facing contestation.

6.2.2 Contribution to IR studies and EU Studies

As has been mentioned, the doctoral dissertation has worked at the intersection of two literatures: the IR norms research literature and the EU studies literature, focusing on Normative Power Europe. In doing so, it has contributed to a nascent field by exploring how the EU literature might draw on the norms research literature and vice versa. In the lines that follow, the main contributions to each of the literatures are outlined.

6.2.3.1 Contribution to IR Studies

In the field of IR and, to be more precise, in norms research, the doctoral dissertation has further developed the strategies of norm contestation. Concerning, normative communities, the literature has assumed the following. On the one hand, within a normative community, contestation is expected to be exercised in the form of applicatory contestation. On the other hand, among different normative communities, contestation is

expected to be exerted in its validity mode. Contrary to what has been assumed by scholars, this doctoral dissertation has considered that contestation within a normative community can be exerted in its validity mode in addition to its applicatory mode. To that end, while the EU has been defined as a liberal normative community it has been considered that both types of contestation can take place within the EU. In this same vein, the doctoral dissertation has empirically developed case studies shedding light on this assumption. Regarding Chapter 3 on Lethal Autonomous Weapon Systems, contestation within the EU is exerted in its applicatory mode, while in the cases of the UN Global Compact of Migration (i.e., Chapter 4) and Sexual and Reproductive Health and Rights (i.e., Chapter 5), contestation within the EU is exerted in its validity mode. In addition to this, the doctoral dissertation has also put forward two sub-types of validity contestation (Daase and Deitelhoff 2019). These are validity as opposition (i.e., Sexual and Reproductive Health and Rights) and validity as dissidence (i.e., UN Global Compact for Migration).

6.2.3.1 Contribution to EU Studies

Concerning EU studies, this doctoral dissertation has contributed and expanded the following lines of research: norm contestation as a framework for analysing norms in EU foreign policy, the unpacking of de-Europeanisation and the identification of structural factors and their effect on the EU's foreign policy system.

Regarding the first contribution, the doctoral dissertation has argued that norm contestation is the appropriate framework for the study of norms in the EU. This framework can be applied to the study of both externally promoted and internally applied norms. This is based on two considerations. First, it is the ambiguity of EU norms that has allowed actors to exploit the interpretative room for manoeuvre available to them, pushing for the interpretation of the norm that most benefits them and legitimising this

claim by referring to EU norms (Wiener 2014). As an example, the ambiguity given to Sexual and Reproductive Health and Rights is what has allowed Malta or Poland to support the EU's determination to promote the norm abroad, while having a very restrictive domestic policy on the matter. Secondly, there is no clear authority within the EU that can determine whether actual and prescribed behaviour match (Costa 2019). This is evident in the case of the Lethal Autonomous Weapon Systems with Member States wheeling and dealing over what the EU's position on the issue should be.

The empirical results of this dissertation echo the theoretical assumptions put forward by advocates of de-Europeanisation (Müller, Pormorska and Tonra 2021). De-Europeanisation can take place in all three Europeanisation processes (Major 2005; Tonra 2015; Wong and Hill 2011). That is, in the case of Europeanisation as cross-loading, based on the assumption that Member States will learn from one another; in the case of Europeanisation as downloading, focusing on how Member States adopt EU practices. Finally, Europeanisation as an uploading interested in how Member States promote their interests with the ultimate goal of their being shared by the EU normative community. Two case studies, the UN Global Compact for Migration and Sexual and Reproductive Health and Rights (SRHR), have covered these elements of de-Europeanisation. Referring to cross-loading de-Europeanisation, the SRHR has shown how Hungary and Poland have sought to build alliances outside the Union with the aim of undermining EU values. A similar pattern is found in downloading de-Europeanisation, where Hungary and Austria, in the Global Compact, chose to stop promoting European values, such as the upholding of multilateralism. Finally, uploading de-Europeanisation has also been addressed, where Poland and Hungary, in the case of the SRHR, and Hungary and Austria, in the case of the Global Compact, have gone against European integration by seeking to renationalise elements of EU foreign policy.

