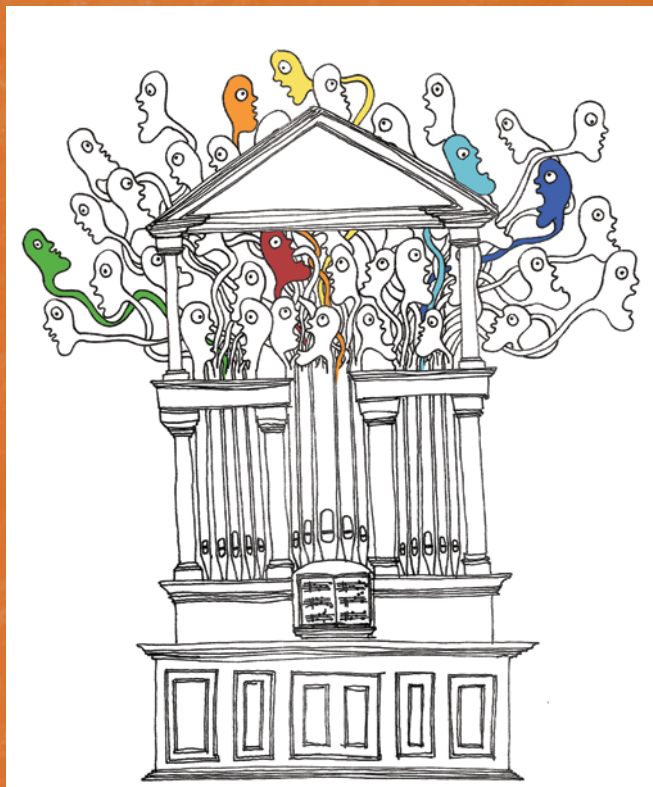


# Intercultural Dialogue and Multi-level Governance in Europe

A Human Rights Based Approach

Léonce BEKEMANS (ed.)



P.I.E. Peter Lang

This book offers an interdisciplinary and in-depth analysis of the relationship between intercultural dialogue and multi-level governance, seen from a human rights-based perspective. It brings together papers that were originally presented at international workshops organised by the Jean Monnet Centre of Excellence of the University of Padua in 2010-2011 with some additional contributions. The authors deal with a broad and diversified framework of concepts, policy approaches and linkages between multi-level governance and intercultural dialogue, particularly in the fields of education and civil society participation. The volume follows a multi-disciplinary approach and presents these readings and reflections for an audience of scholars, as well as individuals and organisations interested in issues around human rights, governance, education and civil society. Its innovative approach addresses the complex issues of today's societies, which are in need of sustainable, coherent and responsible answers at both the conceptual and the policy level.

In short, the book proposes a reading of interconnecting trajectories from governance building, education and civil society to intercultural dialogue in Europe. It is grounded in a human rights perspective and responds to the need for a policy-oriented but value-driven European future.

**Léonce BEKEMANS** holds the Jean Monnet Chair for Globalisation, Intercultural Dialogue and Inclusiveness in the EU at the University of Padua, where he is academic coordinator of the Jean Monnet Centre of Excellence and collaborates with the Interdepartmental Centre on Human Rights.





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Bruxelles · Bern · Berlin · Frankfurt am Main · New York · Oxford · Wien



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Multiple Europes  
No.47



UNIVERSITÀ  
DEGLI STUDI  
DI PADOVA

Interdepartmental Centre  
on Human Rights and  
the Rights of Peoples



Jean Monnet European Centre of Excellence  
"Intercultural Dialogue, Human Rights & Multi-level Governance"

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*I would like to live in this kind of cosmopolitan Europe, one in which people have roots and wings. (Ulrich Beck)*

*I do not want my house to be walled in on all sides and my windows to be stuffed. I want the culture of all the lands to be blown about my house as freely as possible. But I refuse to be blown off my feet by any.  
(Mahatma Gandhi)*

*Ideas have wings; they fly like birds. (Youssef Chahine, *Destiny*, 1997)*



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## Editorial Note

I would like to express my sincere gratitude to the Jean Monnet Programme of the European Commission. It has allowed for an ongoing support to teaching and research activities on the subject of intercultural dialogue from a multi-, inter- and transdisciplinary perspective. The Interdepartmental Centre on Human Rights and the Rights of People of the University of Padua, in particular Prof. Antonio Papisca and Prof. Marco Mascia provided a permanent stimulating content and context setting. The various authors of this book present valuable and diversified contributions which are relevant to a fuller and in-depth reading and comprehension of the ongoing debate on the complex relation between intercultural dialogue and multi-level governance. Last but not least I wish to thank the students of my Jean Monnet Course “Globalisation and Inclusiveness in the EU” as well as the many students who participated to various workshops organised by the Jean Monnet Centre of Excellence of the University of Padua. Their active interest in the theme resulted in a fertile process of mutual learning of teaching and research which gave ample satisfaction and content impact.

I would also like to thank the administrative staff of the Interdepartmental Centre for their continuous support and assistance. Without the diversified help of many this book would not have seen the light on time. An especially warm word of gratitude to Claudia Pividori, who as a research assistant helped with caring precision to develop in a short time many versions of the written word and vision to the final book. She was helped by Federica Napolitano. A last word of thanks goes to the editing house P.I.E. Peter Lang for its swift and efficient collaboration to produce the final outcome in its “Multiple Europes” series.

Léonce Bekemans

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# General Introduction

Léonce BEKEMANS

## I. Premises

Various political, economic, social and cultural processes of transformation are taken place in the era of globalisation. Europe presents itself to this globalising world with an immense wealth of cultural, social and linguistic diversities. However, in today's global era Europe is confronted with the preoccupation and responsibility to maintain its proper socio-economic model of integration and diversity in the rapidly changing world system. Within this context the shared values which bind societies together, such as freedom, loyalty, democracy, human rights, the rule of law, tolerance and solidarity, are crucial for Europe's future. However, all the changes and uncertainties felt in the political, economic, social and cultural areas call for a safeguarding of these values through (innovative) institutional mechanisms and true policies of internal and external dialogues.

We are confronted with a cultural environment that is rapidly transforming and becoming more diversified. The management of cultural diversities in societies becomes crucial. This requires a real dialogue, fertile but open to cultures and peoples within and outside Europe, but also a better understanding of formal, informal and non-formal learning processes and education practices to dialogue, citizenship and human rights as well as various forms of civil participation.

The term of dialogue touches many aspects and problems of cohesive and sustainable society building. This also represents one of the major challenges for a development of a new plural and democratic citizenship in Europe. Intercultural dialogue has sense to the extent that the sharing of values is translated in a "doing together," in inclusive policies on local, regional, national, European and international level.

Dialogue and cooperation, management of cultural diversity and multiple identities, intercultural dialogue, human rights and citizenship, respect for the other, the European dimension of education and mutual learning are all focal key issues of reference for developing a multi-level and multi-actor Europe. It requires an open and respectful dialogue to

obtain participative governance at various levels, from the city, the regions, Europe to the international organisations. In urban and local contexts, regional and territorial cooperation become crucial instruments for an active conviviality between citizens and institutions in which regions and cities are more and more shaping actors. In short, since multi-cultural situations and processes have become a crucial cross-cutting governance issue at local, national, regional and international levels, the subject needs to be addressed, in a more specific, articulated and interconnected way than in the past by political sciences, economics, international law and international relations.

## **II. Setting**

The Interdepartmental Centre on Human Rights and the Rights of Peoples, established in 1982, is the structure of the University of Padua devoted to carry out educational, training and research activities in the field of human rights. Within its existing pluridisciplinary structure and interdisciplinary approach (including political sciences, economics, international law, international relations, philosophy and education sciences), a focused package of various teaching and research activities within the University and in partnership at the local, regional, national and international level is offered. Many of these activities centre on the role of the EU in the dialogue between peoples and cultures and the relation between intercultural dialogue and human rights in a global perspective. The Centre disposes of a good regional, national and European network in the interdisciplinary area of intercultural dialogue, human rights and governance. Recent developments and events in Europe and the world have intensified the policy-oriented debate on human rights, democratic citizenship, cultural diversity and intercultural dialogue.

Aware of the broad political priorities of connecting Europe to the citizens and, in particular pursuing applied reflection on intercultural dialogue, the University of Padua, in particular the Interdepartmental Centre on Human Rights and the Rights of Peoples has strengthened the European and international profile of its existing curriculum of teaching and research activities by setting up a Jean Monnet Centre of Excellence on “Intercultural dialogue, Human Rights and Multi-level Governance” in September 2000.

The purpose is to strengthen and consolidate the European and international profile of the existing curriculum of teaching and research activities with a specific focus on capacity building and curriculum development in the area of intercultural dialogue, human rights and multi-level governance. In the current confusing times policy-oriented debate on dialogue of cultures and peoples has gained a new momentum

and necessitates an extended and deepened analysis of the relation between intercultural dialogue and human rights within a European and global perspective. The Centre further focuses its activities on strengthening cooperation and networking with the civil society, the regional authorities and other Jean Monnet Centres and Chairs active in the field of intercultural dialogue, human rights and multi-level governance.

The vision, mission and working of the Centre are rooted in the “*acquis*” which has been gained in ongoing participation in various Jean Monnet activities, from contributions to structural reflection on the dialogue between cultures and peoples, from activities in lifelong learning programmes in the territory of North-east Italy as well as from its existing network of international cooperation. More precisely, the Centre’s activities are built on the action-oriented interuniversity Jean Monnet research project (2006/2007) on “The role of intercultural dialogue in the development of a new, plural and democratic citizenship.” The subsequent publication “*Intercultural dialogue and citizenship. Translating Values into Action. A Common project for Europeans and their Partners*”<sup>1</sup> illustrates an action-oriented and innovative research approach in the relation between intercultural dialogue and citizenship. It was a major contribution to the European Year for Intercultural Dialogue in 2008.

From September 2007 the Centre also benefits from the experience of the Jean Monnet Chair on “Globalisation, Intercultural dialogue and Inclusiveness in the EU.” The Chair was initiated at the occasion of the 2008 European Year of Intercultural dialogue and has allowed introducing new degree and post-degree courses at the University. It has also contributed to extra-curricular training courses outside the University.

Currently it hosts the Jean Monnet Chair *ad honorem* held by Professor Antonio Papisca, the Jean Monnet Chair on “Globalisation and Inclusiveness in the European Union,” held by Prof. Léonce Bekemans, the Jean Monnet Chair on “European Union Political System” held by Prof. Marco Mascia and the Jean Monnet Module on “Sport and Human Rights in European Union Law” held by Prof. Jacopo Tognon. The activities and events cover teaching modules, lectures by invited experts on policy-related topics and an action-oriented research programme. The thematic network activities of the

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<sup>1</sup> Bekemans, L. et al. (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007.

research programme focus on capacity building and curriculum development in the area of intercultural dialogue and multi-level governance.

It operates in an interdisciplinary and proactive synergy within and outside university and possesses a wide-ranging expertise in international relations, human rights, political sciences, intercultural dialogue and interdisciplinary studies with a focus on policy-oriented research. Its various activities benefit from the international networking of the three existing Jean Monnet Chairs and a pluridisciplinary staff, able to relate to the multidisciplinary and multidimensional programme of the Centre of Excellence.

### **III. Structure**

The book presents a structured and interdisciplinary in-depth analysis of the relation between intercultural dialogue and multi-level governance seen from a human rights-based perspective. It collects updated workshop contributions together with some additional papers by Jean Monnet professors relevant to the general theme.

Most papers were originally presented at international workshops organised by the Jean Monnet Centre of Excellence “Intercultural Dialogue, Human Rights and Multi-level Governance” of the University of Padua in 2010-2011: “*Governance of Intercultural Dialogue*” (23-24 March 2010), “*Education to Intercultural Dialogue*” (22-23 March 2011) and “*Civil Society Participation in Intercultural Dialogue*” (9-10 May 2011). The workshops were organised in collaboration with the Interdepartmental Centre of Human Rights and with the support of the Education and Culture DG of the European Commission, the Unesco Chair “Human Rights, Democracy and Peace” and the Veneto Region.

The papers in the book deal with the broad framework of the concept, the policy approach and the linkage between multi-level governance and intercultural dialogue; some papers are policy-based contributions, others are more scientifically oriented, proposing either a general or specific focus of the general theme; other contributions propose case studies and policy applications in the specific areas of local governance, education and civil society participation.

The book is structured along four parts. The first part collects contributions which introduce some general concepts, tools and frameworks for analysing and understanding the issues at stake. The three other parts deal with specific fields of application, i.e. the governance of intercultural dialogue, the education to intercultural dialogue and the civil society participation in intercultural dialogue. Each part presents papers which deal with the general perspectives and

challenges of the topic, introduce some sectoral approaches and illustrate a few case studies.

The publication, containing a wide variety of contributions provides a timely, wide-ranging and diversified survey of the various dimensions of intercultural dialogue in the radical transformation of societies, in particular dealing with the governance of intercultural dialogue, the education to intercultural dialogue and the civil society participation in intercultural dialogue. It proposes approaches to the understanding of the complexities of current realities and of managing diversities, oriented towards a common destiny and future.

Its many contributions present, analyse and assess various aspects and dimensions of internal and external political, legal and institutional dimensions of intercultural dialogue, conceived as a fundamental and integral component of a human-rights based approach to social cohesion and human security. In many respects the analyses that are contained in this book provide applied reflections, sectoral approaches, case study analyse and illustrations, involving multi-level and multi-actor trajectories which ensure the human rights perspective as point of departure in the building of sustainable and cohesive societies. Finally the action-oriented papers contain general and specific policy recommendations and illustrate good practices which are meant to be a valuable input and reference to the interested reader.

The book offers a general applied reading to policy-oriented academics, International Relations and Human Rights scholars, regional, national and European institutions as well as civil society organisations dealing with human rights, governance, education and civil society issues. Its innovative, interdisciplinary and interconnecting approach deals with crucial issues and challenges that address the European future seen from a human rights point of departure. In all its diversity of contributions, from scientific reflections to policy papers and case studies, the message of the book clearly refers to the fundamental importance of governance of institutional, political and societal diversity, as an expression of experiences rooted in the respect for human rights, being a cross-cutting and cross-border building stone for the Europe of the future.





# **PART I**

## **GENERAL CONCEPTS**



# Introduction

Léonce BEKEMANS

Part I on “General Concepts” deals with the conceptual and valorial framework of the relation between intercultural dialogue and governance. The papers in this part explore the conceptual frontiers and possibilities of governing intercultural dialogue from different (inter)disciplinary and policy angles. They all start from a human rights perspective, discuss its impact on curriculum development activities and suggest policy recommendations. They also provide the broad framework for the applied analysis of the various contributions proposed in the next three parts.

The paper by Antonio Papisca introduces “*Value Roots for Multi-level Governance and Intercultural Dialogue*,” and focuses on the legal and institutional aspects of multi-level governance. He argues that the human rights paradigm is the steering compass for good governance in the era of interdependence and globalisation, set within the dynamics of the key principle of subsidiarity. The author argues that multi-level governance opens the way to extend the practice of democracy beyond the state borders. He reclaims a more substantial role for local governments in the overall multi-level governance architecture. They are considered the basic territorial pole of subsidiarity and the most direct bearer of the responsibility to protect human rights in daily life. They are most suitable to respond to the challenge of inclusion, intercultural dialogue and plural citizenship.

In the paper “*Values, Intercultural Dialogue and Making it Pay to Be Good: a Research Agenda and Policy Approach for the European Union*,” Peter G. Xuereb, a Maltese Jean Monnet professor, strongly argues for a structured and functional values-dialogue with a view to identifying and committing to the common good. He argues that focussing on the common good means focussing on values to be observed at global, European and national level, with institutions and policies inspired by those values and directed towards the perceived common good. Therefore he suggests to rely on the lived experience of the European integration process and to make a re-assessment of the theoretical analysis and the reshaping of the international political,

economic and legal landscape in view of new insights and paradigms beyond disciplinary borders. In the pursuit of the global common good, academics have a vital role in proposing policy approaches to construct a new world order, a European order and national orders.

In “*The Future for European Society: Subsidiarity, Federalism, New Humanism*” Dario Velo, an Italian Jean Monnet professor, explains that the current crisis dominated by globalisation, liberism and post-modernity has confirmed the supremacy of the market on the state, of individualism on universal values and the absence of rules in democratic institutions. It is argued that the crisis offers the opportunity to propose a new model of economy, society and state. The social market economy is the European model rooted in freedom, solidarity and subsidiarity. This opens up a new cycle for a new humanism which sets the centrality of man to guarantee the right of citizenship.

Jan De Groof, a very high-level expert on European education presents in his excellently referenced in-depth paper “*Thoughts on the Autonomy in Policy and Law within the European Higher Education Space.*” The first part analyses the changing concepts of multi-level governance in the European education system, international and university context. A second part concerns the international legal setting of education policy, its European dimension and national legal framework. The third part focusses on the implementation of standards and principles for the creation of the European higher education area referring to competences, various legal methods and European citizenship. The final part of the paper applies the whole reasoning to the university concepts of autonomy and accountability in governance.

