

“Liaison magistrates” and “contact points” as a “remedy” against “high levels of mistrust”: Metaphorical imagery in scholarly papers on EU judicial cooperation

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Abstract

Practitioners and academics have long admitted that metaphor is part of the language of the law, both in general areas and in specific fields (company law or criminal law, amongst others), and have recognized its role as basic for legal persuasion and reasoning. Such persuasive power becomes necessary not only in legal proceedings, but also when new instruments and procedures are introduced, which may come across opposition. This is the case within the European Union with what has been termed “judicial cooperation”, a wide label encompassing a number of strategies and instruments making it possible to overcome problems arising from various national jurisdictions being involved in a case. In the face of resistance from some politicians, and even judicial actors, a whole body of legitimizing discourse is required, where persuasive metaphors are essential. One of these legitimization instruments is the wide array of scholarly papers analysing the evolution of judicial cooperation and attempting to underline the benefits of such cooperation. In these papers, there are frequent metaphors that conceptualize abstract notions with desirable metaphor framings based on living beings and on tangible objects (especially instruments, buildings, areas and structures), or portraying cooperation as a journey where progress is either the only acceptable option or a weapon in a fight against cross-border crime. Conversely, non-cooperation is associated with negative images, mainly obstacles and barriers, and is even seen as a disease for which the legal measures are “remedies” that “alleviate mistrust”. Our study, based on an ad hoc sample of scholarly papers dealing with European judicial cooperation, will examine the

role of metaphors within an argumentative strategy aimed at legitimizing cooperation procedures.

Keywords: legal metaphor, EU judicial cooperation, metaphor and persuasion.

Resumen

“Magistrados de enlace” y “puntos de contacto” como “cura” frente a “altos niveles de desconfianza”: imágenes metafóricas en artículos académicos sobre cooperación judicial en la UE

Desde hace tiempo, profesionales y académicos vienen admitiendo que la metáfora forma parte del lenguaje jurídico, tanto en campos generales como en ramas específicas (el derecho mercantil o el penal, entre otros), y han reconocido su papel como básico para la persuasión y la argumentación jurídicas. Dicho poder persuasivo se hace necesario no solo en procesos jurídicos, sino también cuando se introducen nuevos instrumentos y procedimientos que pueden encontrarse con oposición. Tal es el caso, en el seno de la Unión Europea, de lo que ha venido en llamarse “cooperación judicial”, concepto amplio que incluye diversas estrategias e instrumentos que permiten superar los problemas que suscita el que en un único procedimiento estén afectadas varias jurisdicciones nacionales. Ante la resistencia de algunos políticos, e incluso de miembros de la profesión judicial, se hace precisa una estructura completa de discurso de legitimación, en el que las metáforas son esenciales. Uno de estos instrumentos consiste en la amplia variedad de artículos académicos que analizan la evolución de la cooperación judicial y tratan de poner de relieve sus beneficios. En estos artículos, hay frecuentes metáforas que transmiten conceptos abstractos mediante marcos metafóricos deseables y atractivos, basados en seres vivos y en objetos tangibles (sobre todo instrumentos, edificios, espacios y estructuras), o que describen la cooperación como un viaje en el que la única opción aceptable es avanzar hacia adelante, o en un arma en la lucha contra los delitos transfronterizos. Por el contrario, la no cooperación se asocia a imágenes negativas, principalmente obstáculos y barreras, e incluso se ve como una enfermedad para la cual las medidas jurídicas son “remedios” que “calman la desconfianza”. Nuestro estudio, basado en una muestra creada al efecto de artículos académicos sobre cooperación judicial europea, abordará el papel de las metáforas dentro de una estrategia argumentativa destinada a legitimar los procedimientos de cooperación.

Palabras clave: metáfora jurídica, cooperación judicial en la UE, metáfora y persuasión.

1. Introduction: European judicial cooperation

In the negotiations before the Maastricht treaty in the 1990s, “Police and Judicial Cooperation in Criminal Matters” was conceived as one of the three pillars of European integration, or order to combat drug trafficking and weapons smuggling, terrorism, trafficking in human beings, organised crime, bribery and fraud. Although the “pillar” structure was later abandoned after the Treaty of Lisbon, the initial desire to promote cooperation and harmonization remained in what was termed a “post-September 11 environment”, when governments and citizens began to partake of an idea already known to judges: crime had no borders.

During the first decades of the European Union, extradition and cooperation in Europe were governed by multilateral treaties, such as the European Convention on Extradition (1957) or the European Convention on the Suppression of Terrorism (1977). However, these instruments were regarded as insufficient, especially since the Schengen Agreement of 1990. This feeling, strengthened by the political and social pressure after the 2001 terrorist attacks, gave rise to a number of procedures and instruments, the most important being the European Arrest Warrant (hereinafter, EAW), approved by Council Framework Decision of 13 June 2002, meant to ensure the mutual enforcement of arrest warrants and eliminate the need for extradition (traditionally affected by political and diplomatic factors). Nevertheless, this was not the only measure for EU judicial cooperation: other instruments came along, such as the European Evidence Warrant (Council Framework Decision 2008/978/JHA of 18 December 2008), which supplemented various agreements already in existence since the 1980s, regarding the transfer of sentenced persons, the transfer of proceedings in criminal matters and the enforcement of sentences. These legal instruments were supported by the creation of specific bodies and networks, like the European Judicial Network (1998), Eurojust (2002) and probably in a near future, the European Public Prosecutor. The practical result was that many political and administrative obstacles were removed for cooperation and the system was run by the judiciary in its entirety (for further analysis and comprehensive information on the EAW, see Ouwkerk, 2011).