Lastly, with regard to the finding of structural factors, the PhD thesis has implicitly addressed them (c.f. Badell 2020). The question of whether and which structural factors are present in EU foreign policy is worth considering, as the study of EU foreign policy is at the crossroads of IR and EU studies. In the IR literature on norms, the existence of structural factors such as the institutionalisation of the norm, which helps to contain norm contestation, has been addressed. Delving deeper into the case of norm institutionalisation in the EU, the case of the UN Global Compact on Migration shows that even after Hungary left the EU bloc, the willingness of member states to continue working together persisted. The reason is to be found in the constraining effect of the Council Conclusions and the adoption of COREPER and the CONUN guidelines. Similarly, in the case of Sexual and Reproductive Health and Rights, one of the elements that keeps contestation at bay is the proven existence of long-standing EU documents endorsing such a norm. More importantly, this offers an explanation for why the EU's foreign policy system is remarkably robust. But it also implies that EU foreign policy can institutionalise contestation to reinforce its norms (e.g., Sexual and Reproductive Health and Rights), or it can expel actors from its system when they are in clear breach of norms (e.g., the UN Global Compact on Migration).

6.2.3 General Findings

The doctoral dissertation consisted of three case studies: Chapter 3 presented the case of Lethal Autonomous Weapons Systems; Chapter 4 dealt with the UN Global Compact for Migration and Chapter 5 delved into the case of Sexual and Reproductive Health and Rights. In what follows, the general conclusions will be presented. These will cover the following points: the type of contestation that is exerted, the content of the contestation

and the effects of the contestation on the EU foreign policy system and the norms studied in this doctoral dissertation.

6.2.2.1 Lethal Autonomous Weapon Systems

Chapter 3 traced the EU and Member States' positions on Lethal Autonomous Weapon Systems (LAWS). Covering a period between 2014 and 2021, it analysed the deliberations of the EU and its Member States at the UN Convention on Certain Conventional Weapons (CCW) and at the EU level. In this case study, contestation is taking place in the form of deliberations that focus on clarifying the norm and constructing its legitimacy. It is therefore taking the form of applicatory contestation. Moreover, from the perspective of IR norm research, LAWS is an emerging norm that has been put on the agenda by a transnational advocacy network and is being addressed in the EU through the intergovernmental method, as it affects the field of arms control.

In particular, the case study has shown that applicatory contestation in the case of the EU and its Member States is two-fold or double. First, at the Member States level, there is consensus on the need for human control, but contestation persists as to the appropriate regulatory framework: hard (legally binding) or soft law (politically binding/non-binding). Within the EU that kind of divide seems lately to be par for the course as had already emerged during past negotiations on arms control such as the ones on cluster munitions and landmines. This divide illustrates the presence of two souls in the EU: the national security soul represented by France (and the UK when the country was a Member States) and the good citizen soul represented by Germany.

Secondly, contestation is also exercised towards the EU by some Member States that contest the EEAS's proposal to present an 'EU position'. This type of contestation is somewhat new and stems from the institutional framework established in the 2009 Lisbon

Treaty that created the EEAS. In effect, the EEAS was given a voice in an area that until then had been the exclusive purview of Member States: CFSP/CSDP. And the empowerment of the EEAS within the system in terms of, for example, agenda-setting may lead to Member States to being obliged to work together on national security issues, while EEAS actions are likely, if overdone, to be seen as counterproductive with the risk of triggering disengagement of Member States.

6.2.2.2 The UN Global Compact for Migration

Chapter 4 delved into the negotiations of the first international instrument dealing with migration: the UN Global Compact for Migration. The chapter covered the negotiation period (2016-2018) and also provided insights into how the Global Compact is being implemented. In doing so, it traced the contestation by constantly looking at the interplay between the external and internal level, while it was argued that the EU and its Member States have faced a contestation of validity in the form of dissidence. It is a contestation exercised by an actor or group of actors who follow unconventional mechanisms and tools to prevent the norm from being accepted.

In fact, the EU's internal contestation against the UN Global Compact for Migration was triggered from outside. At the centre of this outside-in contestation was the United States under Trump, and it was echoed by Hungary and Austria. Both Member States acted as receivers and transmitters of this message, signalling that national sovereignty was the only possible framework for migration governance. Indeed, validity contestation was exercised by spreading the argument that the Compact attacked and diluted the country's national sovereignty. Hungary and Austria, in the case of the EU, considered the argument that the Union had no say, arguing that migration is an area that should be the exclusive competence of the Member State. As for Hungary's contestation

in April 2018, it proved that the EU's foreign policy system was indeed robust, as it ended up symbolically expelling Hungary from the EU's normative community as the EU and its Member States found new ways to continue to work together and present an EU position on the Compact at the UN.