The last paper in this part is the policy paper “*Multi-level Governance and Intercultural Dialogue: the Prospects for 2020*” presented by Luc Van den Brande, the former president of the Committee of the Regions. The article departs from the recognition that the concepts of intercultural dialogue, human rights and multi-level governance are crucial for the vision of a political union based on common values. The trends in current EU policy are said to be an ideal for realising an inclusive political union by 2020. It is therefore argued that the EU 2020 Strategy is reinforced by the development of new platforms for intercultural dialogue such as the European Grouping for Territorial Cooperation (EGTC), the emerging “macro-regions” in Europe, and the Assembly for Regional and Local Politicians of the Mediterranean (ARLEM). Finally, the author provides a broad policy assessment of the EU 2020 strategy in view of the pursuit of a European “multi-actor” unity.

# Value Roots for Multi-level Governance and Intercultural Dialogue

Antonio PAPISCA

*Professor Emeritus at the University of Padua,  
UNESCO Chair “Human Rights, Democracy and Peace”*

## I. Local Governments in the Front Line of Human Rights

Manifold globalisation processes going on across the planet are affecting all levels of governance, including local governments (communes, provinces, regions, *Länder*) as providers of basic social services.

World complex interdependence is the human condition of present time. By saying “complex” we mean that not only states, but also social, economic, cultural, political realities inside states are immediately sensible and vulnerable. Needless to point out that the extent of vulnerability varies in the different contexts and that even the richest countries have become not self-sufficient.

Current governance crisis is a structural one, because it affects not only government capacities – in this case it would be a conjunctural crisis, but also, and in depth, the very “form” of statehood as it has been shaped and realised in the last centuries: the state as a national-sovereign-armed-border legal entity.

Statehood crisis is accompanied by the crisis of democracy which is mainly due to the fact that crucial issues relating to the representative and participatory articulations of democratic practice continue to be addressed only with reference and within the “space” of nation-state. This happens notwithstanding of a political and economic reality in which huge and heavy decisions are taken outside and beyond that suffocating space.

World multilateralism and regional integration processes and institutions continue to be heavily conditioned by what I would call the barbarian syndrome of the easy war<sup>1</sup> in spite of a worldwide civil society claiming for their strengthening. In this schizophrenic moment of history, a few powerful leaderships, also in response to terrorist behaviours and economic failures, are attempting to drive back to the Westphalian era the “new” international law that has been developing since the United Nations Charter (1945) on the assumption that the “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”<sup>2</sup> In short, it is under way the attempt to push back history and to rescue that baleful right to make war (*ius ad bellum*) that has been *de iure* deleted, once for all, by the UN Charter.

A Latin saying could suitably describe the situation: “Quod Barbari non fecerunt, Barberini fecerunt” (“What Barbarians did not make, Barberini did make”), even by destroying portions of the Coliseum and other ancient monuments to build up their sumptuous *Palazzi* in Rome and around Rome.

In the presence of a situation that makes very difficult to achieve goals of satisfactory social, economic and territorial cohesion, appropriate instruments and forms of governance are needed in a “glocal” space where internal living realities, that is families, groups, labour, associations, firms, should be allowed, through their municipal and regional authorities, to have voice and play active roles along a *continuum* of processes that cross states boundaries and involve multilateral institutions.

Needless to remind that local governments are the venue of vital administrative and social services, incorporating economics, educational and landscape infrastructures as well as artistic and cultural heritage. In accordance with the Universal Declaration of Human Rights and the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms,<sup>3</sup> widely known as the *Magna Charta* of human rights defenders, local governments as “organs of society” share with states the “responsibility to protect” all those who live in their territories. Committed to defend life and pursue well-being

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<sup>1</sup> Papisca, A., “Article 51 of the United Nations Charter: Exception or General Rule? The Nightmare of the Easy War,” in *Pace diritti umani/Peace human rights*, no. 1, 2005, pp. 13-28.

<sup>2</sup> Universal Declaration of Human Rights, 1948.

<sup>3</sup> UNGA, Res. 53/144 of 9 December 1998.

for all, local governments are entitled to claim active participation in the construction of a peaceful world order following Article 28 of the Universal Declaration: “Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can fully be realised.”

The meaning of peace for local polities cannot but be multi-dimensional and comprehensive, that is including both social peace and international peace. Hence local governments can rightly claim to be formally recognised as fundamental human security and human development public stakeholders, then as institutions that directly contribute to the construction of positive peace.

To carry out tasks of comprehensive institutional peace building from below up to the United Nations system, local authorities should be aware of the strength of “soft power” and of the skills that are required to use it in the most effective way. A strong resource of soft power for local governments is their commitment to build up “inclusive cities,” that is to provide all those living in the local community equal opportunities for the enjoyment of all human rights (civil, political, economic, social, cultural) and political participation.

The very fact of taking over this global responsibility fits well in the inner nature of the local territorial polity as being genuine “territory,” not artificial “border.”

The current official doctrine on the “responsibility to protect” emphasises the international-interventionist role of states saying that they are in the front line of security and the United Nations in the second. It calls upon states and the international community to intervene in internal affairs even by using force though only as last resort and in strict compliance with principles and objectives of the UN Charter. Also to avoid abuses of such sound principle and bearing in mind that human rights protection and violation are “local” events – they took place in the street, in the village, in the cities, where daily life is going on, it should be stressed that the matrix of the responsibility to protect lies with both the multidimensional concept of human security and the principle of local self-government more than with state sovereignty as emphasised by the official doctrine *in re*.<sup>4</sup>

At the same time the international recognition of fundamental rights is disengaging territory from the border-sovereignty of states. This revolu-

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<sup>4</sup> International Commission on Intervention and State Sovereignty-ICISS, *The Responsibility to Protect*, Ottawa, 2001; UN General Assembly, Report of the Secretary General, *In a Larger Freedom: Towards Development, Security and Human Rights for All*, A/59/2005, 21 March 2005.

tionary process is taking place in parallel with the de-territorialisation of politics as a consequence of the above mentioned world processes of structural change. Local governments should take advantage from this dynamics in order to give visibility, as already pointed out, to their being human territory, not marked by arms or borders.

Being in the front line of human rights, local government institutions are forced to deal directly with problems (for instance, migration flows), that belong to the political agenda of world order. At the same time they provide substantial effectiveness to the international law of human rights: we could rightly say, justiciability on the spot. Hence, as the primary (territorial) pole of subsidiarity, they benefit from a full legitimacy to participate in the functioning of a system of global governance which, to be good and capable, cannot but be multi-level, supranational whenever possible, and democratic.

## **II. Thinking “Federalist” without Saying it: Multi-level Governance from Arithmetic Calculus to Moral Foundation**

Multi-level governance (MLG) has become a popular topic in the academic establishment as well as in the political business.

In a view to be further developed in the EU institutional framework, MLG philosophy cannot but be considered an *aggiornamento* of the classical doctrine of federalism, for we enter the constitutional domain. Nowadays this is not a popular discourse in the EU high spheres and in the cabinets of some member states. As a matter of fact we do not dare even to say the word “federal:” needless to remind what happened to the “constitutional treaty” or the non “literal” inclusion of the articulated content of the EU Charter of Fundamental Rights in the Lisbon Treaty.

Nevertheless a consolidate ground does exist to overcome this kind of humiliating determinism.

The European Union is already a system of multi-level governance with a supranational *noyveau dur* in a continuous evolution, hence a very interesting laboratory that benefits from the rich *acquis* provided by: a) *ius commune*; b) an institutional architecture that combines, in an original and evolutionary way, the twofold dimension of inter-governmentalism and supranationalism; c) a large and varied range of democratic access channels in the decision-making processes; d) the EU citizenship; e) the practice of social dialogue and civil dialogue; f) the increasingly political relevance of the role of regional and local authorities and finally g) an *acquis* that already benefits of appropriate methods and concrete means of government and makes realistic to



enquire on how to further improve both the quality and the efficiency of the system.

Taking into due consideration this wealth, the question to answer, as already advanced, is not “why” MLG, but “what” MLG for the EU. The “what” means “good,” that is an MLG based on the strong paradigm of universal values and principles set forth in the Lisbon Treaty and in the EU Charter of Fundamental Rights.

We should be aware of the perpetual challenge of “Europe leading by example,” leading also in imagining new architectural schemes, indeed a virtuous conviction to continuously address the challenge of “unity in diversity.”

Looking ahead, we should further be aware that without a link to a specific moral-legal paradigm, MLG risks to be used as a neutral *pass-partout* or as a formula for only arithmetic distribution of competences, functions and powers between different tiers of government, often emphasising governmental institutions (the territorial pole of subsidiarity, vertical subsidiarity) whilst neglecting civil society organisations (the functional pole of subsidiarity, horizontal subsidiarity). Good (democratic) MLG is intended to balance the two dimensions allowing civil society organisations, local communities and the private sector to have voice in the policing process at different levels.

MLG benefits of a lot of definitions, which are more or less similar in focussing both architectural and processual aspects. A significant example provided by Léonce Bekemans reads as follows:

If we focus on the general policy characteristics of multi-level governance, the changing relationships between actors situated at different territorial levels, but from the public and the private sectors, are put at the centre of the analysis. This implies frequent and complex interactions between government actors and the increasingly important dimension of non-state actors. In particular, multi-level governance crosses the traditionally separate domains of domestic and international politics: it highlights the increasingly fading distinction between these domains in the context of European integration and supranational, national, regional and local governments are interrelated in territorially overarching networks.<sup>5</sup>

This definition summarises the overall blueprint referring to dynamics, actors, and space of MLG, briefly it describes the “why” and the “how.”

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<sup>5</sup> Bekemans, L. *Multi-level Governance and the EU in a Global Context: Some Introductory Reflections*, Brussels, Ateliers for the Committee of the Regions, October 2008, pp. 2-3.

The question “for what” is still open, I mean what marks MLG as a “good governance.”

The Committee of the Regions’ *White Paper on Multi-level Governance*<sup>6</sup> provides a convincing qualitative definition:

The CoR considers multi-level governance to mean coordinated action by the European Union, the member states and local and regional authorities, based on partnership and aimed at drawing up and implementing EU policies. It leads to responsibility being shared between the different tiers of government concerned and is underpinned by all sources of democratic legitimacy and the representative nature of the different players involved. By means of an integrated approach, it entails the joint participation of the different tiers of government in the formulation of Community policies and legislation, with the aid of various mechanisms (consultation, territorial impact analyses, etc.).

The CoR further points out that:

MLG dynamic process with a horizontal and vertical dimension does not in any way dilute political responsibility. On the contrary, if the mechanisms and instruments are appropriate and applied correctly, it helps to increase joint ownership and implementation. Consequently, MLG represents a political ‘action blueprint’ rather than a legal instrument and cannot be understood solely through the lens of the division of powers [...].

The CoR White Paper emphasises the indissociability of subsidiarity and MLG: “[...] one indicates the responsibility of the different tiers of government, whilst the other emphasises their interaction.”

My first comment is that MLG, being a “political action blueprint” cannot but be marked by a permanent teleological tension: in other words MLG is a goals-oriented domain which entails value choices, then moral foundation.

Subsidiarity is a key principle of good governance: economic, social, cultural, civil, and political. Before being a political and legal principle, subsidiarity is a moral value because it refers directly to the human person’s basic needs – inherent rights, that is to the life of the original and central subject of whatever system of governance. This is clearly stated by the Universal Declaration of Human Rights which proclaims that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.”

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<sup>6</sup> Committee of the Regions, *White Paper on Multi-level Governance*, doc. CoR 89/2009, Brussels, June 2009.

The encyclical *Caritas in Veritate* of Benedict XVI provides interesting moral, even anthropological arguments for the genuine foundation of the principle of subsidiarity. This is “an expression of inalienable human freedom [...] first and foremost a form of assistance to the human person via the autonomy of intermediate bodies [...] it fosters freedom and participation through assumption of responsibility.” The principle “must remain closely linked to the principle of solidarity” for it “respects personal dignity by recognising in the person a subject who is always capable of giving something to others.” Furthermore, subsidiarity “is able to take account both of the manifold articulation of plans – and therefore of the plurality of subjects – as well as of the coordination of those plans.” Hence it is “particularly well-suited to managing globalisation and directing it towards authentic human development.” A severe warning:

In order not to produce a dangerous universal power of a tyrannical nature, the governance of globalisation must be marked by subsidiarity, articulated into several layers and involving different levels that can work together. Globalisation certainly requires authority, insofar as it poses the problem of a global common good that needs to be pursued. This authority, however, must be organised in a subsidiary and stratified way, if it is not to infringe upon freedom and if it is to yield effective results in practice.

We should be aware that if these ontologic and moral roots are not clearly specified, subsidiarity risks to share with MLG the same destiny of neutral *passe-partout*.

### III. The Benchmarks

The benchmarks of (good) multi-level governance are human rights, democracy, the rule of law and subsidiarity, interconnectedness and mutually reinforcing.

As reminded above, the world legal field has undergone a genetic mutation, from state-centric to human-centric. It is well known that this process is the outcome of a long historic movement marked by peoples suffering and reacting, intellectual endeavour, mass mobilisations, and political commitment that has brought democratic processes inside individual states. With the UN Charter and the Universal Declaration of Human Rights, the “constitutional” rationale of the national legal systems has been extended to the world level, over-reaching the legal-territorial border of state sovereignty. The human being (*la personne humaine*) has been recognised as subject, not as mere object, of international law.

The “new” international (pan-human) law that is developing since 1945-1948 as a coherent *corpus* of norms and provisions, comple-

menting and updating the first part of the UN Charter, includes principles such as the universality of human rights, their interdependence and indivisibility, the proscription of war, the prohibition of the use of force for the settlement of international disputes, the universality of criminal justice, personal responsibility for war crimes, crimes against humanity and genocide.

It should be pointed out that the Universal Declaration of Human Rights enshrines principles of *ius cogens*, owing the highest degree of legal obligations *erga omnes*. In order to identify who are the *omnes* – the “all” legally equal – the very Universal Declaration provides the response while proclaiming itself:

as a common standard of achievement for all peoples and all nations, to the end that *every individual* and *every organ of society*, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance [...].

The explicit reference is to a plurality of subjects. The same plurality is relevant also for the prohibition set forth in Article 30: “*Nothing in this Declaration may be interpreted as implying for any state, group or person any rights to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein*” (italics added).

The inclusive logic of the Universal Declaration is further elucidated by the UN Declaration of 9 December 1998, mentioned above. Also this important instrument refers directly to individuals and “organs of society” stating that they have “*the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels*” (Article 1, italics added). It should be recalled what we have already emphasised, that is that local governments are (public) “organs” of the society, not of the state, and this is perfectly consistent with the rationale of local autonomy (self-government). Moreover Article 7 of this modern *Magna Charta* proclaims that “everyone has the right, individually and in association with others, to develop and discuss new human rights ideas and principles and to advocate their acceptance.”

The implicit metaphor is that of a large human rights “laboratory” in which individuals, groups and organs of society, in their capacity of human rights defenders, are formally entitled to imagine and disseminate new ideas, models and strategies for good governance. Local governments, the NGO “United Cities and Local Governments,” the many transnational networks of local governments, the EU

Committee of the Regions through its “Forward Studies Unit” and “Ateliers,” as relevant actors in the global human rights yard, can actually appeal also to Article 7 quoted above in order to feel more free and courageous in shaping the architecture of multi-level governance inside and outside the EU system.

In this context it should be stressed that for the effective protection of human rights, the judiciary (courts, tribunals, sentences) is absolutely necessary, but to fully satisfy all vital needs acknowledged as “fundamental rights” and to meet the crucial challenge of social cohesion, public policies and positive actions are necessary as well. Key-principle is the interdependence and indivisibility of all human rights – economic, social, cultural, civil, political rights, a principle which is consistent with the ontologic truth of the integrity of the human being: body and soul, spirit and flesh.

Article 25 of the Universal Declaration is explicit to this regard. It provides a manifesto of welfare for social cohesion, hence for good governance:

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.

Compliance with this norm has the character of legal obligation, not only of moral duty or optional political choice, then implying the government of economy accordingly to the principles of social justice (distributive and redistributive). Article 25 should be read in connection with Article 28 which refers to “social and international order” as a fundamental right. The meaning of these two norms is that rule of law and welfare as well as internal peace and international peace are the faces of the same coin and that social and territorial cohesion inside states is a fundamental part of the peaceful world order envisaged by the Universal Declaration.

“Human rights mainstreaming” has become a universal password to assess the formal and substantive quality of institutions, political strategies, educational projects, peace operations, development cooperation, humanitarian field missions.

In the EU system, besides specific references to fundamental rights in the Lisbon Treaty and in the EU Charter of Fundamental Rights, human rights mainstreaming is significantly advocated in documents such as the EU Guidelines on Human Rights (children, torture, death penalty, humanitarian law, human rights defenders), the EU Annual Report on Human Rights issued by the EU Presidency in cooperation

with the European Commission, the 2008 Report of the Council entitled “*Mainstreaming Human Rights and Gender into European Security and Defence Policy.*”

It should be reminded that human rights issues were addressed in the European system long before the 1990s, thanks to the enlightened case-law of the Court of Justice of the European Communities and to the passionate advocacy of the European Parliament. Furthermore, we should not forget that human rights were included in the first draft of the European Constitution (Altiero Spinelli draft), endorsed in 1984 by the European Parliament, but not by the Council.