However, as we shall see in the following sections, all these areas where cooperation is proposed have a high symbolic component, since they involve concepts of sovereignty (and nationalism), on the one hand, and the protection of human rights, on the other. Therefore, a strong ideological

task is necessary both to overcome existent concepts and to promote new ones in the face of powerful anti-EU and anti-cooperation discourses (see Spencer, 2004). Given that all these concepts are abstract, there is the need to give them a concrete existence so that they may be understood and approved of by decision-makers, but also by legal professionals and the general public. This is where metaphor comes into play, as a basic tool for abstract reasoning (Goatly, 2007: 14). Our study will explore how metaphors are used by academics in order to represent and, more importantly, legitimize European judicial cooperation, a type of discourse that, to the best of our knowledge, has received scarce attention.

2. Theoretical framework

2.1. Metaphor and law: the state of the art

If our understanding is conditioned by metaphors, it is only normal that all domains of human knowledge and activity contain metaphorical language. Such is the case of law, where both legal scholars and academics have explicitly accepted it as one of the basic components of legal language (cf. Murray, 1984; Henly, 1987; Schane, 2006). From a purely objective point of view, if we consider the fundamental role of metaphor in the understanding of abstract notions (Lakoff & Johnson, 1980), by explaining and modelling them (on this, see Goatly, 1997: 149), the specific abstract nature of legal concepts and reasoning requires resorting to metaphorical thinking in order to allow us to understand and grasp what the law entails; as Henly (1987: 85) has aptly described, “the very act of judging requires category jumps –from fact to law, from passion to principle, from persons to rules”. Indeed, metaphor is present not only in specific terminology or in legitimation discourses, but also lies at the origin of many apparently non-metaphorical words which are central to law, such as “appeal”, “case” or “prove” (Watt, 2013) or even legal prepositions and syntax (for instance, the use of “down” or “under” in “hand *down* a judgment” or “*under* the terms herein”, based on CONTROL IS UP, THINGS CONTROLLED ARE DOWN). In fact, the figurative nature of legal language goes to the extent that, once metaphorical lexis is introduced in order to express non-existent concepts (mentioned by Goatly, 1997: 149), many concepts in legal language are simply not describable in non-metaphorical terms. This has great implications, not only for the importance of metaphor in general, but also for the impossibility to view these concepts from a neutral perspective, as shall be seen below.

More specifically, metaphors have also been seen at work in areas like corporate law (Berger, 2004, 2007; Greenwood, 2005), constitutional law (Jackson, 2006), copyright law (Larsson, 2013), or criminal law (Duncan, 1994). What is more important, metaphors have been so central to law that there is a constant transfer of metaphorical frames from the legal to the political sphere and back, as has been shown by Lakoff and Wehling (2012), not only regarding the “corporations are persons” debate, but also more recently, with respect to the “health is a product” or “taxes are a burden” metaphors, which have been shown to have a highly ideological content.

Indeed, this ideological content is central to the analysis of metaphor, since metaphors do not only “illustrate” or “explain”, but are consciously or unconsciously chosen to promote a conceptualization of events. For instance, when critics of abortion describe its legalization as a step in a “slippery slope”, a very powerful, fear-instilling image is created of society (and therefore, citizens) going downhill from the legalization of abortion into an abyss of anarchy. Also, when it is said that “penumbra” is a space within legal reasoning, judges are justified not to use logic and precedent and follow their instinct, something that would legitimize practices that run counter to the principle of *stare decisis*, central to the common law system (Henly, 1987: 87).

As may be seen, metaphor is a useful tool in legal controversies; however, the debate regarding judicial cooperation is not only a legal one (i.e. it does not only involve human rights or the protection of the individual), but also a political one, especially if we consider that judicial cooperation is sponsored by (and the consequence of) a relatively recent political development such as the European Union. Accordingly, the following section will briefly explore what the role of metaphor has been in EU discourse.

2.2. The EU and metaphor

In the same way metaphors are used to legitimize or delegitimize legal measures and positions, the European Union is also creating its own legitimization discourse as a supra-national entity. Metaphor is essential for this construction, given that nations themselves largely exist in the mind of their citizens through metaphorical images (Drulák, 2006; Musolff, 2016: 93ff).

The ideological construction of the EU through metaphor has received plenty of attention from the academia, regarding the European Union itself

(Musolff, 2004; Drulák, 2006), its enlargements (Hülse, 2006), its role as an international actor (Barbé et al., 2015) or even to construct discourses of inclusion and exclusion in European identity (Wodak, 2007). In general, these metaphors have succeeded in establishing both what the European Union is (A BODY, AN AREA, A SPACE, A BUILDING) and what it can do (A MODEL, AN INSTRUMENT, A PLAYER, A FORCE). In fact, a sizeable part of institutional EU terminology is largely metaphorical: the most fitting description is that put forward by Drulák (2006: 16), who portrays the EU as a whole as a “target domain which can be metaphorically bridged to several source domains”. As we pointed out earlier, and given the power of metaphor to promote a given interpretation of events, it follows that little, if any, of EU institutional language is neutral.