However, in the case of Austria in October 2018, the EU's foreign policy system and its norms were shown to be temporarily eroded. This was not only the result of the US-led contestation, but also the result of Austria holding the EU's institutional power as Council president. These developments caused Member States that had hitherto supported the agreement to start pulling out or not voting in favour of it. In parallel, within the EU, migration practices were revised in the sense that the EU's liberal migration policies were set aside. A new approach focused on the securitisation of migration was adopted. Despite this, the EU can today refer to the Global Compact, but it is worth noting that reference can only be made to its existence, but not to how beneficial such an agreement is and, above all, how it could help improve the relationship between the EU and third parties.

6.2.2.2 Sexual and Reproductive Health and Rights

Chapter 5 traced the contestation of Sexual and Reproductive Health and Rights (SRHR) between 2017 and 2021. It argued that, at the EU level, contestation in this field is often exercised as validity contestation in the form of opposition. This means that actors may not have sufficient agency and accept the prevailing order as well as its channels of political participation. This kind of contestation of SRHR within the EU foreign policy system has been present since the norm's inception in 1995 at the Beijing Women's Conference. This has allowed for ways to encapsulate contestation, which in turn has had a positive effect: the strengthening of SRHR within the EU's foreign policy system. The chapter traced episodes in which this type of contestation has been exercised by providing

the examples of the 2017 European Consensus on Development, in which Malta contested the presence of SRHR, or the 2018 post-Cotonou Agreements, with contestation was exercised mainly by Poland. In both cases, initial opposition ended with the Member States joining the normative consensus.

At the international level, however, developments have not followed suit. The United States, under Trump, pushed forward a revisionist SRHR agenda that has substantially changed the fate of the norm at the UN. As a result of their actions in October 2020 they presented an alternative SRHR, which found support from Hungary and Poland. During this period of time, the EU and its Member States remained strong advocates of the SRHR at the UN, demonstrating how opposition within the EU to SRHR has actually had a strengthening effect within the foreign policy system. But this opposition turned into dissidence once the US presented an international alternative to SRHR. In another case of outside-in contestation, this led Hungary and Poland to block in December 2020 the adoption of the EU's Gender Action Plan III as Council Conclusions. However, this dissent was countered by Germany (CODEV chair) by adopting the Action Plan as Presidency Conclusions with the support of 24 Member States. The EU was able to bring Hungary and Poland back to the normative consensus on SRHR in the Team Europe Conclusions in April 2021 at a time when the international atmosphere underwent a change, i.e., when the Biden Administration took office in the US.

6.3. AVENUES FOR FUTURE RESEARCH

Based on the results of the individual case studies, future avenues of research that merit attention are set out in the following lines. Prior to presenting the research avenues, it is necessary to stress a limitation to the thesis. This limitation is therefore a line of research

to be considered in the future. Given that the thesis has focused heavily on the EU's discursive dimension of normative contestation, the future line of research should analyse what the EU's behavioural dimension on norms is. For example, it is necessary to move beyond the realm of discourse and also consider the extent to which the EU actually implements its foreign policy.

6.3.1 Lethal Autonomous Weapon Systems

In the case of Lethal Autonomous Weapon Systems (LAWS), future research should take into account some of the three points to be discussed below. First, the research ended with the events of the Sixth Review Conference, where negotiations on the need for a new international instrument could not be opened. That is being advocated by Austria, Belgium, Luxembourg and Ireland. It is therefore necessary to investigate to what extent it would be beneficial for the international system to negotiate an agreement outside the UN system without the presence of key players in the field of Artificial Intelligence (AI) such as the United States or Russia.

Second, it is also necessary to further explore the role of the European Defence Fund and the Commission as an increasingly powerful actor in the defence field and to see what the impact of the autonomous weapons ethical screening is, and whether it ends up having an impact on the European position on LAWS. Third, the chapter also highlighted the winding path that the EEAS faces in trying to play within its responsibilities. For this reason, more case studies are needed to shed light on the extent to which the EEAS is an instrument that enhances or hampers coordination among Member States and generates a cohesive and effective foreign policy.