Since 1999, the human rights reports of the European Parliament have been accompanied by the annual EU Report, above mentioned. In the field of external relations, human rights, linked with education and civil society structures, have high visibility in the framework of development cooperation with the ACP countries (Lomé and now Cotonou system). Since the early 1990s, a human rights clause has been included in treaties with third states establishing that implementation can be suspended if the concerned state does not comply with human rights and democratic principles.

The important role of the EU institutions in fostering the establishment and the functioning of the International Criminal Court should also be emphasised. The European Union is endowing itself with specialised machinery to deal with human rights. The European Parliament has the Committee on Civil Liberties, Justice and Home Affairs, the Committee on Petitions, the Subcommittee on Human Rights, the Committee on Foreign Affairs, and the Human Rights Unit at the Secretariat General.

The Council has a specialised standing human rights working group (COHOM). The High Representative of the EU for Foreign Affairs and Security Policy deals with human rights in external relations. Within the Commission, a Commissioner has a specific human rights portfolio, and the Directorate General for External Relations has a Directorate for multilateral relations and human rights and a Unit for human rights and democratisation. A European Agency for Fundamental Rights is functioning in Vienna. And of course, since the Maastricht Treaty there is the European *Médiateur* who, since its establishment, is carrying out its functions following an approach that is explicitly human rights-oriented. More recently, the consolidated practice of “social dialogue” has been complemented by the so-called “civil dialogue,” with the aim of involving civil society organisations in EU policy-making in a greater

and more substantive way. In this context, a specialised “human rights network” is developing.<sup>7</sup>

#### IV. It is Time for a New, Plural Citizenship

In the multi-level governance scheme based on the human rights paradigm, the concept and the practice of citizenship cannot but be revised and reconstructed.<sup>8</sup>

Nowadays, owing to the very paradigm of universally recognised human rights, we are in the middle of a process of cross-fertilisation of cultures and political visions. In this “universal yard,” a rich variety of actors are playing significant roles. It should be stressed that the topic of international legality based on human rights and multilateralism has become familiar to the transnational world of civil society; not only far denouncing, with increasing competence and full legitimacy, dictatorships, hegemonies, illegal use of force (for instance the so-called preventive war), economics without social justice, *Realpolitik* behaviours, but also far conceiving and proposing suitable policies and institutions, positive measures, and good practices to achieve goals of global (good) governance.

The passionate and creative reality of civil society organisations and movements acting across and beyond state borders demonstrate that civic and political roles, as part of active citizenship, are no longer limited to the intra-state space, and that a suitable “geometry” for democracy is really extending and building up.

According to international law of human rights, citizenship should be defined as the legal status of the human being (*statut juridique de la personne humaine en tant que telle*) in the space that is proper of that law. This enlarged constitutional space coincides with the common vital space of “all members of the human family” (Universal Declaration). The legal status of the human being does not stem from the anagraphical power of the state, it is not *octroyé* but simply “recognised,” because the holder is an “original” subject of law, not the “national” or the “subject”

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<sup>7</sup> For an up-to-date survey on EU policymaking *in re*, Benedek, W. *et al.* (eds.), *European Yearbook on Human Rights*, Antwerp-Graz-Vienna, Intersentia, 2010.

<sup>8</sup> Papisca, A., “Citizenship and Citizenships ad omnes includendos: A Human Rights Approach,” in L. Bekemans *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007, pp. 457-480; *id.*, “European Citizenship, Migration and Intercultural Dialogue: The EU Leading by Example,” in European Commission (ed.), *A Europe of Achievements in a Changing World. Visions of Leading Policymakers and Academics*, Brussels, European Commission, 2009.

of whatever state. All human beings, being formally recognised as born with dignity and equal rights (Universal Declaration), are by nature citizens of the planet Earth. The primary or universal citizenship is a common citizenship. Anagraphical, national or European citizenships are secondary or complementary citizenships, as such they should be consistent with the original (universal) legal status of the human being.

A metaphor could serve our didactic purpose: citizenship is like a tree, whose trunk and roots are the juridical status of the human being, that is the universal citizenship (*la citoyenneté de la personne*), and the branches are national and sub-national citizenships. Citizenship is a plural conceptual and legal category.

National citizenship is traditionally theorised and taught as a matter of collective identification *ad intro* around the symbols of national history and national statehood, and of exclusion *ad extra*, with respect to what does not fit within the national borders. It should be remembered that the paradigmatic French Declaration of 1789 referred to *les droits de l'homme et du citoyen*, which gave way to interpreting fundamental rights as a privilege for those who already are registered citizens of a particular state. Its implicit rationale is *ad alios excludendos*, and as such is contradictory to the immanent universality of human rights.

As already pointed out, before the advent of the international human rights law, citizenship was essentially characterised as being national, unilateral, *octroyée* by the state, and based on the *ius sanguinis* (right of blood) or/and on the *ius soli* (right of land), in a perspective of distinction-discrimination, in short *ad alios excludendos*.

Today, in the globalised world, we have entered the phase of *plenitudo iuris*, whose principles postulate the *plenitudo civitatis*, the civilisation of full citizenship. Human dignity is the central value of *plenitudo iuris*, implying equal dignity of all members of the human family.

The “new” citizenship is modelled on such a statute that is therefore fundamentally universal, *ad omnes includendos*, and it is articulated in the plural, in the sense that the universal dimension does not cancel particular citizenships but rather opens towards the experience of a richer identity. The universal citizenship is not *octroyée* and particular citizenships (the branches of the tree) must be regulated according to the respect of universal citizenship (the trunk and roots of the tree).

This implies that the *ius humanae dignitatis* parameter should prevail over the traditional parameter of the *ius sanguinis*, making the *ius soli* complementary compared to the *ius humanae dignitatis*, and functional for the harmonious exercise of identities. Even for the identity of individuals with universal citizenship, the expression “united in



diversity” applies: in this case, “unity” means the ontic identity of the “human being,” which is enriched by and develops in different cultural and institutional contexts. Universal citizenship sums up and harmonises anagraphical citizenship, and the inclusive city is a place that favours this process, thus plural citizenship and the inclusive city postulate each other.

In the inclusive city, particularly through intercultural dialogue, evolutionary dynamics of identity develop in a direction of a “transcendental civic identity,” a superior identity that is authentically secular because it is universalistic, trans- and meta-territorial, and trans-cultural. This new identity is the *plenitudo iuris* that is interiorised by individuals, an identity that is open to sharing responsibilities in the inclusive city, in the inclusive European Union, and in the inclusive United Nations.

New citizenship in tandem with the impact of the necessary intercultural dialogue aimed at democratic inclusion can revitalise the public sphere in a perspective of multi-level and supranational governance. Thus this kind of political architecture is congruous with the need to guarantee universal citizenship rights in the enlarged space that belongs to all. And it is in fact the “phenomenology in the plural” of citizenship – dialogue and inclusion – that obliges institutions to redefine themselves according to *telos*, and therefore to open up and develop multiple channels of representation and democratic participation.

“EU citizenship” was formally established by the Maastricht Treaty in 1992, exactly forty years after the first European Community Treaty. By the subsequent Amsterdam Treaty in 1997, human rights were proclaimed as part of the founding principles of the European Union. Finally, on 10 December 2000, in Nice, the Presidents of the European Parliament, of the Council and of the European Commission, jointly proclaimed the EU Charter of Fundamental Rights, which was prepared by the *ad hoc* European Convention. The Charter, now recognised as legally binding by the EU Treaty (Lisbon Treaty), is at the same time an achievement, because it makes the matter more coherent and systematic, and a starting point for further developments towards the full “constitutionalisation” of the EU system; in particular providing a suitable ground for a more correct foundation for EU citizenship.

There are suitable grounds for revising the present “EU citizenship” for which (as it is explicitly stated in the Treaty establishing the European Community)<sup>9</sup> – belonging to an EU member state constitutes a

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<sup>9</sup> Consolidated version, Part Two, Citizenship of the Union, Articles 17-22.

prerequisite. This means that “nationality” still remains the primary requirement and the overall philosophy is still *ad alios excludendos*.

In the present EU legal system, provisions regarding citizenship give way to a paradox: the “tree of citizenship” is enriched without overcoming discrimination and contradictions.

The least we can say is that the EU Charter of Fundamental Rights legitimates wondering why EU citizenship is not based directly on human rights as is any national democratic citizenship. Such a logical, natural foundation, while in principle not incompatible with the parameter of complementarity of national and European citizenship, would allow the latter to become physiological and consistent with the international law of human rights and the principle of non-discrimination, a well-known principle of *ius cogens*, or customary law. Furthermore the principle of interdependence and indivisibility of all human rights should make sense also in the EU legal system. This implies that the special rights that mark EU citizenship (in particular, freedom of movement, eligibility at the municipal level, right of petition, and diplomatic protection abroad) cannot be separated from the comprehensive set of all other fundamental rights (civil, political, economic, social and cultural), that is, from their natural womb.

No doubt the specific rights of present “EU citizenship” are justifiable in a concrete way, but this argument should not give way to discrimination between those who are citizens of an EU member state and those who regularly live in the EU territorial space without that “privilege.” I think that advocating a correct and consistent foundation of EU citizenship with reference to the universal paradigm of “all human rights for all” cannot but become an important part of the active implementation of the present (though limited, privileged) European citizenship, a cause deserving great commitment, especially in the field of immigration.

## **V. Intercultural Dialogue and “Transcended Civic Identity” in a Context of Human Security**

The topic of intercultural dialogue, in its natural global and transnational context, is strictly linked with the topic of citizenship as it is with the democratic practice. Sharing the human rights paradigm as the same axio-legal roots, democracy (national and transnational), citizenship and intercultural dialogue are interlinked. There is also an instrumental function of that paradigm as a code of communication symbols, as a transcultural tool that facilitates moving from the potentially conflicting condition of multiculturalism to the dialogic stage of interculturalism. But dialogue could still be limited to only an

exchange of information, a reciprocal exchange of images and stereotypes. This is certainly a prerequisite but not enough to achieve the principal aim that is: the inclusion of all in the political community to benefit from equal fundamental rights. The right answer to the question “intercultural dialogue for what?” is: dialogue for working together, to imagine and put into practice common projects for achieving goals of common good.<sup>10</sup>

To be fructuous, dialogue among individuals and groups with different cultures should occur among equals; if not, the case will be another kind of interaction, for instance the deliberate homologations from one side or another. Equality in our case is the ontic equality of human beings as assumed and explicitly highlighted by the law and the orthodox doctrine of human rights. The “equals” are the original holders of universal citizenship. The dialogue we are interested in is one that should be carried out in the context of daily life. If we start from the human rights paradigm, dialogue should be carried out more than on abstract principles – education should play a major role to help internalise values. Above all, it is on how principles are translated into behaviour and policies, and what should be done together, as equal beings, in the same polity. As mentioned above, dialogue should be goal-oriented more than comparison-oriented. The strategic common goal is building up and developing the inclusive city as the result of the contributions of many cultures. The fertiliser of this democratic inclusion-building is once again the human rights paradigm.

Once more, we emphasise that the culture and strategy of inclusion has a direct relationship with both internal peace (social cohesion) and international peace. As already emphasised, these are the two faces of the same coin: the inclusive city is the ground of a peaceful and a just world.

In the light of its citizens’ “transcended civic identity,” Europe is urged “to transcend” the negative part of its historical “Western world” identity, that is of hegemonic power of “conquest,” colonialism, world wars. To “transcend” for Europe means to redefine itself on the basis of the positive part of its historical identity, reflecting on the meaning of a universal European polity that promotes itself before the world as an inclusive space within its borders and as an actor of inclusion on a world scale.

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<sup>10</sup> Papisca, A., “Droits de la Personne et Démocratie. Les Cultures à la Source de l’Universel,” in European Commission (ed.), *Intercultural dialogue/Dialogue interculturel*, Brussels, European Commission, 2003.

In particular Europe is challenged to overcome the “utilitarian” (and “securitised”) approach to immigration.

In the current context of multi-ethnic and multicultural conflicts that need new forms of political organisation of the world, it should be stressed once more – *opportune et inopportune* I would say – that citizenship should be considered as an evolutionary concept, as is the case for security and development, I mean in a multidimensional vein. Analogies are clear and convincing. Until recently, security was meant as “state,” “national” and “military” security, aimed at pursuing the national interest, nowadays we speak of human security as primarily “people” security, a multidimensional concept including social, economic, and environmental aspects, as well as reference to a collective and supranational machinery. In the years following the Second World War, development was addressed as an economic concept for purposes of quantitative growth; today we say “human development” relating to a rich basket of both quantitative and qualitative indicators, relying on the principle of the centrality of the human being as emphasised by the United Nations Declaration on the Right to Development in 1986.

A common EU policy on immigration, balancing both economic and demographic needs and human rights obligations, should be conceived accordingly, as pointed out before, with interconnection between human security and human development.

## **VI. Extending the Arena of Democratic Practice**

The human rights discourse on democracy is at the same time elementary and strongly demanding. It could be summarised as follows. The source of democracy is “the people.” A people is sovereign *in toto* because each of its members, as human beings with inherent rights internationally recognised, is sovereign *pro quota*. Fundamental rights should be protected and realised where people live: local governments are closer to the source of sovereignty than the state.

The judiciary belongs to the state, but social services are provided primarily by local governments, then the state is obliged to endorse policies which facilitate and complement the front line-tasks of local authorities.

The nation-sovereign state has proven not to be sufficient to protect and nurture the physiologic elements of democracy. Whilst nobody would deny that nation-states have been the fertile kindergarten of democracy, current empirical evidence demonstrates that they are not capable to address in a suitable and democratic way the impact of interdependence, globalisation and transnationalisation.

The traditional inter-state system has been an exclusive club of “rulers for rulers.” Now it is citizens, especially through their transnational organisations and movements, who are legitimately claiming substantial participative roles at all levels of governance.

This transnational political demand entails that the practice of democracy, in its twofold articulation of representation and participation, should be extended and deepened: upward, in terms of international and cosmopolitan democracy, and downward for more direct democracy.

For both quality and effectiveness of governance, it is urgent to recuperate genuine democracy, that is “all democracy” – political, social and economic democracy – but to achieve this strategic goal it is necessary to extend democratic practice in a suitable space, from the local community up to the institutional sanctuaries of international politics and economics. “All democracy” also means local, national, and international democracy.

By extending democratic practice beyond its historical geographic borders, the “local territory” becomes a new frontier to be duly represented also at the macro-level of multilateral sanctuaries. In such enlarged “constitutional” space of multi-level governance, local governments share with states and multilateral institutions the responsibility to enhance the democratic practice.

Democratising international institutions and politics in the true sense of democracy – that is more direct legitimacy of the relevant multilateral bodies, including the United Nations, and more effective political participation in their functioning – has become the new frontier for any significant human-centric and peaceful development of governance. “One country, one vote” is the procedural translation of the old principle of equal sovereignty of states, it is not democracy we are talking about. Human rights paradigm for multi-level governance necessarily affects both the organisational infrastructure and the substantive political agenda on all levels.

To be legitimate and sustainable, a human rights political agenda should aim at producing social policies and positive actions, hence it should constantly refer to the principle of interdependence and indivisibility of all human rights to be implemented in the light of the comprehensive and interconnected strategies of “human development” and “human security.” Both strategies are anchored to the human rights paradigm, both hold the human being as the central subject. In this multidimensional context which fits in well with the multi-level dimension of governance, emphasis is put on the access of individuals and groups to welfare and better quality of life.

In order to be effective in pursuing goals of security in the daily life of citizens, local governments should have more suitable channels to participate in the decision-making processes on the international plan. They can rightly claim to be formally recognised as human security and human development public stakeholders.

Local and regional governments are already active in carrying out several initiatives to effectively play this role within a multi-level architecture of governance, following the example of the Council of Europe and of the European Union where regional and local governments have a consolidated formal representation, respectively the Congress of Regional and Local Authorities and the Committee of the Regions.

From a legal point of view, a very interesting phenomenon regards the adoption at local level of legal instruments which refer directly to the international law of human rights and establish specialised infrastructures in cooperation with civil society organisations, schools and universities.

The Italian case is amazing and (still) unique also from a cultural and political point of view. In 1991, municipalities and provinces were allowed by a national bill to exercise a larger degree of autonomy in revising their statutes. The result is that thousands of (new) statutes include the so-called “peace human rights norm” that reads as follows:

The Commune X (the Province X), in conformity with the Constitution principles that repudiate war as a means to resolve international disputes, and with the principles of international law on human rights, recognises peace as a fundamental rights of the human being and of peoples. To this purpose it pledges to take initiatives and cooperate with civil society organisations, schools and universities.

In several statutes explicit mention is made of the Universal Declaration, the International Convention on Children’s Rights, the EU Charter of Fundamental Rights. Owing to this “norm” many communes and provinces (and regions) have established councils and departments dealing specifically with human rights, peace education, (decentralised) development cooperation, and international solidarity. This field is actively coordinated by the “National Network of Local Governments for Peace and Human Rights,” a legal association of public institutions which currently include more than 700 communes, provinces and regions, representing over half of the Italian population.