Metaphors, amongst other tools, are at work especially when, as we hinted above, the existence of the EU is constantly questioned, both in itself (“should it exist or not?”) and concerning its role (“should it be merely an economic community, or advance towards greater integration?”). Hence the importance of legitimation discourses, which are hardly necessary in the case of nation states, since they are mostly accepted as they are, both by their citizens and by others, and have existed for centuries. This can hardly be said about the EU, a comparatively “young” (and thus frail) entity, constantly fighting in order to preserve its own existence (with some states leaving and others facing growing internal pressure in such direction), or against accusations of lack of accountability or transparency or, at times, democratic default (Hix, 2008; Scharpf, 2011; Majone, 2014).

Political developments also mean that metaphor in EU ideological construction is by no means static. Thus, it has even been observed that there has been an evolution in the metaphors used. As noted by Guzzetti (1995: 168), for instance, the metaphor of “space”, which seemed to be prevalent (e.g. “Euro Area”, “European Economic Area”, “European Higher Education Area”), has comparatively lost weight compared to that of “networks” (e.g. the European Judicial Network, the European Migration Network, Enterprise Europe Network) in order to stress integration between the parts of a whole.

3. Our study

In order to show how metaphor contributes to the legitimation of the European Arrest Warrant and other instruments of judicial cooperation in

the EU, we manually extracted all metaphors used to refer to judicial cooperation from a selection of 13 academic papers dealing with the topic (see primary references section). The approach is qualitative, since the focus was more on the metaphors themselves than on density or sheer numbers, although mention will be made if a given metaphor or image is a very pervasive one.

The method for metaphor detection follows the proposal by the Pragglejaz Group (2007), whereby metaphors are manually extracted and identified as such if the contextual meaning of a word or expression differs from the basic meaning, but still allows some connection between one and the other. The purpose being to analyse the conceptualization of judicial cooperation, metaphors not related to such cooperation were disregarded for the study, like “*heads* of state and government”, even if they pertained to legal language (e.g. “*serve* a sentence”). The result was a total of 186 metaphors related to judicial cooperation, from a total word count of 75,677 words.

Regarding our analysis, although other authors have classified legal metaphors on the basis of the “great chain of being metaphor” (Vegara, 2014, 2015), in the specific case of legal cooperation we have preferred to resort to the more “classical” three-tiered taxonomy by Lakoff and Johnson (1980: 14) of ontological metaphors, structural metaphors and orientational metaphors, as we have considered that, due to its simpler nature, it provides better insights on the effects of those metaphors in order to conceptualize and legitimize judicial cooperation. The following section shows the most interesting source domain subcategories found.

4. Analysis of the results

In this section, we shall comment on the most salient metaphors used to describe (and justify) judicial cooperation. In order to visualize the metaphorical associations through the effects they produce, we have subdivided the ontological metaphors into “living beings” and “object” metaphors, and grouped the structural and the orientational metaphors as follows:

- Metaphors of living beings
- Object metaphors (physical properties, instruments, containers)

- Structural metaphors:
 - Journey and position metaphors
 - Fight metaphors

4.1. Metaphors of living beings

One of the most usual techniques in human perception is considering animals, objects and even concepts as living beings. This animation of instruments and organizations (COOPERATION MEASURES AND ORGANIZATIONS ARE LIVING BEINGS) provides them with “living” features, which is why beginnings and endings become births and deaths (in each example, the metaphor is italicized, and the name of the author(s) of the paper is indicated between brackets):

- (1) It [surrender of prisoners] was *given birth* in the Statute of the International Criminal Tribunal for the former Yugoslavia (Plachta)
- (2) The grand concept of an Espace judiciaire européen [...] seemed to have died *a quiet death* (Vermeulen).

The metaphor of the “body” itself is a frequent one although lexicalized (the *OED* [2009] shows metaphorical examples ever since the Renaissance, such as “The entire body of the Scripture” in 1593), and it is based on LAW IS A BODY and on LEGAL COOPERATION ORGANIZATIONS ARE BODIES, which implicitly means that, like human bodies, they are coordinated and have a common purpose:

- (3) a single EU *body* of law based on mutual recognition (Nilsson)
- (4) Eurojust, a *body* of prosecutors and judges having its seat in The Hague (Nilsson)

The conceptualization as bodies, in turn, leads to metaphorical tokens of body parts:

- (5) It is also at the *heart* of its added-value as it allows Eurojust to assist Member States (Thwaites)

Within living beings, human metaphors allow a “peer-to-peer” approximation to concepts, seen by addressees as “one of us”. This view,

which lies at the root of other phenomena, such as anthropomorphism, creates empathy between the addressee and the concept, especially when there is a danger that the connection may not occur; in the words of Epley et al. (2007: 864), “[a]nthropomorphized agents can act as powerful agents of social connection when human connection is lacking”.