6.3.2 The UN Global Compact for Migration

The chapter on the UN Global Compact for Migration ended with a general outline of the implementation of the Global Compact. That is why it would also be interesting to study how the European Commission, using its autonomy in certain areas of the migration regime, has contributed to advancing the agreement. For example, as of today we know that the Commission has been an actor that has contributed to the funding of the UN Migration Network, one of the milestones of the Global Compact.

Also, the Global Compact has been the battleground between EU Member States that promote a liberal migration regime and those that clearly advocate a securitisation of the regime. This raises the question of to what extent the current fact that the EU can refer to the existence of the Compact but not to its content is a victory for the securitarian, or, on the contrary, a victory for the liberal camp. This is relevant since the Global Compact was said to replicate European practices.

Finally, the Global Compact for Migration shows how the EU and its Member States, when faced with a manifest case of dissidence, can expel the actor in question from the system and continue working towards a common horizon. However, it raises two questions. The first is whether the case of the Global Compact is a first example of what a European foreign policy based on qualified majority voting might look like. The second, in line with classic foreign policy debates, concerns the extent to which a similar case would be feasible if the actor in question were not a small state.

6.3.3 Sexual and Reproductive Health And Rights

The case of Sexual and Reproductive Health and Rights (SRHR) has presented two levels of analysis on the state of the norm. At the international level, it has ended up being argued that the norm has entered a stage of fragmentation in which there is a group of actors who defend the norm, but who also choose to push it outside the UN if necessary; and a rival

group of actors who have gone beyond the desire to change the norm by removing references in resolutions and have ended up presenting an alternative norm. It is therefore necessary to examine the question of the fragmentation of SRHR, its articulation and the effects it may have on the universality of women's rights and human rights.

In the realm of EU foreign policy, we have seen how the EU has built its engagement with SRHR on an interactive basis where the norm is constantly contested. However, this has led the EU to be seen (abroad) as a passive actor in this area, one that has focused too much on devoting resources to addressing the internal challenge to the neglect of the external dimension. In other words, a Union that looks inwards while having a lame view outward. Further research is therefore needed on the extent to which the EU is recognised internationally as a key actor in the defence and advancement of SRHR and women's rights in general; and also, on the extent to which countries see the EU as a legitimate actor in this field.

6.4 CONCLUDING REMARKS

Discussions on creating, preserving the status quo or strengthening regimes on arms control, migration and gender equality show that the Liberal International Order is in good health. Broadly speaking, this implies that cooperation based on a sense of oughtness persists. Yet, these agreements share similar limiting characteristics (see Table 9). They are non-binding, aspirational in nature and depend on voluntary commitments for their success (Ferris and Donato 2019). Despite this limitation, it can be posited that the international order continues to swell with the development of new norms.

Table 9. Case studies

	Low intrusiveness	**High intrusiveness**
High authority transfer		
Low authority transfer	• LAWS	• SRHR • Global Compact for Migration

Source: adapted from Barbé (2021)

As for the EU, it continues to preach multilateralism with the UN at its core and a rules-based order with a preference for international law. Nevertheless, it remains critical to address the question of which mechanisms the EU has at its disposal to preserve, protect and defend liberal values. This question is all the more pertinent in a world on the verge of systemic rivalry. That speaks to the outward-looking EU foreign policy. As Leonard argues, the world is about to enter an era of non-peace, in which the EU's idealistic notion of how interdependence would lead to peace appears to be dysfunctional (Leonard 2021). Such a situation speaks of the advent of an open international system "in which all states have political and economic freedom of action and can make independent strategic decisions without being forced into closed blocs or camps that could result in their hierarchical dominance by more powerful states" (Lissner and Rapp-Hooper 2020, p. 93).

To this end, European diplomats are key to envisioning a future different from today's (Cooper 2020). Diplomats are crucial in bringing ideas that change the way the world is viewed, and their actions can change the ways in which the world works. From the 57 interviews conducted for this dissertation, one key insight emerges: the EU has a

plentiful supply of diplomats with the imagination to envision a future different from today. Moreover, EU officials and Member State diplomats are excellent at monitoring and understanding current events and should be given more autonomy to think differently and explore creative and innovative solutions.

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