On the international-transnational level, many associations and networks of local governments’ institutions and authorities, such as the Human Rights Cities, the Intercultural Cities, Mayors for Peace are striving for human rights, peace and human development. An ambitious

instrument is the European Charter for the Safeguarding of Human Rights in the City.<sup>11</sup> Human rights mainstreaming is fertilising the legal systems of urban settlements: a meaningful example is provided by the Montréal Charter of Rights and Responsibilities, which was endorsed by that City Council in 2005. The growing political movement of “City Diplomacy,” strongly supported by “United Cities and Local Governments,” is working to make more visible the political role of local governments as an essential – I would even say providential – help to states and multilateral institutions in the framework of a peaceful and democratic multi-level governance. In this context, an explicit link of human rights with local self government in the multi-level governance perspective is enshrined in the *Hague Agenda on City Diplomacy*, a declaration-action programme that was endorsed at the end of the First World Congress on City Diplomacy (The Hague, 13 June 2008).<sup>12</sup>

## VII. Epilogue: Taking Advantage from New Opportunities

The establishment of the European Grouping of Territorial Cooperation (EGTC), with legal personality in the EU system (Regulation CE no. 1082/2006) is an opportunity that ought to be seized to affirm the peaceful involvement and support of local governments in the multi-level governance architecture. The opportunity of this revolutionary provision should be seized to include in the agreements and statutes of the EGTCs specific reference to the international law of human rights and to the EU Charter of Fundamental Rights, highlighting the principle of interdependence and indivisibility of all fundamental rights as the most appropriate for social and territorial cohesion. Needless to emphasise that the EGTC provides suitable ground to experiment plural inclusive citizenship. Hopefully the establishment of a human rights infrastructure, for instance, in the form of an EGTC Ombudsperson, should be envisaged as well.<sup>13</sup> A major objective could be the progressive enlargement of this European experience by extending, whenever possible, membership of the EGTC to local

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<sup>11</sup> Adopted in Saint-Denis on the 18<sup>th</sup> May 2000 by the European Conference Cities for Human Rights.

<sup>12</sup> Musch, A. *et al.* (eds.), *City Diplomacy. The Role of Local Governments in Conflict Prevention, Peace-building, Post-conflict Reconstruction*, The Hague, VNG International, 2008; Papisca, A., “International Law and Human Rights as a Legal Basis for the International Involvement of Local Governments,” *ibidem*, pp. 27-46.

<sup>13</sup> Papisca, A., “L’Avvento del Gruppo Europeo di Cooperazione Territoriale, GECT. Nuovi Orizzonti per la Multi-level Governance Democratica,” in *id.* (ed.), *Il Gruppo Europeo di Cooperazione Territoriale. Nuove Sfide allo Spazio dell’Unione Europea*, Venezia, Marsilio Editori, 2009, pp. 11-33.

governments and public agencies in third countries. In parallel within the United Nations, a process towards the establishment of “international” groupings of territorial cooperation in the name of the principle of local autonomy-self government-human rights and democracy could be carried out. In this perspective and in analogy with the EU Committee of the Regions, it should be pursued by the establishment of a Committee of Territorial Cooperation (or a Committee of Local Governments) within the UN system with formal advisory functions.

Needless to point out that the EU system is not sheltered from the worldwide turmoil. Its functioning, even its architectural structure, is increasingly conditioned by external-international variables. Achieving the European “single voice” in the world system has become a key element also for the internal strengthening of the EU. At present, the Committee of the Regions is the international supranational body that owns a high degree of formal and substantive authority and a large range of competences in the EU system as well as increasing visibility in the international scenario. The “regionalism” represented and carried out by the CoR in the EU institutional system is a “bottom-up regionalism” that balances and excels the primitive “top-down (charitable) regionalism” carried out by the European Community.

Briefly it is a high profile “political regionalism,” having constitutional implications for the future of the EU system. The production of opinions that increasingly refer to sensitive issues, like those dealing with human rights, plural citizenship, enlargement, environment, multiculturalism and intercultural dialogue, social and territorial cohesion, strengthens the “political” relevance of the CoR role for the extension of local self-government as a contribution to democratic multi-level governance. It is important to exploit these positional features as resources of power to carry out and consolidate roles within the EU system and in the system of world politics. The CoR Committee for External Relations has a lot to do in this direction. The liberation of “territoriality” from the determinism of the ties with the state “sovereignty *ad alios excludendos*” is the new frontier *ad omnes includendos*.



# **Values, Intercultural Dialogue and Making it Pay to be Good: a Research Agenda and Policy Approach for the European Union**

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The paper focuses on what I see as the key challenges facing us today and on the contribution that we as academics, in the course of projects such as the Jean Monnet Centre of Excellence at Padua, may yet make to the evolution of Europe in the world. The answer to the question: “What is the future of Europe, and what role for Europe in the world?” cannot be answered, in my view, by looking inwards. We can only begin to know the answer by first asking: “What kind of a world do we want?” Consequently Europe decides its shape and policy approach in which it will work in and for that world. But we need to “think global” first.

In answering this question, two points are central: first, there can be no answer worth anything without real intercultural dialogue, not least about values and virtue, that feeds into consensus at global level; and secondly, Europe has a degree of experience with intergovernmental and then deeper cooperation between sovereign and increasingly non-homogeneous states and their peoples. This cooperation can surely be brought to the forum of dialogue about the future shape of our world, including the instruments and techniques of dialogue and decision-making at global level, and therefore about that of our Europe.

I emphasise the word “experience.” I myself have used the word “model” in the past. This has been open to misinterpretation, to an interpretation that was never intended. The Union, the Europeans, have no ambition to expand to take-over the globe (I think!). Nor can we imagine that our values/systems/techniques can be taken wholesale and transplanted. What we have is a chequered experience of seeking always – even when, as in recent times, we seem to be stumbling and falling

back – to somehow keep the dynamic of further cooperation moving forward – with a large measure of success in these terms.

What we can offer for consideration is the whole complex of experiences, good or bad, and some key elements of working, thinking and studying together in a global context – a context that cries out for some new framework for deeper cooperation and joint endeavour. I will therefore focus on functional (decision-making and therefore institutional) intercultural dialogue, ultimately taking a global as well as European and Mediterranean perspective, rather than focussing on migration and Euro-Med relations as such. We can only succeed even in these spheres through dialogue at the regional and cross-regional and at the same time the global level. My key phrases therefore remain dialogue, values and the European experience of “part-global” governance.

## **I. Towards a New International Order**

I will try to transmit some ideas that in my view remain of key importance in addressing the greatest challenge that faces us today as European and global citizens, and one that we share on equal terms of interest with our fellow world citizens – the construction of a new global order based on justice and inter-generational solidarity or, as it has been put, “a new order of relations in the world,” a true international community characterised by shared responsibility for the “universal common good,” but respecting each other’s cultural achievements and differences. To this end I have proposed a research and policy agenda on which some of us have started to work, but which in my view needs to take centre stage, for the participants in this joint endeavour will be very many.

## **II. The Need to Work towards a Common Understanding of the Common Good**

It seems to me that what is required at the present time is a genuine and new commitment to the clarification of the philosophy of the common good in global and European terms. I see this as the key question to be addressed at this stage of our common history. What do we mean by the common good? What is it in any particular context? I would argue, again, that we have to think globally in the first place, and consequently develop a clearer view of the Union’s role in the world, as well as in its internal policy-making, including areas from energy to security, from trade and aid to state and human rights.

This could be translated into a coherent set of new long-, medium- and short-term policy objectives rooted in a new “deal” on state and

human rights. Without a new and clear sense of the common good we will stumble from quick fix to late quick fix. On the other hand, focussing on the common good means focussing on values to be observed at national, European and global level, with institutions and policies adapted, or newly-designed for and directed towards the common good. It seems to me that the common good can only be understood through a proper dialogue about values.

The dialogue must evidently be intercultural. For this purpose the academic community could work on and through such concepts as the “common heritage of mankind,” that of “common goods” and other related concepts. It will enable us to focus on preserving and sharing scarce planetary resources, reducing and then eliminating the waste of resources and human potential. These are currently absorbed in keeping a precarious power balance instead of their being channelled into the alleviation of poverty, misery and injustice in constructive ways.

I argue that a new or renewed global architecture is clearly needed for these purposes. Europe has “been there before” in many ways, with experiences over the last fifty years that offer a complex of concepts and elements which can also be used in designing a new global institutional architecture. But first and foremost, values need to be introduced. In and across Europe, as also outside it, a values-oriented new human rights discourse is taking place. Often, in the West this excludes religion, although this is changing too.

Yet, seen from a traditional cultural and religious perspective outside the core of Europe, a liberal humanist relativist discourse is the language of social turmoil if not sedition. Suddenly (or less so), for societies unused to relativism or cultural pluralism, the very foundations of society seem to be rocking: the definition of “marriage” is up for discussion; and within Europe as elsewhere the definition of “good capitalism,” “good management,” “good government,” indeed the definition of “good” itself is up for discussion. This in itself is not new in human history, but such soul searching always poses a challenge to each generation. As for any new challenge, a counter-reaction is experienced to any reaction.

From the liberal (neo-liberal?) relativist humanist perspective in Europe, any challenge to accepted “European values” of pluralism and individual rights and the economic and social progress that accompanied their evolution, or any call to dialogue about values, is seen as a call to admit a failure and reject the notion that “Western” values and notions of human rights, proclaimed as universal, are being put “up for discussion.” Therefore, no one is happy; for everybody’s fundamental societal underpinnings are “up for discussion.” Yet, they are! And increasingly so, in the global as well as the regional and the national

spheres. Surely, these must be discussed openly and with full respect for difference if we are to create a better international order.

On a broader canvas, it is worth asking: “How universally moral is it: to set up and use systems for the non-payment of one’s dues to society; to pollute the environment that is everyone’s heritage; to lure youngsters into self-damaging behaviour; to exploit the weak, the desperate and the vulnerable; to hold back the development of other nations which are perceived as potential competitors; to withhold needed resources including medicines from those in need of them for their health and survival; to put people’s lives or health at risk in numerous ways, often in the name of progress and scientific advancement; to keep women and children and others in servitude; to deny access to basic human necessities to millions of people; to put profit before caution in the face of possible harm?”

These are among the many moral dilemmas that call for a principled response to the complex considerations at play. It is increasingly clear that the international community must address them. We need to “evolve” together before our differences pull us any further apart. Only a major historic effort of true dialogue about virtue in the public sphere, while valuing and respecting differences, holds out the hope for the creation of a new common understanding around values, one that will work to reduce tension and heighten justice in the world. What is needed is not uniformity in all cases, but a new explicit basic common understanding of virtue in all contexts.

### **III. Virtue and the Socio-economic, Business and Finance Model – an Example**

We have come to accept that when it comes to values below the level of core human rights there is often no single, fixed Union “view” on each and every issue. When it came to dialoguing with neighbours and the wider world we could not take “one view” on an issue to any regional or global dialogue forum. However, we can identify broadly accepted viewpoints in particular contexts. For example, as it was put in March 2009 at the University of Padua by Luc Van den Brande, as President of the Committee of the Regions, “*Our model is not a model of concentration of wealth, but a model of solidarity, equal opportunities, cooperation and partnership.*” This presents an example – an experience – of flexible multi-level or multi-sphere cooperation. However, and crucially, it is also an example of a construct that tends inherently towards ultimate enforceability and the rule of law – of a sense of “belonging” – of commitment to what has been agreed.

Our great challenge as human beings is to create the trust – through the construction of workable institutions and processes – that will allow such order to prevail beyond our particular sphere(s). The fact remains that, although there has been much convergence if not integration, there is still no one single European view, but indeed a lack of consensus, for example, over any economic, managerial or social model. Of course, there is always room for divergence but, utilising all our knowledge and experience and those of our fellow citizens of the world, can we not come closer to a core basic common ethical understanding of what is right and what is wrong in terms of the common good?

We must first agree that values – “virtues” as it is often referred to in business ethics, beyond the “value of profit-making” – should permeate trade and commerce. Recent catastrophic events are indeed spurring us in this direction. But can we then fail to also address together some of the harder issues about which we have for too long agreed to disagree, with the result that ethical considerations have perhaps given way to “market realities” without ethics?

For agreeing on core values means taking a hard look at national models, and the ways in which own convictions and institutions prevent us from working to a common understanding of virtue into economic activity. Surely we cannot accept on the one hand that trade and commerce are not ends in themselves, and that justice and human rights demand the pursuit of wealth in a proper manner, without on the other hand also facing and resolving questions of social justice in the production and distribution of wealth, created and generated by a market supported by the efforts and resources of all. This will mean looking with an open mind at one another’s “models,” and again at our own.

Subsidiarity, a principle often interpreted and employed in the EU context in order to keep social political discourse at national level, seems today to be pointing to the direction of requiring action at the EU level. It certainly seems to point to the need for discussion and consensus on a number of issues at global level if we are to create a moral playing field at global level, in other words if the aim is to “make it pay to be good” at global level. This makes it all the more important to involve regional and local actors. For again, such a moral playing field must be universal or it will not work, for if not universal it will pay to be bad when others are trying to be good. It will not pay to be good when others are allowed to be bad; indeed to be good then would be market-place suicide. This is the real lesson of the market failures that we have suffered: greed is infectious and will spread if unchecked. This implies that markets must be allowed to operate state, regional and even global bodies, but also be allowed to regulate in new ways. It means re-organising ideas of “good” market operation not only in technical

terms but especially in virtue (ethical) terms, and dialoguing about this in order that appropriate rules be put in place at all relevant levels (or spheres).

In this challenging context, academics have noted the changes required of their disciplines, including also the economic discipline. Similar “doctrinal crises” have presented themselves to international relations specialists, political scientists, social anthropologists, moral theologians, management and business scientists, to scientists in general, and even to law professors. Key debates have been coming to a head: Constitutionalism or not? Regulation or self-regulation, or no regulation, de-regulation or re-regulation? Free market or social market? Freedom of religion or freedom from religion?

Through all this, the underlying question: are supposed alternatives such as these false antagonists? Is the matter not so complex that we need to be able to employ a mix of strategies and tools, and the appropriate mix at the appropriate time and in the appropriate context? So, when is the appropriate time for what; what makes the right mix for which context? Some writers in the economics field use the phrase “complexity economics” to signify the complexity of the arguments and the fact that no one idea or theory can provide a full explanation and basis for action, unless it be perhaps a super-theory that gives due play to each relevant theoretical standpoint. If this is a new awakening to a truth in economics, are we not all guilty, to some degree, of mono-disciplinarity, and worse, within that mono-disciplinarity, of mono-theory?

Call that what is needed “complexity studies,” call it “cross-disciplinary-complexity studies.” But even these notions may not encapsulate the fullness of the idea. For underpinning all these efforts must also be the overriding preoccupation with values dialogue with a view to identifying the common good – which all disciplines should ideally serve. Again then, what is the common good as far as the business world is concerned? This approach and these kinds of questions are surely of prime relevance for the agenda of the Padua Jean Monnet Centre of Excellence, featuring a cross-disciplinary search for the criteria of the common good, of which (the common good *in concreto*) there surely can only be one in any particular context.

#### **IV. Articulating and Pursuing the Common Good: the Institutional and Decision-making Dimensions**

Our experiences in Europe must surely be relevant to a world that is crying out for a new international order. The successes, the failures, the “non-linear” evolution of the Union and its institutions and the relations

of these with the member states and their citizens – yet who are also Union “citizens” – all this, surely, can provide lessons and almost certainly some possible elements for consideration by those entrusted with developing a new international order. My argument is that we need to consider seriously whether the international order can develop as such on the basis of values, tools, instruments and institutions of a kind that the European experience has shown to be workable among sovereign states and peoples. We also need to ally future developments to real inter-cultural dialogue about values. Europe has an obligation, reflected in the Treaty on European Union, to further the (appropriate) development of international law. This must be done on the basis of agreed universal values.

### ***A. The Elements***

The equality of all “members” or “partners;” the principle of subsidiarity (to be applied at all levels from local to global); citizen representation and civil society dialogue; decision-making centred around cohesion allied to real and justifiable procedural and substantive solidarity and instruments of cohesion, yet with all necessary and proportionate flexibility and differentiation (including the use of soft law such as typified by the open method of co-ordination, regulated enhanced cooperation); the ultimate bindingness in principle of legitimately taken “majority” decisions in dialogue; the direct effect of clear and unambiguous norms; judicial review: so, the rule of law on the basis of general principles of law and institutions to match.

These and other elements of the European experience could transform governance at world level for the better, based as they are on fair, equal and solidary processes. Fair rules based on the equality of nations and peoples and individuals (but allowing for majority decision-making) must be agreed dialogically, but with a view to their being followed and ultimately enforced. Studies on the fight against poverty, on business ethics, on international trade, on overseas development aid, on external relations and sustainable development in all its aspects, all point to this conclusion. I will argue in a similar way later in this paper in connection with Euro-Med and wider cooperation.

### ***B. The “Vision”***

The international order would be rendered more orderly, it would be rendered more fair, it would be rendered wholly inclusive if all players, major and minor, were brought together to devise new institutions, affirm the values and adopt the general principles that will point these institutions towards the common good: equals producing a new international (global) order. Of course, such an initiative cannot be

driven or pursued unilaterally by the EU. Similar experiences exist elsewhere! In any case, the European elements are only some of the elements that could find their way into the ultimate result of a serious joint effort. However, whoever takes the lead, it must be clear from the outset that this has to be a joint global project. It is equally clear that those values, including moral values and ethics, not least those inspired and taught by the main religions, must be the subject of deep study.