Once established as humans (COOPERATION, COURTS, STATES AND ORGANIZATIONS ARE HUMAN BEINGS), target domains share the traits of human beings and are capable of human attitudes and feelings:

- (6) It [the area of freedom, security and justice] drew *inspiration* from the creation of the so-called internal market of the European Community (Nilsson)
- (7) This is done by *stimulating* and improving judicial co-ordination (Thwaites)
- (8) the newly proposed regime is *over-ambitious* (Apap & Carrera)

Within human attitudes, there is a specific scenario where cooperation, courts and states relate as humans would, i.e. they *trust* each other and, as a result, they *recognize* each other. In the case of “trust”, the token often appears in the combined metaphorical schema “building trust”, which refers to institutional efforts to overcome suspicion that foreign legal systems are not up to standard (for instance, in the protection of human rights, and therefore “may not be *trusted*”). In the following examples, “trust” is attributed to member states as agents, and in some cases (11) “mistrust” is both a physical entity with vertical gradation and capable of “locking” an extradition system:

- (9) policy orientations may or may not overcome the persistent *mistrust* and *lack of confidence* among the member states (Apap & Carrera)
- (10) Approximation and harmonization of legislation and mutual *trust* in each other’s legal systems is therefore absolutely necessary (Felföldi)
- (11) the EU extradition system, which still seems *locked* in a rather high level of *mistrust* (Apap & Carrera)

One of the central concepts in European judicial cooperation, defined in European instruments, is that of “recognition”, even as part of the name of various cooperation texts (Council Regulation (EC) No 44/2001 and Regulation (EU) No 1215/2012 on civil and commercial matters, Council

Regulation (EC) No 2201/2003, on matrimonial matters and parental responsibility). The concept is also based on human attitudes (human beings recognize one another), where the subject is usually the courts (or states) and the object is the judicial decision:

- (12) Non-custodial pre-trial supervision measures are not *recognised* between States (Ljungquist)
- (13) [...] implement the principle of *mutual recognition* of judicial decisions (Apap & Carrera)

The extent to which states and cooperation are seen as humans is so great that there is also a metaphor whereby mistrust and lack of cooperation are viewed as a disease afflicting such humans, and the cooperation measures become the remedy:

- (14) Transfer of the evidence to the issuing State without delay unless a legal *remedy* is underway (Williams)
- (15) It also seeks to *alleviate* the apparent mistrust among the current and future EU member states (Apap & Carrera)

4.2. Object metaphors: Where judicial cooperation becomes tangible

As we have argued earlier, the apprehension of abstract concepts is not a simple matter, which is why in many languages the concept of physical, three-dimensional existence is equated to reality, as in expressions like “tangible results” or “materialize”. In the case of judicial cooperation, especially when seen as theoretical and difficult to achieve, it is capital to provide it with “tangible” nature (COOPERATION IS AN OBJECT WITH PHYSICAL PROPERTIES), so that the feeling is created that the cooperation exists in what Henly (1987: 82) calls “the world of objects”. In this way, the EAW can occupy the “physical place” of extradition (16) or help (17), a Europe without borders (18) can have a physical shape, and importance can also be measured in terms of relative weight (20) or size (21):

- (16) European arrest warrant – is it an improved method to *replace* extradition? (Apap & Carrera)
- (17) The help provided by Eurojust can take various *shapes* such as putting different Member States’ competent authorities in contact (Thwaites)

- (18) Hand in hand with the *shaping* of a Europe without internal borders, the EU had to face an increased vulnerability regarding its internal security (Bogensberger & Troosters)
- (19) ...what we have in the Framework Decision is a *horizontal* system, as opposed to a *vertical* one. (Plachta)
- (20) Does the EAW guarantee a good *balance* between efficiency and judicial protection of the individual's fundamental rights? (Apap & Carrera)
- (21) the evidence being sought is necessary and *proportionate* for the proceedings in question. (Williams)

When something has physical, three-dimensional existence, it can be used by the *homo faber* to do things. Thus, the metaphor LAW IS AN INSTRUMENT/TOOL is a frequent one (as is also in its application to the European Union as such), to the extent that the word “instrument” has developed an established meaning of “a formal writing of any kind, as an agreement, deed, charter, or record, drawn up and executed in technical form, so as to be of legal validity” (*OED*). Although the meaning has been lexicalized, the use of “instrument” applied to legal texts (Treaties, Directives, Regulations) still evokes – although at an unconscious, non-explicit level – problem-solving through physical means:

- (22) Most on the Treaties and other legal *instruments* mentioned in this article may be found at the Council of the EU website (Nilsson)
- (23) *this instrument* [the Framework Decision] will apply the principle of mutual recognition to a judicial decision (Vermeulen)

However, in some other examples the occurrences are more explicitly metaphorical, as they depart from the pure naming of “statutory texts” and explicitly refer to the fact that something can be used to do things (reinforcing both its practical nature and the idea that there is a purpose to be attained). Thus, “instrument” transmits its core meaning more clearly, together with “tool”, when applied to the European Arrest Warrant or Eurojust:

- (24) instruments [...] may be considered valuable *tools* for effectively combating cross-border crime in the European Union. (Apap & Carrera)
- (25) Eurojust is a “*tool*” which can be contacted by the Member States’ competent authorities (Thwaites)