I repeat this fundamental point. The main religions are far more than after-life and heaven and hell. He who sees them in this way misses the point. They are about values to be practised in this life – between individuals, in society, in government, in international relations, in international governance; they propose a set of social values that promote justice, peace and order – the ideals (and goals) that all of us speak of, and lament the absence of, day after day. To dismiss religions as dangerous or at best useless, is to deny a primary source of the values that can source the virtuous international order.

In a secular society, even and especially in a multicultural pluralist “European” society-in-the-making, some values can be hidden or even camouflaged. To many it can then appear as though they do not exist. Yet the more recent research done in many places has uncovered several such values beneath the layers of secular rules, and this in many policy areas. It is vital that these values be teased out into the light of day, lest we forget that they are at the base of national and European construction, lest the younger generations fail to learn their salience, and lest our neighbours near and far imagine that they do not exist or that we do not honour them. Of course they exist, but their salience has been diminished by the exclusion of moral language from our political discourse.

Recent and not-so-recent writing has also increasingly uncovered that in some cases we ourselves have committed the wrong of relegating certain moral values and ethics to the realm of the private, or at least to the non-material and non-public sphere. Short-termism in economic and financial activity is one symptom of this phenomenon. Turning a blind eye to the underlying causes (including breaches of human rights) of the ever-growing divide between rich and poor regions, states and people is another. It is possible for a state or its rulers to be rich while the people are (kept) poor. It is possible for some states to be (at least relatively) rich while their neighbours are poor.

One key theme of much recent writing is the relevance of values – and not least religion-inspired values – to policy making, to internal politics and increasingly to external relations. It is most valid subject of intercultural dialogue but also of political discourse within the individual member state polities, the emerging European polity and, not



least, in the external relations. Several writers have noted a moral, even spiritual resurgence in Europe, a phenomenon increasingly visible worldwide. United States' President Obama himself has written that the politician ignores the fact of religious faith as the guiding light of hundreds of millions in their public as well as their private lives at his peril, and at the peril of the common good. I highlight this because it shows, assuming that many are right and that indeed this kind of thinking is acquiring mass support and is growing across the Atlantic and beyond, that we are entering a new historic era, and facing a great historic opportunity and challenge. John Boli calls it the challenge of "rationalising virtue and values."<sup>1</sup>

Politics remains the art of the possible, and what is possible is constrained by differences. If there is common ground among religions, our common humanity and innate goodwill and love for peace, then the great players in the "West" (the USA and the EU) seem to make values and virtue count. There is reason to be hopeful, for openness to dialogue is much on the increase. However, dialogue is only possible if we use the same "language," and avoid the coyness of the West about using the language of moral values. This is likely to remedy misperceptions of the West and establish a closer dialogue and better cooperation across the globe.

Of course, it is not just a question of language. As Tsinisizelis and Xenakis have put it:

Accordingly a new 'hermeneutics of civilisational dialogue' emanates as a *praesumptio juris et de jure*; a dialectic of cultural self-realisation through a reciprocal exchange based on a philosophy of mutual understanding that does away with the subjectivist approach that wants the 'West' to act as a universal civilising force based on an almost metaphysical obligation to humanity.<sup>2</sup>

The same applies in reverse. We must strive to move forward together towards the global moral economy.<sup>3</sup> In his book on *Islam and the Moral Economy*, Charles Tripp concluded: "For Muslims and non-Muslims alike, part of the challenge for the future (is) to create the

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<sup>1</sup> Boli, J., "Religious Organisation," in P. Beyer and L. Beaman (eds.), *Religion, Globalization and Culture*, Leiden, Koninklijke Brill NV, 2007, pp. 203-232.

<sup>2</sup> Tsinisizelis, M.J., Xenakis, D.K., "Unity in Heterarchy: Security Complexity and Systematic Change in the Mediterranean," in F. Prausello (ed.), *Sustainable Development and Adjustment in the Mediterranean Countries Following the EU Enlargement*, Milano, Franco Angeli, 2006, pp. 73-101, p. 84.

<sup>3</sup> See Tripp, C., *Islam and the Moral Economy: The Challenge of Capitalism*, Cambridge, Cambridge University Press, 2006.

space, imaginative and actual, in which acceptance is not read as subordination and in which active engagement becomes part of a process of self-definition.”<sup>4</sup> My wish for the Padua Jean Monnet Centre of Excellence is that deep study and reflection will lead, in the context of some of the most relevant global debates (human debates), to practical results for the sake of justice, peace and prosperity in a truly new world order. It is where we – as Europeans and as Europe – decide that we stand in these debates that define the essence of our citizenship, of the Union and of the world.

### ***C. The Really Big Question: What Does Europe Stand for?***

We have placed the citizen, and in a special way, civil society, at the centre of our inquiry. The really big question is: What does it mean to be a citizen of Europe and of the Union, with a particular identity and culture and therefore particular values, not least religious, but also democratic, family, and social, and these in view of a particular identity mix? How can this identity mix be made relevant in meeting this great challenge of the 21<sup>st</sup> century? What makes us proud to be European? What identifies us as European? What does Europe stand for in the European Year of the Fight against Poverty?

I wish to apply some of the above thinking to this scourge of largely innocent and dying humanity. This raises issues about the world order. We increasingly think not of nation-states or even of groupings of states but in global terms. Poverty is a global challenge. This has implications for the disciplines of law, economics, international relations, anthropology, sociology, philosophy, theology and so on. Poverty is also a multidimensional challenge; it can only be addressed by a coherent, comprehensive strategy that is rooted in principle and driven by the common will. However, the fight against poverty remains essentially a moral issue.

If we truly (increasingly) not only are, but also feel, morally responsible for each other across borders, then also law, in the sense of universal rights and institutions that recognise such, must follow this practical utopia.<sup>5</sup> The international regimes of international trade are under scrutiny. The UN framework, institutional and political, is under review. The policies of the World Bank and of the International Monetary Fund are constantly questioned. The role of the EU in the

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<sup>4</sup> *Ibidem*, p. 201.

<sup>5</sup> Midgley, M., “Towards an Ethic of Global Responsibility,” in T. Dunne, N.J. Wheeler (eds.), *Human Rights in Global Politics*, Cambridge, Cambridge University Press, 1999, pp. 160-165.

world is a matter of debate, and for many the practical implementation of the Lisbon Treaty holds forth the promise of a European Union that will play out its true vocation on the world stage as a beacon of practical solidarity.

Some, perhaps not many anymore, see the possibility of “the end of poverty” beyond achieving the Millennium Development Goals, through the use, with or without adaptation and with our without further development, of already existing mechanisms. Others quite simply do not see it (“the poor will always be with us”), and throw up their hands in defeat, whether through scepticism about the possibility of reform or about the reforms proposed.

We can ask the following questions: What are the values that should inform policy making at all levels? Do these differ according to level and scope of the initiative in question? Are new values emerging to inform policy making in the area of poverty? Has experience given new insight into the definition, the causes, the sufferers (the “faces of the poor”), the manifestations, the symptoms or results of the phenomenon? Understanding has changed of the way in which the poor see themselves and are perceived in turn, thus causing a change in the values applied to the categorisation and judgement of the situation of the poor by the policy maker and his or her electorate? What have we learned in the last few years about how we do trade, how we do aid, how we do business, how we work with others (or fail to) in the search for prosperity and security? Have we learned the lessons, often hard, of an often unrestrained “short-termism,” and what mechanisms can be employed to keep free the entrepreneurial spirit while at the same time curbing the excesses of the short-term pursuit of wealth on the individual, corporate, and even national planes?

Of course, it is implicit and vital that we all work from the same values. Do such universal values exist, or do we need to discover them through intensive inter-cultural dialogue? Bhikhu Parekh, for one, thinks the latter.<sup>6</sup> In this sense the call is for a full and frank dialogue in institutional and other fora that guarantee it. Such are the main themes of a volume published in Malta recently.<sup>7</sup> Solidarity is the key value at play. It is assumed, of course, that we want a solidary world rather than one at war, that we want security rather than insecurity, and that we want equality and justice rather than inequality and injustice. “We” in this are the ordinary citizens, rather than the profit-seekers and

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<sup>6</sup> Parekh, B., “Non-Ethnocentric Universalism,” in T. Dunne, N.J. Wheeler (eds.), *Human Rights in Global Politics*, *op. cit.*, pp. 128-160, especially p. 139.

<sup>7</sup> Xuereb, P.G. (ed.), *The Fight Against Poverty*, Malta, EDRC-PEG Ltd., 2008.

exploiters, those politicians who crave power above all else, and all those who would put their own personal power and wealth before the common good of mankind, however much they may protest that they are acting in the interests of the economy, prosperity, progress.

On these bases, the questions become ones of an instrumental nature. What instruments are available to address the key causes of poverty? What are the obstacles to their mobilisation or implementation? Not all states can (or wish to) join the EU, but the EU should wish them to wish to join something similar, and global solidarity should find in the EU something of a model for its own ordering. This must be done around agreed values as based on the dignity of the human person. Of these, the principal one is equality, implying equal access to opportunity, to the resources of security and economic independence. The right to freedom from fear and insecurity, freedom from want, is the first right of the human being.

Even the EU has its problems with identifying its optimal model. There is none such which can simply be taken and offered to the rest of the world. We all need to learn from the EU experience and think in ever-increasing circles. It is increasingly agreed that a multilateral approach is required, covering the EU member states and their neighbours. I have argued for this before and have suggested that the EU model of evolution of relations should guide us in devising the model for these relations, not least for the Euro-Mediterranean area but also for the Pan-Euro-Mediterranean area and beyond.<sup>8</sup>

We should not be in too much of a hurry, but nor can we afford to delay. This will require institutions that have the capacity to act as institutions for the common good. Just as capitalism owes its origins to economic development and the political reforms that led to the emergence of the nation-states of Europe, the financial scandals of the last century are testimony to greed, the herd instinct and the opportunities presented by globalisation to render all operations, including those predicated by greed and speculation, global. They are testimony to the failure to regulate or re-regulate at national, regional or global levels to dampen such behaviour and foster responsible and moral behaviour.

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<sup>8</sup> Xuereb, P.G., "Pan-Euro-Med Cooperation and Integration – Looking Ahead to Infusing the Euro-Med Partnership and the European Neighbourhood Policy with the Supranational Dynamic," in E. Lannon (ed.), *The European Neighbourhood Policy Challenges*, Brussels, P.I.E. Peter Lang, 2012. I here reproduce some passages from my contribution to this volume.

Values, and especially the key value of solidarity, expressed through practical solidarity at every level of society, from local to regional to world society, and through (new) institutions that lead and implement this practical solidarity via good governance, democracy and justice, are indispensable for the creation of a just world order. Underlying everything is the value of solidarity. So what does the European Union stand for? And, equally (and realistically) we must ask another question, for as we strive for global justice, and as we seek justice for others too, we must ask: what is it that matters most to the citizen of Europe? How would a European citizen answer this question in relation to his/her expectations of the European Union?

If I am honest and practical, I would answer this way. What finally matters to most people in Europe is the answer to this question: will decisions that might have an impact on the essence of my own individual identity, on my culture, on my habits, on my beliefs, on my way of life, on my life just as much as my livelihood, on my children's education, and most of all on my values, be decided with all due respect being accorded to them and without any imposition upon me to discard my loyalty to my country, my values and my community? If those who lead the Union can answer this question honestly and truthfully in the sense that the citizen of Europe has nothing to fear, a vitally important question for the peace of mind of the citizen will have been answered. The leaders of Europe will then be able to count upon the support of the citizen of Europe in developing the policies and taking the decisions that will advance the aims and objectives of the Union while remaining true to its declared values, whether the Union is acting internally or externally, that is whether the acts or decisions are intended to have effect within the Union or to be operative in the wider world as part of the Union's external relations policy.

However, one thing must be understood. Our common values are the starting and the end points. We need to ask whether the Union can adopt a neutral role in the field of values and ethics, leaving to others the duty of upholding its declared values, and still remain credible as an internal and external actor. We must decide to permit the Union to act to uphold our declared values (democracy, dialogue, human rights protection) in the outer world while of course demanding that the Union remains true to the pact of respect for the identity of each member state and its people, implying subsidiarity and proportionality.

I now take two main issues to illustrate the nature of dilemmas facing us: the first is that of combating people smuggling and trafficking as linked to asylum protection; the second is the putting into practice of our values in the Euro-Mediterranean region through what I call "doing with our neighbours as we do among ourselves" via the creation of

institutions and decision-making paradigms that truly respect our neighbours and involve them in the practice of common values in pursuit of the common good.

## **V. We Europeans and our Treatment of Irregular Immigrants**

The work of Matthew J. Gibney on the ethics and politics of asylum<sup>9</sup> addresses the fundamental question as asked in this paper: Where does the Union (and where do the Europeans) stand on asylum? Is the Union guilty of engaging in full rhetoric about human rights while in effect in some way denying full play to the right to asylum? I do not go here into the merits or demerits of the new Stockholm Programme of the European Union. Rather, for the purpose of this paper, I pose the fundamental question. It seems clear that the member states – and particularly the small and “vulnerable” states – are increasingly, if not exclusively, looking to “the Union” to resolve what Gibney terms their “asylum woes.” I take this phrase to refer to the logistical and financial burden, coupled with the “integration of the (im)migrant” burden, and all submerged under the political burden of governments in office of reassuring their citizens that immigration is under control, that their citizens’ jobs and futures and very identity and culture are not being put at risk by the national policy and practice relating to the treatment of asylum seekers.

The principle of burden-sharing solidarity among the member states of the Union, a principle now enshrined in the Treaty on the functioning of the European Union (Article 80), seen at once as a device for the extension of solidarity with the asylum seeker where otherwise this might be withheld, and at the same time one that might be used as a screen for less than proper individual state action on the ground that such inter-member state solidarity is lacking. Some member states such as Malta have in any event contended that there has been insufficient demonstration of inter-member solidarity in the past (the Lisbon Treaty should change this). What do member states expect of themselves and of each other, as they seek to ensure their security and at the same time act in accordance with respect for human rights and in accordance with European values towards all human beings? After all, we say that the Union exists in order to make certain objectives, which we share in common, attainable and sustainable. This does mean that we have to collaborate in spheres such as immigration and asylum policy in order to

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<sup>9</sup> Gibney, M.J., *The Ethics and Politics of Asylum*, Cambridge, Cambridge University Press, 2004.

achieve our security aims, but primarily in order to be true to our values by acting appropriately in the human rights sphere.

The treaties therefore give the Union competence in these areas and now, with Lisbon, move decision-making in the Council of Ministers, as in the European Parliament, further into majority mode.<sup>10</sup> From an ethical standpoint, certainly a Christian one, one could and should argue that the right of asylum is a fundamental human right to be respected at any cost; that human dignity and safety have no price. Yet, it seems that, in practice, this cost has to be explained and justified to their electorates by governments in office, although the entire political class bears the burden in this matter, and even though the same ethical principles apply, or are assumed to do so, at the individual citizen level. Or are the citizens of Europe free, to pressure their governments away from asylum granting for the same reasons as Gibney professes? Are they (we) really so lacking in conscience and citizen formation that they (we) will punish their (our) governments for abiding strictly by international and other legislation, or acting beyond them even, in accordance with such moral precepts as bear on the question?

What indeed do we stand for? Can we really be expected to “stand” for more than we do? Is our burden-sharing principle aimed at, and is it up to the task of, maintaining a proper balance between the claims of citizens to “protect” their identity and culture and their very communities and, on the other hand, the human dignity and equality claims of the bona fide asylum-seeker? But if solidarity between member states is not truly a principle to be employed in practice, then is reference to it in the treaties worse than useless, obliging individual states to take matters into their own hands and either support (arguing ethical self-defence justification) a restrictive Union policy or defy (again arguing an ethical self-defence justification) a non-restrictive or non-effective Union policy that appears to ignore their legitimate claims? After all, the Treaty on European Union itself in Article 4 obliges the Union to respect the identity of each member state.<sup>11</sup> Its policies may not push such identity aside. One could argue that the Union should take as many (true?) refugees who deserve protection, while giving them every opportunity to seek it, and should at the same time ensure that no single state is pushed beyond any justifiable limit by being asked to do more than its fair share. No one has suggested, far less

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<sup>10</sup> The so-called “ordinary legislative procedure,” formerly called “co-decision” has been extended to all areas of immigration policy.

<sup>11</sup> Although its wording remains as yet untested.

proved, that the Union as a whole cannot fulfil the international moral obligation towards all deserving cases.

All reasoning contrary to a truly principled approach is premised on the alleged overriding moral priority of maintaining the culture, identity, polity of our societies. Such is Gibney's "credible ideal" for state (and Union) action – a "desirable goal."<sup>12</sup> Gibney argues that the guiding principle leading to practical implementation programmes and action as well as providing the justifiable measure is the principle of *humanitarianism*. This is "simply stated" by him as follows: "States have an obligation to assist refugees when the costs of doing so are low."<sup>13</sup> Would we go along with this? Is there a moral obligation to assist only when it does not matter to us, only when the costs can be taken by us in our stride? Are we to reduce individual human rights and human dignity to this? And what if climate changes and other disasters require more to be done?

Again, does this mean that the definition of "refugee" cannot change over time to cover all manner of causes of desperate migratory movement even if this is to raise the costs to higher (than "low") or "high" or even "very high," but where to fail to widen the definition is to condemn others to poverty, starvation, disease, and even death? Are there really a moral imperative and a justification to safeguard the *status quo* in our societies beyond ensuring that security, democracy and human rights prevail and continue to prevail in our polities? How far can we go in defence of our social mores, social rights, traditions, etc., which Gibney emphasises as most importantly in need of protection?

Is Gibney's the right answer when looking for the "credible ideal?" Credibility is an issue of practical politics perhaps, but Gibney's approach is open to the charge that principle is to be determined by the standards of utilitarianism, not least in national politics. Is his view, his criterion, truly shared by Europeans? To be fair, Gibney's study concludes with this statement:

The current response of Western states to refugees and asylum seekers is characterised by a kind of "organised hypocrisy" (a term borrowed from Stephen Krasner). Liberal states publicly avow the principle of asylum but use fair means and foul to prevent as many asylum seekers as possible from arriving on their territory where they could claim its protections.<sup>14</sup>

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<sup>12</sup> Gibney, M.J., *The Ethics and Politics of Asylum*, *op. cit.*, p. 230.

<sup>13</sup> *Ibidem*, p. 231.

<sup>14</sup> *Ibidem*, p. 229.



He argues that his guiding principle or test would oblige us to do more or better, but still only as long as the costs are “low.” At the same time, Gibney appears to leave open the ethical question of the treatment of the economic migrant, as opposed to the migrant fleeing persecution, when he writes that the barriers that Western states have put in place to stop the rising numbers of refugees “may well be justified in order to prevent the arrival of economic migrants, but they also halt the movement and punish the entry of those fleeing persecution and great danger.”<sup>15</sup> This would appear to have been precisely the case for example in the turning back (the “push back”) by the Italian navy of boats carrying potential entrants to Italy from Libya in May 2009, an action that appears to have had the approval of other member states including the apparent approval and support of the Maltese government.

The crucial question is this: is Gibney’s analysis applicable to Union policy? In other words, is Union policy based on this minimalist idea of assisting when the cost is low? Is another test applicable, for example that the Union’s policy is to assist when it suits, when in fact there is no overall cost, for example because we stand to gain much needed skilled workers? What appears to be the guiding principle of Union policy? These are questions to be asked, and repeatedly so, as we formulate and implement our policies. It is clear that the post-Lisbon European Union must be bold. It must find the tools to match its values.

In the next section, I draw on the rather sad experience of our experiments with various Euro-Mediterranean initiatives to make the case for “doing with others as we do among ourselves,” for in my view until we begin to do so we do less than our values require, and will fail to achieve what is in our power, together with our neighbours, to achieve. I lay out a proposal for further study, although in my view the time has come for us to put into place at Euro-Med level a framework for the rule of law inspired by the European experience. This approach is also in our interests. I would argue that only in this way, through a multilateral and supranational framework of law, can we, together with our neighbours, resolve the root causes of the scourges and threats that we face together, while securing justice for the individual.

## **VI. The Rule of Law and Institutionalised Dialogue and Cooperation in the Euro-Med Region**

The thesis is that there are significant lessons to be learned from the evolution of the Union, and the impact of Union enlargement. Primary

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<sup>15</sup> *Ibidem.*

among these is the institutional and decision-making “incrementalism” that have drawn the member states ever closer together in a dynamic that has proceeded from close to closer cooperation to the formulation of common policies and a degree of integration that surpasses anything seen in our global experience to date. It is argued that a bilateral approach and differentiation remains the key to the deepening of relations between the EU and each neighbour<sup>16</sup> in many areas, we must be alive to the huge potential of the “supranational dynamic” and seek to employ it as and when the opportunity arises.

In my opinion, we should go much further and, now that the Union for the Mediterranean is itself faltering, we should actively seek to put it in place. The argument is that we can provide for as much differentiation and forward movement as is necessary, but do so in a more coherent and focused manner, while also ensuring policy coherence, by relying on the tried and tested mechanisms that we are used to employing among ourselves within the Union, namely decision-making that leads to binding measures, albeit with the possibilities on a temporary basis of enhanced cooperation, temporary opt-outs or opt-ins, temporary derogations, unilateral exemptions based on justifications on accepted grounds.

Writing, when all is said and done, as a lawyer, I would highlight the importance of the rule of law in the development of relations with the Southern neighbours. While membership of the Union is not, and may never be, in prospect for many neighbours, the thesis is that the “Community” model of integration (I prefer to call it our “European experience”<sup>17</sup>) can serve to accelerate the achievement of the ultimate objectives of the Euro-Med process and of the ENP<sup>18</sup> in key common areas. This could be deployed, if not immediately across the board (the

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<sup>16</sup> This is most certainly the basis of all the Commission’s reasoning: see, for example, Communication from the Commission, *A Strong European Neighbourhood Policy*, COM (2007) 774 final, Brussels, 5 December 2007. See also COM (2006) 726 final of 4 December 2006. These and more recent ENP documents are available from the Europa site via [http://ec.europa.eu/world/enp/strengthening\\_en.htm](http://ec.europa.eu/world/enp/strengthening_en.htm).

<sup>17</sup> Xuereb, P.G., “Pan-Euro-Med Cooperation and Integration,” *op. cit.*

<sup>18</sup> For example, the Commission argued for the extension of aspects of the internal market policy through the ENP, increasing benchmarking of rules against practices in non-EU countries and promoting European standards in ENP partner countries. *Communication of the Commission on a Single Market for Citizens*, COM (2007) 60 final, 22 February 2007. In its March 2007 statement, the Civil Society Contact Group emphasised the urgent need for “benchmarks for policy coherence within and between all (the) domains, and a new framework for transparency, accountability and participation of civil society,” which I cite lest we forget the vital civil society aspect of our relations with our neighbours.

ideal), at least in many key areas of policy where there was a clear and tangible common interest and the possibility (as well as the need) to identify the common good and fasten on a common policy.

The key ideas would be those of heightened multilateralism and supranationalism, common values and general principles of law, common institutions, common mechanisms, dialogue, joint decision-making, binding decisions with differentiation and assistance in solidarity, enforceability and judicial review. I also emphasise that while aiming to reduce poverty can involve the taking and adoption of manifold “measures” or initiatives, and taking a thematic or policy-wide approach is of course vital. We lose the real context if we forget that poverty is in no small measure, if not wholly, due to the lack of personal freedom and the possibility to exercise basic and fundamental rights, so that human rights and fundamental freedoms, touchy as this core might be, is indeed just that – the core issue.

Yet our initiatives to date still offer no clear prospect of remedying the central deficit.<sup>19</sup> It has been assumed by the Commission that an “assured” multilateral/bilateral “balance” “in the South” via the Euro-Mediterranean partnership already exists, while such balance is lacking in the East. The Commission has in the past stated: “In the South, the Euro-Mediterranean partnership has been essentially multilateral and the ENP has added a bilateral dimension. Towards the East, the ENP has no multilateral dimension.”<sup>20</sup> The thematic dimension can be seen as a contribution to optimising the ENP’s balance.<sup>21</sup> It is also said, rightly, for example, that:

The very nature of economic integration calls for a high degree of regulatory convergence [...] and to reap maximum benefits from the process of regulatory convergence would require the EU and ENP Partners to commit them fully to going down the same path.<sup>22</sup>

This is precisely the point being made here. The rapid progress that is now urgently needed arguably requires that, while retaining policy dialogue fora, we consider whether we should not institutionalise further for the purpose of collective decision-making.

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<sup>19</sup> See, for example, a number of contributions in Bekemans, L. *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007.

<sup>20</sup> COM (2007) 774 final, p. 8, citing the Centre for European Policy Studies-CEPS Paper, *European Neighbourhood Policy After Two Years: Time Indeed for an “ENP Plus,”* 21 March 2007.

<sup>21</sup> *Ibidem.*

<sup>22</sup> *Ibidem*, p. 12.

Transport, energy and other ministerial conferences producing recommendations and even regional action plans is all very well if that is all that can be done, but we need to ask ourselves whether this is enough.<sup>23</sup> Is a framework treaty, covering at least the prime areas for thematic cooperation not to be contemplated? Of course, ministerial meetings and senior officials meetings can produce recommendations and even move toward some regional policy, but it is suggested that this basic multilateralism needs to be built upon actively and can be pushed forward through further institutionalisation of the Euro-Med partnership, and why not within the wider ENP context?

The time is certainly right for the Mediterranean, to broach this idea with the neighbours, and together work it out. We cannot continue to discount the real multilateral Euro-Med gains achieved so far, as also the real “standardising” potential of a more ambitious role for the EMP, and the ENP too. This implies fostering maximum cohesion among the partners, allowing for the development of true common policy with joint implementation. Even so, the nature of “standards” is that they are non-binding.<sup>24</sup>

I hypothesise in this paper that we should think twice before turning our backs not only on the potential for an incremental increase in the binding element, but also for joint rule-setting. Ahrne and Brunson write as follows: “Many standardisers try to combine their rules with more elements of organisation. They may try to recruit members and enrol presumptive rule-followers in rule-setting processes in order to secure their commitment.”<sup>25</sup> I see virtue (as well as truth to our own declared values) in so respecting one’s interlocutors – one’s “partners” – enough to invite them to consider partnering in a new framework where we are joint standard-setters. This requires “organisation” – in my view, appropriate institutions – based on the Community (Union) “experience.”

I also hypothesise that it is only by moving beyond “standards” to binding common “rules” through “organisation” that the necessary cohesion can be achieved within the proposed thematic dimension. “Standards” denote voluntarism and opt-out as well as opt-in. Already, the bilateralism of the EMP and the ENP ensure some binding elements, but enforcement and sanction require “recognition” of rules, and the

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<sup>23</sup> *Ibidem*, pp. 14, 16, for example.

<sup>24</sup> See Ahrne, G., Brunson, N., “Organising the World,” in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance. Institutional Dynamics of Regulation*, Cambridge, Cambridge University Press, 2006, pp. 74-81.

<sup>25</sup> *Ibidem*, p. 81.

acceptance that recognition presumes can ultimately rest only on the fact that the rules be made jointly by equals. As Ahrne and Brunson warn,<sup>26</sup> failure of decision or of implementation is most often to do, in meta-organisations, with significant differences among members.

Organisation, however, can be the answer to addressing those differences. I feel that we should seriously consider “organisation” before reinforcing our differences by continuing to rest our approach upon them, wide as they appear to be. Arguably, it is the perceived greatness of the differences that has prompted the EU to emphasise the bilateral over the “organisational.” Big differences often result in consensus demands, to prevent the large or powerful from dominating. Yet, consensus-building is not incompatible with the cohesion dynamic. Indeed, it must be its basis. It was consensus, in the form of unanimity, which prevailed at the start of the European Economic Community. But the all-important further organisational step was taken – eventually.

I hypothesise that we must try to find a similar way in the EMP and ENP contexts. Voluntarism may underlie the system; non-bindingness, even when the standards are arrived at by unanimity, will continue to feature in many spheres, but bindingness based on consensus should *be* bindingness. The many positive features of “the organisation” appear at the moment to be denied to EU-Med relations, and also to EU-“other partner” relations because of this lack. Organisation is needed. This is also the model that explains much of the global order that currently exists.<sup>27</sup> It certainly explains the EU itself. Perhaps, it can explain the future of the EMP and the ENP. There can be no “order” without “organisational elements”<sup>28</sup> that bind.

Certainly, “soft law” (including the EU’s Open Method of Coordination) has a major role to play where consensus about objectives is found to be lacking,<sup>29</sup> so that the very basis for joint formulation of a “common policy” is not present. On the other hand the existence and functioning of institutions committed to the search for supranationalism, can be fundamental for the emergence of such a basis. At the same time, the pattern of global re-regulation (including in the EU itself) suggests that new institutional linkages are necessary to take account of the repositioning of the nation-state and “societal actors.” Moreover the urgent need to fully involve civil society, in particular, more directly in

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<sup>26</sup> *Ibidem.*

<sup>27</sup> *Ibidem.*

<sup>28</sup> *Ibidem*, especially p. 93.

<sup>29</sup> At the end of a process that has sought it out.

“governance”<sup>30</sup> is a crucial factor in the Mediterranean region. It is emphasised by the Commission in yet another non-paper<sup>31</sup> that the potential for cross-border cooperation projects is ever on the increase.

Typified by dialogue, the soft law dynamics has everything to commend it when real differences prevent arrival at what I may call “basic agreement.” The various modes of regulation interact and reinforce each other, so that agenda-setting, monitoring and auditing can develop through and beyond basic agreement into integrative rules. Jacobsson and Sahlin-Andersson write that it is clear that “*we have a case in which the soft approach could be seen as a stage in a development, the end-point of which may be that all actors agree about best practices.*”<sup>32</sup> With this “basic agreement” comes the willingness to bring in tighter methods of integration, for which the essential Community “model” and methods offer themselves as candidates. A blueprint for such might well involve a combination of the original EEC/EC and the current Union mix of methods and institutional utilisation, dependent on policy area and state of “agreement.”

The whole history and experience of the EC/Union institutional and functional development provides a possible input into such a blueprint. Nor does this exclude or diminish inter-relation and inter-linkage between Pan-Euro-Med governance and global governance.<sup>33</sup> It is quite the opposite. In the concluding chapter to their book,<sup>34</sup> M.-L. Djelic and K. Sahlin-Andersson provide some insights into the question of institutional dynamics in a re-ordering world. They emphasise “transnationalisation” as explaining this global “re-ordering.” They emphasise the role of persuasion around the ultimately unifying concepts of the common good and win-win dynamics, thus balancing prosperity for all with sustainable development, including peace and security, equal opportunity for states and people and so on.

Therefore, soft rules act either as a buffer from harder rules or as a first step towards harder forms of regulation, the latter often depending

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<sup>30</sup> Jacobsson, B., Sahlin-Andersson, K., “Dynamics of Soft Regulations,” in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance, op. cit.*, pp. 247-265, p. 251. See also COM (2007) 774 final, p. 11.

<sup>31</sup> Commission non-paper on *Strengthening the Civil Society Dimension of the ENP*, at: [http://ec.europa.eu/world/enp/pdf/non-paper\\_civil-society-dimension\\_en.pdf](http://ec.europa.eu/world/enp/pdf/non-paper_civil-society-dimension_en.pdf).

<sup>32</sup> Jacobsson, B., Sahlin-Andersson, K., *Dynamics of Soft Regulations, op. cit.*, p. 257.

<sup>33</sup> See Likosky, M., *Transnational Legal Processes. Globalisation and Power Disparities*, London, Butterworths LexisNexis, 2002, and especially the contribution therein by Snyder, F.G., “Governing Globalisation,” pp. 65-97.

<sup>34</sup> Djelic, M.-L., Sahlin-Andersson, K., “Institutional Dynamics in a Re-ordering World,” in *id.*, *Transnational Governance, op. cit.*, pp. 375-397.

on the success of the softly-softly approach as allied to the increasing urgency for effective common action. Their studies show that there is a tendency towards “organisation.” By the way, they also argue that this re-ordering is marked by what they call “marketisation,”<sup>35</sup> a phenomenon that apparently helps in persuading all to play the game but that many see as antithetical to the parallel phenomenon of moral resurgence in what has been described as an “increasingly rationalised global moral order”<sup>36</sup> as well as an order characterised by deliberative and participatory democracy. In any case, they propose the “good news” that we are witnessing “an apparently unstoppable escalation of regulation and governance.” After all, it is order and not anomie that we all crave.

We are moving beyond international law and along a continuum to transnational law to trans-regional law (soft and hard) and governance. The pieces of the jigsaw are coming together. Yet, while some law will be hard and some will be soft – always, yet there must in the end be law, there must be right and obligation, and there must be the threat of sanction.<sup>37</sup> Without this, all gains are fragile and apparent order can descend into disorder and worse. This appropriate mix of legal order must be sought actively and purposefully. We must ask at every stage whether “soft” has worked to an extent that justifies and calls for harder regulation.

In my view, proper institutions that can play both soft or hard as needed, with a range of instruments at their disposal, and perhaps with ease of movement from the one to the other,<sup>38</sup> are the means to providing the essential supranational dynamic. These institutions would need to be representative, participatory and transparent. In the “end-game” about which I hypothesise here (the wider transregional picture), they would need to gather the EU, its North, its South and its East in the eventual Pan-Euro-Med construct. Intermediate stages might have to

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<sup>35</sup> Take the example of CO<sub>2</sub> emissions trading.

<sup>36</sup> On this point see the Chapter by Boli, J. “The Rationalization of Virtue and Virtuosity in World Society,” in M.-L. Djelic, K. Sahlin-Andersson (eds.), *Transnational Governance*, *op. cit.*, pp. 95-118. See also Xuereb, P.G. (ed.), *Business Ethics and Religious Values in the European Union and Malta. For a Moral Level Playing Field*, Malta, EDRC, 2007.