In some cases, judicial cooperation is seen as a mechanism or a piece of machinery, which, as can be seen in some of the examples below, is capable of industrial production (“output”), but also needs mechanical “maintenance” (“oil”):

- (26) This cooperation *mechanism* between national and European jurisdictions applies, in principle, also in Third Pillar matters (Bogensberger & Troosters)
- (27) the main convention *output* of the newly established EU machinery in the field of judicial cooperation in criminal matters (Vermeulen)
- (28) to further improve, simplify and speed-up their co-operation; in other words to facilitate or “*oil*” it (Thwaites)

Another variation of the object metaphor is the conceptualization of judicial cooperation as space. The concept of “area” and “space”, as has been seen above, was a basic one at a time in European institutions. Judicial cooperation is no exception, especially since the then French president Giscard D’Estaing envisaged the *Espace judiciaire européen* or “European legal area” in 1977. Although the literal concept was dropped, the notion of space or area helps to give a physical presence to European cooperation, and also acts as a “container” metaphor (in fact, “framework” is so frequent a term that it is unavoidable in EU law):

- (29) ... the mandate to draw up a number of draft conventions which would help to create a European *area* for judicial cooperation in criminal matters (Vermeulen)
- (30) Does an efficient EU *framework* exist that safeguards the suspected individual’s human rights? (Apap & Carrera)

The advantage of the container metaphor, central to the EU itself (Drulák, 2006: 21ff) is that it also enables an objective representation of cooperation, i.e. “those who cooperate are inside, those who do not are outside”:

- (31) Member States can “*opt-in*” according to different modalities as concerns the authorization to pose questions to the Court (Bogensberger & Troosters)

Another ontological metaphor creating a strong positive mental association is that of COOPERATION IS A BUILDING. Political discourse (and

persuasive discourse in general) has often resorted to construction metaphors, as does general language (“constructive” criticism is desirable); architectural metaphors have been used to describe European Unification (see, for instance, Schäffner, 1993), and the image of the “pillar” is a very popular one, amongst others, to describe the role of NATO (Luoma-aho, 2004). In the case of the European Union, as we saw earlier, European integration was once described as a structure resting on “three pillars”, and at the time the papers analysed here were published, the “pillar” image was a very strong one:

- (32) This cooperation mechanism between national and European jurisdictions applies, in principle, also in *Third Pillar* matters (Bogensberger & Troosters)

As can be observed, the “pillar” metaphor has been lexicalized to such extent that it may appear with the correct physical orientation resulting from the comparison (the pillar is *under* those things it supports), as in (33), but in some cases it has lost its original value and enters other prepositional schemas indicating different relationships, e.g. as a container (34), or even in a higher position than those things it supports, which indicates that, when they occur together, the CONTROL IS UP, THINGS CONTROLLED ARE DOWN metaphor, prevalent in law, is stronger than the “pillar” one (35):

- (33) Framework Decision on the protection of the environment by criminal law, based on a *Third Pillar* legal base (Bogensberger & Troosters)
- (34) The Maastricht Treaty [...] that recognized for the first time some limited jurisdiction for the Court [...] adopted *within the framework of the Third Pillar* (Bogensberger & Troosters)
- (35) Articles 1 to 7 could have been properly adopted on the bases of Article 175 TEC so that its adoption *under the third pillar* provisions infringed upon Article 47 (Zeitler)

As a rule, the idea of “building” and “constructing” is very frequent, as endorsed by institutional discourse, which has strongly emphasized the domain of building, which conveys “strength”, “protection”, but also, as will be seen below, “process”. Academic papers dealing with European cooperation frequently draw on this scenario, including both buildings and their constituents (including the “foundation”):

- (36) The establishment of a basic level of trust is closely intertwined with the *building* of an EU judicial area (Apap & Carrera)
- (37) Such co-ordinated activities have generated *constructive* results (Thwaites)
- (38) The EU provisions on Police and Judicial Cooperation Criminal Matters, Arts. 29-42 of the Title VI of the Treaty on the European Union (TEU), provide the legal *foundation* [...] for the programme (Apap & Carrera)

Within the structure of the “European cooperation building”, the image of the “cornerstone” emphasizes the importance of the EAW or of mutual recognition of judgments as a *sine qua non* component (if the cornerstone is removed, the whole building collapses):

- (39) It [the EAW] represents a *cornerstone* for the establishment of a single EU legal and judicial area of extradition (Apap & Carrera)
- (40) the principle of mutual recognition of judicial decisions should become the *cornerstone* of judicial cooperation (Nilsson)

The building metaphor can be seen as an event scenario (as a container metaphor), but it also focuses on the process. The advantage is that attention is thus shifted towards the potential benefits, and any problems (described as those in a building site) may be tolerated. In this way, any potential “destructive” metaphors by opponents of judicial cooperation may be deactivated before they are even wielded:

- (41) The only comforting thought is that the muddle exists, not because Europe has built a muddled system, but because the system is at present in a state of transition. Viewed as a *building-site rather than a completed structure*, the muddle becomes bearable. (Spencer)

A variety of the building metaphor is the “house” or “shelter” domain, also very popular in politics. The “house” was used to describe the EU itself, in the popular expression “common European house” (Chilton & Ilyin, 1993); its components also appear as a way to express abstract concepts through everyday images:

- (42) the level of the extradition *threshold* in the requesting and requested state, as well as the double criminality rule itself, have been debated (Vermeulen)

- (43) Any relaxation had to concern the imprisonment *threshold* and extraditable offences in general (Vermeulen)

4.3. Structural and orientational metaphors: How cooperation behaves and what it does

As we saw earlier, any potential failures in EU judicial cooperation may be “counteracted” by viewing cooperation as a building “under construction”, whereby the ontological metaphor (COOPERATION IS A BUILDING) may also be seen as an event/action structural metaphor (TO COOPERATE IS TO BUILD A HOUSE). In the field of structural metaphors, we shall concentrate on two main framings: the journey scenario and the fight scenario.