<sup>37</sup> On sanctions and “conditionality” generally in the still current context, see Lannon, E., Inglis, K.M., Haenebalcke, T., “The Many Faces of Conditionality in Pan-Euro-Mediterranean Relations,” in M. Maresceau, E. Lannon (eds.), *The EU’s Enlargement and Mediterranean Strategies: A Comparative Analysis*, Basingstoke (UK)-New York, Palgrave, 2001, pp. 97-138.

<sup>38</sup> This particular technique would mark a departure from the past and current models of the “European” treaties.

evolve first. On the other hand, if representation and participation is to be by “blocs,” the first step is to mould the “blocs.” This seems a very difficult task at the moment, but some blocs are taking shape. Closer cooperation appears to me to demand this. But the crucial elements in building such blocs, judging by the European experience, are common aims, the pursuit of the common good, dialogue, respect for identity and equality, respect for human rights, with “bindingness” and the rule of law. In all this, values and intercultural dialogue about values, as well as the human rights paradigm, are key factors.



# **The Future for European Society: Subsidiarity, Federalism, New Humanism**

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The fall of the Berlin Wall in 1989 created widespread expectation that a new phase would open up for the world: one of increasing integration within a stable, pacified international context, and based on the economic, political and social model of the United States of America.

According to the traditional liberal model, the market is situated within a state order which guarantees that it will function in the general interest. The end of the bipolar order has placed the United States in a position of pre-eminence on the international level; American leadership was believed capable of making up for the lack of international institutions, and of ensuring governance of the market on a world level, beyond the borders of single nations.

Globalisation and liberism have come to the fore; the institutional doctrines of political liberalism have now been described as “obsolete.” Post-modernism has solidly adhered to the processes of globalisation and radical liberism in defining a new order for an internationalised society.

The reality soon proved to diverge from this vision. The end of bipolarity has created a space in which some states, with the size of a continent, have been able to assume increasing responsibility. Europe no longer forms the frontier between the two superpowers which at Yalta had divided it in two. Moreover, it has found growing capacities for taking the initiative: the European currency has been born, borders have widened till they reached Russia, the Treaty of Lisbon has given the European Union its first true constitution.

The international community and civil society have revealed fresh capacities for renewal, and for launching deep processes of transformation. This new dynamism has quickly emerged, as well,

within the United States: once again, as in its historical past, it has declined any possible temptation to act as empire.

In this context, Europe emerges as a laboratory for advanced experiments, capable of pointing the way to the future for the entire world. Europe has designed a new form of statehood: one in progress, which remains open to social needs. Civil society is cultivating new values, and new capacities for fixing them in history.

To a great degree, the future of Europe today depends on the capacity of European society to reorganise itself, in order to signal to the world that a new phase of human civilisation is about to begin. As we evaluate progressive change, new humanism, federalism and subsidiarity will be our anchors.

## **I. Post-modern Culture, Globalisation and Liberalism versus Subsidiarity, Federalism and New Humanism**

In order to understand what is new, we must understand the crisis which has struck the preceding order. A process of transition towards a new, more advanced order, has greater chances of arising during times of crisis. The importance and relevance of the historic moment we are now living, lie in the fact that so-called “post-modernity” is coming to an end, while a new stage<sup>1</sup> is beginning.<sup>2</sup>

Post-modern theory sees a weakening in the great systems of interpretation, in universal values, in ideologies; such weakness throws into crisis the very possibility of elaborating overall models and interpretative frameworks.<sup>3</sup> Thus, an enormous void is created which may be filled by systematic doubt, by pragmatism, by the co-existence of differing world visions, without searching for criteria of truth. This is the reign of relativism, fragmentation and complication: a reign seen as the prime foundation of the new world.<sup>4</sup>

According to this interpretation, post-modern society tends to annul hierarchies; it fuels continually evolving fluxes that at any minute might change direction. Post-modernism renounces any trust in a meaningful pathway, in man’s capacity to plan and construct a historical path towards affirming universal values in the world: it fails to consider transcendence. Post-modernism does not worry about whether or not to

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<sup>1</sup> Habermas, J., *La Crisi della Razionalità nel Capitalismo Futuro*, Bari, Laterza, 1975.

<sup>2</sup> Kuhn, T., *La Struttura delle Rivoluzioni Scientifiche*, Torino, Einaudi, 1977.

<sup>3</sup> Vattimo, G., *La Fine delle Modernità*, Milano, Garzanti, 1985.

<sup>4</sup> Prigogine, I., *Le Leggi del Caos*, Bari, Laterza, 1993.

give order to chaos; it accepts chaos and lives without certainties. It is not interested in giving explanations, in seeking the truth.

The post-modern is liquid; it cannot reach understanding by way of traditional knowledge or by value-anchored thought.<sup>5</sup> Post-modernism confronts itself and the world containing it, in the same way. Just as it refuses any ideology, analogously, it tends to elude self-definition. A complete description of postmodern thought can be made only by one placed outside it; those who place themselves within the post-modern perspective participate directly in the vagueness qualifying its world vision. Spectacle, communication, syncretism, hedonism, the absence of rules: these could be entries in a possible “decalogue” for the post-modern person, provided that it is not presented to them as a Decalogue.<sup>6</sup>

At the heart of post-modernism we find a solitary individual who lives without any point of reference in institutions; he lives in mutable aggregations; he sees himself – she sees herself – as a citizen in the web, so that the network assumes value as a substitute for true relationships with others. Those who have investigated such behaviour widely agree in describing the post-modern human as an individual who uses his rationality less and less, in favour of emotions, sentiments, extemporaneous opinions. Opinion polls become the main instrument for understanding the mutable orientation of persons who lack a culture anchored to certainties. Even the traditional areas of culture are being attacked by post-modernism; in light of this fact, one could consider post-modernism as “anti-culture.”<sup>7</sup>

The post-modern scientist tends increasingly to be self-referential, favouring the popularisation of information without in-depth study or a systematic vision of the major themes. For such researchers, frequency of citations, rather than content quality, gives value to their efforts.

The researcher therefore inclines toward the passivity of Internet rather than dialogue and human relationships, as a source of personal enrichment. Communications come fast and thick, but at the same time, they are precarious and superficial, destined to implode in only a short time. In the world of culture, as well, an ephemeral kind of consumption prevails, denying culture itself.<sup>8</sup>

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<sup>5</sup> Foster, H. (ed.), *Postmodern Culture*, Trowbridge, The Cromwell Press, 1983.

<sup>6</sup> Lyotard, J.F., *La Condizione Postmoderna*, Milano, Feltrinelli, 1982.

<sup>7</sup> Rosenau, P.M., *Postmodernism and the Social Sciences*, Princeton, Princeton University Press, 1992.

<sup>8</sup> Spaemann, A., *Per la Critica dell'Utopia Politica*, Milano, Angeli, 1995.

Post-modernism tends to conceive the man as an isolated actor who passes through existence in radical incredulity, feeling no need to relate with others within an order guaranteed by institutions. One dangerous limitation of post-modernism is its tendency to underestimate the institutions.

This limitation must be linked to the globalisation process which evolved during the second half of the 20<sup>th</sup> century. During that historical period, along with acceleration in the process of internationalisation, we saw the advent of a world market outside the control of any state. This advent was the direct consequence of the differing dimensions of market and state.<sup>9</sup>

This outlet in the flow of interdependence has been theorised as a totally positive event; radical liberalism has theorised that market mechanisms are superior to the regulating role of public institutions; in the global market, devoid of guidance from any institution endowed with corresponding geographic dimensions, radical liberalism believes it as a chance to establish a more advanced order. We must stress the profound difference between the liberist approach described above and the traditional liberal approach, which has always considered the market as a reality within a state order: one responsible for protecting the general interest, not merely particular interests arising from the initiatives of single operators. A state-less market has nothing to do with the cultural heritage of the liberal tradition.<sup>10</sup>

According to the traditional liberal approach, the management of a world market requires governance by institutions; innovative forms of statehood may form on a world level, just as they have gradually done in Europe, in order to direct a market extending beyond national borders.<sup>11</sup> The attempt to substitute the state with the market (liberist globalisation) does not correspond with any of the forms in which democratic thought has developed in the Western countries.

Globalisation has struck all the systems, not only in their international relations, but also internally. The liberist concept, preferring the market over public institutions, has spread at every level. Globalisation and post-modernism have fused together, presenting themselves as an alternative model for society and the economy.

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<sup>9</sup> Zamagni, S. (ed.), *Economia, Democrazia, Istituzioni in una Società in Trasformazione*, Bologna, il Mulino, 1997.

<sup>10</sup> Rosenau, J., Czempiel, E. (eds.), *Governance without Government: Order and Change in World Politics*, Cambridge, Cambridge University Press, 1992.

<sup>11</sup> Quadrio Curzio, A., "European Union and Italian Federalism. Is There a Catholic Thought?," in *European Union Review*, no. 1, 1997.

In the face of this evolution, Europe is building an alternative model, one of new humanism, thanks to the capacity to renew statehood by defining an institutional order shaped by the values of subsidiarity and federalism. The role of institutions has been reaffirmed in a new way.

Liberty, humanism, the integral development of the person, require institutions. These values can find their place in history through the indispensable relationship between individuals and institutions.

Our reference to the growth of institutions places today's crisis within a precise historical framework. In Europe today, subsidiarity and federalism are the principles which inspire institutional change, along a pathway of progress having a *telos* which gives it meaning.<sup>12</sup> The meaning of the interaction between globalisation, liberalism and post-modernism has not yet been studied in adequate depth.<sup>13</sup>

The integration of economies on the international level is an inevitable historical pathway. The path of growing internationalisation may be travelled using various solutions. Globalisation posits an internationalisation process governed by market forces. The European experience demonstrates that an internationalisation process may be governed by institutions, to the point of creating a more advanced type of statehood. The interaction between federal integration, subsidiarity and new humanism is central to an alternative way of thinking which culture is striving to develop.

## II. Work and Integral Human Development

On the international level, widespread discussion has arisen in recent years concerning company responsibility, giving unprecedented importance to a theme which is not new. Such reflection, inspired by real problems and animated by undeniably praiseworthy intentions, has been harmed by a certain amount of semantic confusion. Globalisation has given rise to a world market outside the control of any state.

Some enterprises, typically large ones, have chosen to operate on the world market, seeing the absence of a regulating, protective state as an opportunity. This has occurred in the industrial sector, in banking, finance and services. We have witnessed corresponding phenomena even in the fields of research and medicine.

A series of intolerable circumstances due to such behaviour has fuelled a demand for rules and ethics, in the sphere of globalisation.

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<sup>12</sup> Velo, D., *La Grande Impresa Federale Europea. Per una Teoria Cosmopolitica dell'Impresa*, Milano, Giuffr , 2004.

<sup>13</sup> Beck, U., Giddens, A., Lash, S., *Modernizzazione Riflessiva*, Trieste, Asterios, 1999.

Enterprises active on the global market have been called to play a role in substitution of institutions; these enterprises have been asked to draw up an ethics code and to promote codes of responsible self-regulation among all personnel. These enterprises have thus found themselves assigned a role outside their competence. In this vision of responsibility, the enterprise is attributed with legislative legitimacy. Legislator, controller and controlled coincide.<sup>14</sup> A radical interpretation of this tendency would lead to the idea that ethics may be founded on a form of self-regulation among the economic actors endowed with the greatest contractual power.

A somewhat analogous phenomenon has emerged in cases where an enterprise active on the world market has been asked to respect the norms of its country of origin, in the absence of equivalently advanced norms in countries – normally less developed ones – where its factories or other operative units exist. There has thus been an attempt to create islands of law within the territory of countries where branches of the globalised enterprise operate: legal islands based on the norms of the country of origin.<sup>15</sup> In this case, as well, the phenomenon has been linked to the concept of company responsibility. The differences between this behaviour model and the previous one, however, remain undeniable.

A profoundly different concept of company responsibility emerges carrying the same label, among those who attempt to adapt the concept to new forms of statehood, shaped according to the principle of subsidiarity.<sup>16</sup> The enterprise is thus conceived as an institution; as an intermediate body beside other intermediate bodies, in a renewed social, economic and statehood order. The decision-making processes carried out in the enterprise are part of the system's governance, conceived as the set of decision-making processes organised according to the rules of subsidiarity. With this framework, we can have a more complete picture of integral human development, since the person is placed at the centre of a constitutional order which recognises his or her right to citizenship in every dimension of coexistence.<sup>17</sup>

The autonomy of the economic dimension is now subject to debate. The economic dimension is correlated to the general framework in which it is situated, and where it assumes a more advanced significance.

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<sup>14</sup> Cattaneo, C. (ed.), *Il Bilancio Sociale nell'Evoluzione dei Rapporti tra Economia e Società*, Milano, Giuffrè, 2003.

<sup>15</sup> Sciarelli, S., *Economia e Gestione dell'Impresa*, Padova, CEDAM, 1997.

<sup>16</sup> Millon-Del Sol, C., *L'Etat Subsidaire*, Paris, Presses Universitaires de France, 1992.

<sup>17</sup> Sen, A., *Etica ed Economia*, Bari, Laterza, 1999.

The market actually constituted a frontline of human advancement at the end of the 18<sup>th</sup> century, when it served in recognising the innovative role of the bourgeoisie as a motor of progress, compared to the aristocracy.

In the present situation, any vision of the market as a place where the autonomy of the economic moment finds concrete expression, depends on the failure to recognise the historical evolution in support of subsidiarity: subsidiarity as a new form for organising people within the communities in which the overall Community organises itself.<sup>18</sup>

In an enterprise organically placed within an order that sustains the principle of subsidiarity, the economic, ethical and politico-institutional dimensions converge. Company responsibility, thus conceived within a framework of subsidiarity, suffers from a contradiction to the degree in which subsidiarity can be achieved only in an advanced society: therefore, in the present situation, in only part of the world.<sup>19</sup> Integral human development can be fully achieved only once we have reached a framework of world unity sustained by a real planetary homogenisation of development.

A man can be free only if all men are free. Integral human development is such if affirmed and implemented for every man. The principle of subsidiarity is the principle upon which the most advanced regional federations have begun to organise: Europe, first of all. They have thus opened the way to a new organisation of the world community.

Subsidiarity is bound to reach an international level. Therefore, we have a right to consider Europe today as a laboratory, a forerunner for experiences in other regions of the world. Today we can try out new creations that just may find full expression in a later, more advanced stage in the world's peaceful unification.<sup>20</sup>

Institutions and society are reorganising by modifying the roles of the various individual actors, and the ways in which they interact.<sup>21</sup> Subsidiarity modifies the organisation of labour, giving new space to individuals,<sup>22</sup> it sustains the development of a new kind of statehood allowing more advanced forms of participation. If the enterprise

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<sup>18</sup> Personally, I am disappointed that the European Community changed its name to European Union; the term "community" has a deep, evocative meaning not enjoyed by the term "union."

<sup>19</sup> Usher, D., *The Economic Prerequisites of Democracy*, New York, Columbia University Press, 1981.

<sup>20</sup> Velo, D., *Il Governo dello Sviluppo Economico*, Milano, Giuffrè, 2009.

<sup>21</sup> Vittadini, G. (ed.), *Liberi di Scegliere*, Milano, ETAS, 2002.

<sup>22</sup> Zamagni, S., *Non Profit come Economia Civile*, Bologna, il Mulino, 1998.

observes the principle of subsidiarity, coherently assuming the role of intermediate body in the framework of a renewed statehood, the worker's way of participating in the enterprise will be seen as fully analogous with the citizen's way of participating in the public life.<sup>23</sup>

Humanism is becoming a project involving the person, in every moment of his or her life. Such a vision can gain coherence, to the degree in which institutions are experienced as places where progress finds form. The individual acting outside community experience is fatally condemned to experiencing the solitude of anomie.

The participation of each individual in the history of the world requires his or her participation in the institutions comprising human organisation. The dramatic defect of globalisation is to have fuelled the idea of a society and market without institutions. The development of subsidiarity allows work to become less and less alienated for a growing number of citizens. It allows real participation in the public life to assume an intensity and a degree of liberty never before experienced.<sup>24</sup>

A new theory of organisation is taking shape and constantly expanding. The organisation has traditionally considered the worker as an instrument, a component in the productive process. To the degree in which it adopts the principle of subsidiarity, the enterprise today opens the way to considering the worker as an end. Kant's statement shows how such developments can be conceived as a contribution toward establishing a new humanism. In turn, the new humanism creates a situation in which such developments can take root.<sup>25</sup>

Organisation is good orientation. Disorientation is disorganisation. Only an adequate institutional order can allow the passage from disorganisation to organisation. In this framework, the value dimension, which is human-centred, constitutes the condition allowing such mechanisms to operate in depth.

The economy is freeing itself from the area of technology in order to become part of a historical process oriented toward cosmopolitanism and a new humanism. Economic goods are instrumental means; they are losing any value as ends; they are subordinate to ends which are not identifiable as material goods.<sup>26</sup>

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<sup>23</sup> Cattaneo, C. (ed.), *Terzo Settore, Nuova Statualità e Solidarietà Sociale*, Torino, Einaudi, 2000.

<sup>24</sup> Beck, U., *Il Lavoro nell'Epoca della Fine del Lavoro*, Torino, Einaudi, 2000.

<sup>25</sup> Montini, G., *Al Mondo del Lavoro*, Roma, Studium, 1988.

<sup>26</sup> Manzone, G., *La Responsabilità dell'Impresa*, Brescia, Queriniana, 2002.