4.3.1. Journey and position metaphors: The road towards cooperation

The journey metaphor is an obligatory image in human experience (life itself is “a journey”, and so is death). Its use in the language of judicial cooperation is probably where this argumentation comes closer to political discourse: all endeavour is a “path”, where advancing is seen as a good sign. In the case of the European Union, the path/journey metaphor is among the most important elements in its ideological construction (Musolff, 2004: 39ff). In judicial cooperation, the process is viewed as a journey, the destination being judicial recognition and cooperation:

- (44) [The European Evidence Warrant] is to be considered as a first *step towards* replacing the existing regime (Williams)
- (45) Moreover, the *starting point* was not pursued consistently: if necessary, non-privative penalties, included monetary sanctions, could be substituted by imprisonment (Vermeulen)
- (46) a genuine EU security strategy or security *roadmap* to fight everything broadly falling within the so-called ‘internal and external threats to our European societies’ (Apap & Carrera)

Within the journey scenario, progress is the only acceptable option, and therefore, IMPROVEMENTS ARE FORWARD MOVEMENT:

- (47) Eurojust’s unique and unprecedented structure represents an important *step forward* to enhance multilateral co-operation in EU criminal matters (Thwaites)

- (48) Does the Green Paper on procedural safeguards for suspects and defendants in criminal proceedings throughout the EU provide *the right way forward*? (Thwaites)
- (49) as the *progress* of the work on the new comprehensive, UN-sponsored, convention against terrorism clearly indicates, no such universal definition *is in sight* (Williams)

Consequently, slow speed or backwards movements are not desirable:

- (50) The Agreement was only ratified *at slow pace* and only became sort of successful in the second half of the nineties (Vermeulen)
- (51) In the Convention of 27 September, ultimately, the *step backwards* was a small one (Bogensberger & Troosters)
- (52) The quasi-automatic renunciation of entitlement to the principle of speciality, on the contrary, represented a considerable *regression* (Bogensberger & Troosters)

As forward progress towards a destination has been defined as positive, PROBLEMS/DEVELOPMENTS IN JUDICIAL COOPERATION ARE PHYSICAL OBSTACLES:

- (53) Therefore it must not be an *obstacle* to the application of Article 54 of the CISA if different legal classifications may be applied to the same facts in two different Member States (Bogensberger & Troosters)
- (54) for practitioners to meet and identify *blockages* to co-operation as well as best practices and/or common procedures (Thwaites)
- (55) fight *barriers* to effective judicial co-operation (Thwaites)

Along journeys, achievements are also referred to with metaphorical tokens. For example, in line with general legal language, “landmark” is frequently used for decisions with great repercussion in case law (leading to an almost unavoidable expression in legal English, *landmark decision/judgment*):

- (56) The Court’s ruling is generally considered as a *landmark judgment*, as it clarifies the distribution of powers between the first and third pillars regarding provisions of criminal law (Bogensberger & Troosters)

A similar concept, but with a different application, is that of “milestone”, also describing a specific point along a journey, but this implies a major

achievement reached with difficulty or after negotiation, which is why it is usually applied to treaties or agreements:

- (57) following the political introduction of the so-called ‘mutual recognition principle’ in the Tampere *milestones* [...] of this new principle in the Framework Decision of 13 June 2002 on the European arrest warrant (Vermeulen)

In this respect, a very frequent metaphorical token is the “Tampere Milestones”, the label for the goals agreed at the Tampere European Council of 15-16 October 1999, including common asylum and migration policy, a European *area* of justice, a EU-wide fight against crime and stronger external action. In this case, the *milestone* metaphor joins the description of mutual recognition of judgments as “*the cornerstone* of judicial cooperation”. As is frequently the case with metaphors that have become an unavoidable term with no alternative, even critics of the EU’s justice and home affairs policy “accept” this positive metaphor. For instance, in a paper with such a disparaging title as “Constructing crises, (In)securitising terror: The punctuated evolution of EU counter-terror strategy”, the author has no other option than to use terms with a great euphoric load, like “Third Pillar” and the “Tampere Milestones”, which somehow weakens his open criticism of EU policy, as in “the EU has inflated the threat posed by terrorism” and “counter-terrorism practices can generate greater insecurity inside and outside the union” (Oz, 2010: 445).

However, it is not only linear journeys that are seen as desirable, but also converging ones, i.e. all of those meaning proximity, the metaphor being CLOSE IS GOOD, SEPARATED IS BAD. This is a usual metaphorical conceptualization in human cognition, which tends to see, for instance, similarity in terms of proximity and difference in terms of distance. EU law makes frequent use of this image, often resorting to expressions like “*approximation* of laws” and “*alignment* with the *acquis communautaire*” as one of the obligations of EU membership, or as the Maastricht Treaty suggested, “the approximation of the laws of Member States to the extent required for the functioning of the common market” (Article 3, h). Of course, this proximity would not operate without the object metaphors we saw earlier, so that things may come near each other, and even touch:

- (58) Eurojust has developed a network of *contact* points in several countries throughout the world to assist it in its mission (Thwaites)

- (59) Eurojust is *linked* to a series of related actors such as the European Police Office (Europol), the European Anti-Fraud Office (OLAF), the Liaison Magistrates and the European Judicial Network (Thwaites)
- (60) Eurojust also has *links* with organisations such as IberRED (the Iberoamerican Network for Judicial Co-operation) (Thwaites)

In general, as these examples show, the underlying metaphor is that good relationships are physical contact or immediate proximity. Such physical contact is at the root of two very important figures in European judicial cooperation with a highly metaphorical load: the “*contact points*” and the “*liaison magistrate*”. The “*contact points*” are the basis of the European Judicial Network, defined by Article 1 of Council Joint Action 98/428/JHA of 29 June 1998 as “A network of judicial contact points [...] set up between the Member States”. For its part, the “*liaison magistrate*” is a common occurrence in international cooperation, a judge facilitating legal assistance with other states (both within the EU and third countries). Through the use of *liaison*, the relationship is a physical one, but also an image that brings in connotations of cooking (*liaison* was originally borrowed from French with regard to cooking sauces, according to the *OED*), intimate relationships or military coordination (which in turn takes us to the fight metaphors we shall see below, especially in the back-formation “*liaise*”, born in military jargon):

- (61) Eurojust’s specific task is to actively *liaise* between the Member States’ competent authorities (Nilsson)
- (62) They also foresee the secondment of *liaison* prosecutors (Thwaites)

When contact (the ideal scenario) is not possible, a movement in the right direction is that implying greater proximity, in such a way that (INCREASED) PROXIMITY IS GOOD, (GREATER) DISTANCE IS BAD:

- (63) Eurojust’s daily work has an impact on EU Member States by bringing them *closer* without however changing their criminal laws (Thwaites)
- (64) Title VI of the EU-Treaty, which contains provisions on Police and Judicial Cooperation in Criminal Matters [...] calls for *closer* cooperation between police forces and the judiciary (Bogensberger & Trooster)

Special emphasis can be made here on *approximation*, an extension of the proximity schema which has also become a central concept in European law. In EU terminology “*approximation*” designates the process whereby EU law

is transposed and implemented in member states and in candidate countries (the metaphor of “unification” or “uniformity” is excessive, and almost taboo, given the fear of states of losing sovereignty):

- (65) the necessary *approximation* of legislation will facilitate cooperation between authorities and the judicial protection of individual rights (Plachta)
- (66) The application of the ne-bis-in-idem principle is not made conditional upon harmonisation, or at the least *approximation*, of the criminal laws of the Member States (Bogensberger & Troosters)

Closely related to this “approximation”, but also to the human beings metaphors, is the ability to “sing to the same tune”, leading to one of the most powerful terms in EU discourse, that of “harmonization”, which evokes togetherness, but also lack of conflict (“harmony” has become lexicalized as a partial synonym of “peace”):

- (67) Approximation and *harmonization* of legislation and mutual trust in each other’s legal systems is therefore absolutely necessary (Felföldi)
- (68) the Council has been active in a programme of *harmonization* of criminal law since 1997 (Ligeti)

Finally, a type of metaphor that logically follows from the conceptualization of abstract concepts as physical ones is the orientational metaphor, whereby abstract concepts, once objectivized, are assigned a spatial locus in terms of one another, such spatial connection also expressing abstract relationships. As we mentioned above, orientational metaphors are very frequent both in everyday use and in legal language (e.g. CONTROL IS UP, THINGS CONTROLLED ARE DOWN), and they appear in our sample as a logical consequence of concepts related to cooperation being given a physical nature: if two objects exist physically, they can be viewed in terms of their spatial relationship, but these relative positions also indicate hierarchical relationships. For instance, THE EUROPEAN ARREST WARRANT, COOPERATION RULES AND PROGRAMMES ARE UP AND LEGAL MEASURES ARE DOWN:

- (69) What are the inherent gaps in the proposed new surrender procedure *under* the EAW? (Apap & Carrera)
- (70) Both the scope of authorities whose decisions fall *under* the mutual recognition rule and the notion of financial penalty needs to be further explained (Ligeti)

Also, cooperation is measured vertically, i.e. MORE IS UP, LESS IS DOWN, and is conceptualized in terms of higher or lower levels:

- (71) ... achieve an improvement in the *level* of trust and cooperation in the EU (Apap & Carrera)
- (72) The Convention of 27 September 1996 relating to extradition between the EU Member States, has *lowered* the threshold in the requested state to six months (Vermeulen)

Finally, vertical upward movement often becomes an image of coming into being:

- (73) The last decade of the XX century has witnessed the *emergence* of a new form of international cooperation in criminal matters (Plachta)
- (74) Eurojust is gradually *emerging* a solid and incontrovertible facilitator of judicial co-operation (Thwaites)

4.3.2. Fight metaphors: The cooperation battle against a common enemy

As we mentioned in the introduction to this paper, in order to promote judicial cooperation, crime is portrayed as a cross-border enemy, an image that provides cohesion and prevents internal dissent (“united against a common threat”), and also justifies all measures, however unpopular: after all, as The Stockholm Programme argued in 2010, “in a global world, crime knows no borders”. Therefore, fight metaphors are usual, although legal scholars and practitioners exercise self-contention and avoid the explicit mention of “war on terrorism” which politicians often resort to (Steuter & Willis, 2008). The difference is important, because a “fight” or a “struggle” may be tempered by human rights considerations and has a number of “rules”, whereas “war” is where everything would be permitted:

- (75) instruments [...] may be considered valuable tools for effectively *combating* cross-border crime in the European Union (Apap & Carrera)
- (76) reflected the concern of the Member States to improve judicial co-operation in the *struggle* against crime (Vermeulen)
- (77) Instruments such as the European arrest warrant would thus directly help to tackle the imminent new *threats* (Apap & Carrera)

- (78) The 2000 convention [...] is an efficient *weapon* in the fight against organized crime and terrorism (Nilsson)

However, it is not only crime that is combated, but also any obstacles to, or criticism of these cooperation bodies or measures. This includes another metaphor which has become lexicalized, “conflict of jurisdiction”:

- (79) Eurojust also faces a series of *challenges* in the performance of its tasks (Thwaites)
- (80) Consequently, such situations may lead to a *conflict* of jurisdiction, for example when two or more Member States have initiated parallel proceedings for the same facts (Panayides)

5. Conclusions

Language does not “describe” reality; it “creates” reality. However, language is so immensely powerful that it does not only tell us what exists, but what *may* exist, what is possible or feasible and what is not. In this respect, as all these examples have illustrated, metaphorical concepts and their expressions can be used to construct a given reality, that of European judicial cooperation, but also to emphasize its potential, to legitimize it and to metaphorically disparage its opponents.

In this particular topic, it should not be forgotten that, unlike other situations where laws and legal measures are not debated, legal cooperation is more open to controversy, because, for a start, the legitimacy of the EU to create and implement legal measures is not always accepted (in fact, some EU countries, like Denmark, do not participate in some of them). This does not happen with nation-states: when a party wins an election and has a majority in parliament, it is usually “allowed” to pass laws, the only barrier being their constitutionality. But not only this: even if the power of the EU to adopt measures were accepted (not the case), the measures themselves would face strong criticism, both in objective terms of human rights issues, and in supranational terms of sovereignty. This is why the academic controversy is a legal one, but also (and mainly) a political one, and more is expected to come in the near future with impending developments in the EU and worldwide.

In this study, we have examined a number of conceptual metaphors on European judicial cooperation, with a special focus on the notions of

instruments, journeys or houses. Some metaphors have a long tradition in legal vocabulary, as witness words like “body” applied to courts or institutions, or “instrument” to documents or statutes, whereas others are more typical of political discourse, such as journey or fight metaphors, and even some are almost proper to judicial cooperation.

Regarding the effects produced, this paper has shown two main types of metaphors: those that underline the material existence of cooperation through living beings and object scenarios, and those focusing on the achievements made and the difficulties encountered, especially through the journey and the fight scenarios. Both act as powerful persuasive instruments in the legitimation of European judicial cooperation, the former for those who do not believe in its feasibility, the latter for those that emphasize its difficulties. Moreover, by using those metaphors, a body of “semi-official” terminology is created which usually highlights positive aspects and minimizes (or completely eliminates) negative ones, in such a way that also those who may oppose judicial cooperation might be forced to express themselves through the metaphors used by its supporters (e.g. “judicial recognition”, “Tampere milestones”, “liaison magistrates”, “contact points”), and even if these opponents resort to adverse persuasive strategies (or metaphors) of their own, they start the battle at a disadvantage: for instance, were one to talk about of “the failure of the Tampere milestones”, the first perception would be that of an oxymoron (“If it is a milestone, it cannot fail, can it?”). In fact, one of the interesting components of the metaphors in our sample, in line with other studies (Drulák, 2004: 37), is that they are conventional and institutionalized (most of them are lexicalized), and there is little room for “innovative” metaphors, which may indicate an absence of radical change.

An important feature of this study is that it has been carried out with papers by legal scholars who are not necessarily native speakers of English. In our opinion, this can provide insights into the real use of English in a context, such as academic discourses on the EU, where the language norms and the ensuing discourses are not necessarily dictated by native speaker uses, and where there is frequent influence between languages. Therefore, an interesting follow-up to this analysis would be gauging to what extent there has been transfer between European languages in these metaphors, especially considering that metaphors in legal and political settings are in a very good position to cross language barriers, and that many of them appear in multilingual documents, such as regulations or directives. It may well be

the case that these metaphors are part of a multilingual ideological scenario, which, should it succeed, may be a key factor for the survival, not only of European judicial cooperation, but of the EU itself.

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