Traditional management techniques are driven by possessive individualism.<sup>27</sup> In the newly emerging circumstances, in a business perspective, this element is not even functional to the economic interests of the enterprise. Possessive individualism is not the most efficacious motivation when the worker is asked for creative commitment. The growing importance of knowledge is now a dominant trait of new-generation enterprises; in this context, individualism reveals all its many limitations.

The new order founded on subsidiarity is capable of sustaining integral human development; in turn, it needs to be developed by persons who aspire toward an integral realisation of their own humanity. In reality, the person has always been at the heart of society. The theories elaborated by economists have prevalently referred to the mechanisms regulating relations between enterprises and institutions, more than to man; an orientation corresponding to characteristics traditionally assumed by the economic system.<sup>28</sup>

The person has become the object of in-depth analysis by economists only when he or she has assumed an extraordinary role; suffice it to recall the reference to Schumpeter's elaboration of entrepreneurial theory.<sup>29</sup>

The new element in our experience today is the centrality of man. Modern forms of enterprise are always based on the centrality of man. Subsidiarity places man at the centre of institutions and relations among institutions, where the enterprise assumes the role of intermediate body. In the economy, man has begun to occupy a central position, whereas before, the centre of attention was the mechanisms regulating the functions of a market considered to be more important than the persons composing it.

From this context arises the new humanism which wanders like a phantom today among the social sciences.<sup>30</sup>

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<sup>27</sup> Lombardi Vallauri, L., *Corso di Filosofia del Diritto*, Padova, Milani, 1981.

<sup>28</sup> Mintzberg, H., *La Progettazione dell'Organizzazione Aziendale*, Bologna, il Mulino, 1985.

<sup>29</sup> Manzoni, G., *Il Mercato. Teorie Economiche e Dottrina Sociale della Chiesa*, Brescia, Queriniana, 2001.

<sup>30</sup> Drucker, P., *Post-Capitalist Society*, Oxford, Butterworth-Heinemann, 1993; Baumann, Z., *Voglia di Comunità*, Bari, Laterza, 2001.



# Thoughts on Autonomy in Policy and Law within the European Higher Education Space

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## I. Introduction, Starting Points and Overview

### A. Multi-level Governance within the European Education System: Changing Concepts

Multi-level governance (MLG) was introduced in the last decades in the EU decision-making process as a system of continuous negotiation among nested governments at several territorial tiers describing how supranational, national, regional, and local governments are intertwined in a complex policy-network.<sup>1</sup> The core belief is that the dispersion of governance across multiple jurisdictions systems is both more efficient and democratic, and aims in capturing positive externalities arising from processes at all levels. High quality regulation at one level can be undermined by poor or regulatory policies at other levels, while coordination and coherence can vastly expand the benefits of the system.<sup>2</sup>

MLG is considered as a support for the implementation of the provisions in the Lisbon Treaty, but there is much to do in order to

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<sup>1</sup> Marks, G., "Structural Policy and Multi-level Governance in the EC," in A. Cafruny and G. Rosenthal (eds.), *The State of the European Community: The Maastricht Debate and Beyond*, Boulder, Colorado, Lynne Rienner, 1993, pp. 391-411.

<sup>2</sup> Rodrigo, D., Allio, R. and Andres-Amo, P., "Multi-level Regulatory Governance: Policies, Institutions and Tools for Regulatory Quality and Policy Coherence," in *OECD Coherence*," *OECD Working Papers on Public Governance*, no. 13, OECD Publishing.

successfully reach an effective implementation.<sup>3</sup> The CoR White Paper on Multi-level Governance (2009) submitted the vision of the Community in creating a governance model, which considers the regional and local authorities as “partners” which must be mutually supportive. Governance should therefore become a more flexible and dynamic system: the power sharing at all levels.

While MLG has been widely discussed in general on its outcomes and implementation strategies, there is little concern on issues that the MLG approach raises in European education systems. The notion of nation-state is challenged by the advent of new heterogeneous actors who are able to impact on the higher education system. The Lisbon and Bologna processes have commenced the establishment of the European Higher Education Area (EHEA), which has impacted the existing national educational systems and European universities. Within such a scenario there are a lot of questions.

From a legal perspective, the interactions between different levels, from local to European domain, lead to what one can refer as the phenomenon of “multi-level regulation.” MLG is pushing towards a more precarious distinction between domestic and international law: domestic law is continuously recognising international provisions in local law frameworks, while it keeps exerting a bottom-up influence at international level.<sup>4</sup> There is an increasing range of instruments as soft law provisions, best practices, benchmarking, which may not see normative at a first glance, but that have a strong influence on national and international regulation.

The purpose of this contribution is to analyse the evolution and interactions of normative processes at European and national level with specific focus on the impact of MLG in higher education, in order to draw conclusions on the existing status of the EHEA, possible future developments and to highlight the tense relationship between autonomy and new regulations for the European higher education system and the need for accountability.

### ***B. The “New International Order” Started Already***

The March 2010 Budapest-Vienna Declaration on the European Higher Education Area, stipulated:

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<sup>3</sup> Committee of the Regions, The Committee of the Regions on Multi-level Governance, CDR 89, 2009.

<sup>4</sup> Follesdal, A., Wessel, R., Wouters, J., Multi-level Regulation and the EU: the Interplay between Global, European and National Normative Processes, Leiden, The Netherlands, Martinus Nijhoff Publishers, 2008.

Since 1999, 47 parties to the European Cultural Convention, have signed up to this vision and have made significant progress towards achieving it. In a unique partnership between public authorities, higher education institutions, students and staff, together with employers, quality assurance agencies, international organisations and European institutions, we have engaged in a series of reforms to build a European Higher Education Area based on trust, cooperation and respect for the diversity of cultures, languages, and higher education systems.<sup>5</sup>

The Bologna Process and the resulting “European Higher Education Area” are unprecedented examples of regional, cross-border cooperation in higher education. But full implementation of the agreed Bologna principles and action lines across the European Higher Education Area, especially at the national and institutional levels, requires policy and legal measures to face successfully the challenges of the next decade. “The new international order” started in some respect already last decade. To be more precise: “the new international order” but not yet fully a “new international legal order.”<sup>6</sup>

The Treaty of European Union (1992) included education as one of the policies of the Community in order to help it “meets its severely amended and extended objectives.” Article 3(9) stipulates that the EU shall deliver a “contribution to education and training of quality” and the Treaty introduces consequently the Articles 149 and 150 (former Articles 128 and 129). The Bologna process (1999) and the *communiqués*, published after the ministerial meetings in Prague (2001), Berlin (2003), Bergen (2005), London (2007), Leuven/Louvain-la-Neuve (2009) and Budapest/Vienna (2010) launched the broad perspective of uniformity within the higher education systems of the wider Europe, despite keeping national responsibility on education as a constitutional principle and some diversity as a characteristic of the common European education space.

As Article I.3 *GATS Treaty* excludes “services supplied in the exercise of governmental authority,” if not supplied “on a commercial basis” nor “in competition with other service suppliers,” the applicability of the Treaty to some education sectors remains questioned. The last decade witnessed explosive growth in international

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<sup>5</sup> European Higher Education Area (EHEA), *Budapest-Vienna Declaration on the European Higher Education Area*, 10 March 2010, accessible from <http://www.ehea.info/>.

<sup>6</sup> See also De Groof, J., “European Higher Education in Search of a New Legal Order,” in B.M. Kehm, J. Huisman, B. Stensaker, *The European Higher Education Area: Perspectives on a Moving Target*, Rotterdam, Sense, 2009, pp. 79-104.

trends in services, particularly at the tertiary level among a great diversity of public and private players.

Major changes have taken place in higher education in the wider Europe over the past decade, indeed. In this multitude of changes, some are initiated from within institutions. But most large-scale changes were initiated through the legislator, the government, the international community, the socio-economic environment, donors.

This seems also being the case in the past. It has become clear that it has not been the universities themselves which have taken the lead in making quality assurance explicit. The reform of the universities has been a laborious process, not spurred on by the universities themselves. From the overall study of Hilde de Ridder-Symoens on the concept of the modern university in Europe,<sup>7</sup> it is obvious that the reformation of university education throughout centuries advanced only with great difficulty and usually not under the impulse of the universities. Usually the political government, as defender of the interests of society, had to take the decisive initiative to bring the passivity of the universities to an end.

The question whether a concept of “the European University” is arguable, can not be avoided. European universities are characterised by a higher degree of heterogeneity compared with American universities, which is reflected in organisation, governance, academic leadership, the conditions of employment and recruitment of teaching staff and researchers. Despite the internationalisation of education and research, the European universities are attracting less researchers and students from other countries than American universities. European universities offer their staff and in particular researchers a less attractive environment. Moreover, the financial and working conditions offered by the European universities are less attractive or sometimes inappropriate. But the “European University” remains an attractive idea, and more influenced by dramatic changes than “the American institutions.”

### *1) Consequences of the Changing Landscape*

The changing *size* and *shape* of higher education became a constant characteristic of the institutional landscape, in types and numbers.

With 4,000 establishments, over 17 million students and 1.5 million staff – of whom 435,000 are researchers – European universities have

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<sup>7</sup> de Ridder-Symoens, H., *History of the Universities in Europe*, Cambridge, Cambridge University Press, 1992.

enormous potential.<sup>8</sup> Competitiveness among higher education institutions provoked new generations of education providers.

At the same time, some organisational reduction of existing higher education through institutional cooperation, through forms of association, through the specific mechanism of mergers and other legal concepts, seems to be a priority target of most national plans for higher education. White, green or other draft governmental papers on planification, rationalisation, and “optimisation” of higher education do not just focus on finance-mechanism and on input and output criteria; they can not remain neutral *vis-à-vis* the institutional shape and size of universities and the other providers of higher education. The incorporation of previously non-university higher education into the university system also caused a dramatic alteration of the post-school institutional landscape.

Globalisation implies also the changing nature of higher education providers. The growth in private education institutions, commercial and not for profit has been quite dramatic since fifteen years. The sector was dominated during decades or even centuries by universities, often with public status. It became a “market.” Competition with the new providers led to an innovation of the curriculum, flexibilisation of the academic organisation and sharpened the core business of the universities.

The expansion of instructional programmes into various kinds of *distance* education led to a fastly growing delivery of web-based or telematic programmes, including eventually the recognition of other forms of education provision outside contact institutions. Distance learning stimulated also contact instruction to make use of modern technology on teaching as a complex of alternative opportunities. Distance programmes and/or institutions call for a transparent and innovative organisation of the learning process, as an aspect of quality management.

In some countries these new providers provoked a decline in enrolments at “classic” universities. But in all countries government subsidisation and legislative priority given to the latter will be questioned, referring to fair and equal treatment of all accredited institutions and/or programmes, to free trade and to competition law. Due to the new relationship, public/private in the higher education sphere, governmental regulations restricting access to private and/or international providers will be questioned.

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<sup>8</sup> Communication from the Commission to the Council and the European Parliament delivering on the *Modernising Agenda for Universities: Education, Research and Innovation*, COM (2006) 208, 10 May 2006.

Education as a “public” or “private” good, as a “good” or as a “service” was debated at length among ministers in the Bologna Follow-up Group. But the consequences of free trade or the relevancy of trade barriers should also be clarified by legislation and policy, nationwide and internationally. The alteration of the higher education landscape and the transnational trade should invite universities and governments to cope innovatively with the challenge of such a growing interest in higher education.

2) *Changing Concept of Autonomy  
in Line with its Standing Relevancy*

The literature refers – rather repetitiously – to the factors of change which affect higher education, which it may or may not proactively seek out: the changing role of the government; the trend towards deregulation; a certain diversification of institutes; the gearing of national politics to the international context. Each of these trends raises critical questions. One example is that of autonomy, which comprises both universities and colleges. Most international reports on education identify the demand for increasing autonomy as one of three cardinal trends of any modern education policy, along with the care for quality and the assessment techniques this requires.

However, one can hardly deduce a uniform notion of “autonomy” from the comparative indicators that are regularly published.<sup>9</sup> There appear to be major differences of opinion, depending on the specific disciplines and on the administrative organisation of the education system in a particular country. It does not even seem to be contradictory to state that the increasing delegation of powers to the local education level is accompanied by an increasing power of the central authority – e.g. when it comes to guiding education processes, establishing the national framework curriculum, or government-run output control.

Autonomy is then considered the best precondition for gearing education to the changing needs as regards knowledge, abilities, and qualifications. The OECD reviews of national policies for education also point to the ubiquitous option of decentralisation of administrative responsibilities and increased autonomy in primary, secondary, and tertiary education since the early 1980s. With regard to higher

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<sup>9</sup> De Groof, J., Neave, G., Svec, J., *Democracy and Governance in Higher Education*, Kluwer Law International, Den Haag, Council of Europe, 1998, p. 401. Consult the comparative study and the national reports in Berka, W., De Groof, J., Penneman, H.A., *Autonomy and Education. Yearbook of the European Association for Education Law and Policy*, The Hague, 2000.



education, the general assumption is that “independence” is one of the essential characteristics of the administration and management of a university or college, but the ways in which this idea is put into practice differ greatly.

The degree of autonomy therefore seems to have the direct influence that is claimed for it on essential aspects of the administration and management of an educational establishment, which includes the quality assessment method and in particular the organisational self-assessment, as well as the decision-making procedures and structures of participation. Generally, it is assumed that there is also a direct correlation between the degree of “decentralisation” and “flexibilisation” – a notion that seems to have gained considerable ground in recent years.<sup>10</sup>

It remains to be seen to what extent this will be the case in practice, and that includes the legal framework of education. It would be useful to undertake a comparative study of the regulations that give room to innovative education experiments in Europe on matters of education. The Commission argues that member states should guide the university sector through a framework of general rules, policy objectives, funding mechanisms and incentives for education, research and innovation. In return for being freed from over-regulation and micro-management, universities should accept full institutional accountability to society at large for their results. This requires new internal governance systems based on strategic priorities and on professional management of human resources, investment and administrative procedures. It also requires universities to overcome their fragmentation into faculties, departments, laboratories and administrative units and to target their efforts collectively at institutional priorities for research, teaching and services.<sup>11</sup>

Autonomy is one of the main principles reflected in the laws regarding research and education. Mainly through international pressure and after governmental or legislative interference, universities had to change drastically their traditional idea of autonomy, at different levels. Universities have to deliver new answers on “if,” “what,” “when” and “how” education will be organised. Autonomy could not be defined any more as refusing external interference. To counterbalance this freedom, a thorough and differentiated system of accountability is elaborated by

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<sup>10</sup> The *White Paper on Education and Training, Teaching and Learning* stated: “Experience has shown that the most decentralised systems are also the most flexible, the quickest to adapt and hence have the greatest propensity to develop new forms of social partnership.”

<sup>11</sup> Activities of the European Union Summaries of Legislation, Education and Training: General Framework, Lifelong Learning, Modernising Universities.

the governments. General rules are enacted and universities are forced to make their own regulations.<sup>12</sup> The Human Rights “4 A Scheme,” dealing with education on “Availability,” “Accessibility,” “Acceptability” and “Adaptability” should be expanded to the fifth A, – “Accountability.”<sup>13</sup>

### 3) *Changes and Continuities*

These changes had to have a clear impact on the organisation of university management and institutional governance. The previously existing classic schedules on “strategic planning” had to be modified in the light of “attainment targets,” institutional performances and quality assurance. The “failed or failing universities” are those who are not competent or able to respond adequately to these changes.

Several other tangible changes in higher education at the macro, meso and micro level could be mentioned. The context of and challenges for the providers changed and so do they for the students, the teaching and research staff, the administrative and technical staff, the stakeholders, the job market. The academic workplace and the socio-economic environment changed. In some previously highly centralised countries of the wider Europe these changes do also affect the constitutional competence on higher education and recognise the regional, linguistic and cultural diversity.<sup>14</sup> A legal approach of the changes, introduced into the higher education system, will also take into account the continuities in the national system, reflecting the relevancy of these changes and their impact on e.g. the labour and civil law and the social security system.

The specific mission of the universities and their charters, eventually denominational but mostly pluralistic, are often “constant,” despite radical changes through last decades. The specificity of the institution should be refined more explicitly whatsoever, and this counts also for the institutional “culture.” The profile and careers of the academic staff remained to some extent unchanged. There is, in many universities and

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<sup>12</sup> Quality insurance, evaluations, estimates, audits, accounts, year reports ... are some techniques of the accountability discourse. Added to mechanism of recognition, licence, attestation, accreditation, visitation, etc., the question raises to which extent the accumulation of accountability formula ought not to be considered as prohibitive, preventive *vis-à-vis* the autonomy principle. A new balance should be reached.

<sup>13</sup> See also my report as *Chargé de mission* to UNESCO for the right to education, De Groof, J., *Report: Fulfilling the Right to Education*, 2009, p. 58.

<sup>14</sup> On this subject: Schade, A., “A Research Topic in Education Law and Policy: The Development of Regionalisms in Europe and their Impact on Educational Policy and Administration,” in *European Journal for Education Law and Policy*, vol. 4, no. 1, 2000, pp. 35-39.

programmes, an urgent need for more internationalisation within the *corps académique*.

What remained constant, above all, is the growing importance of higher education and academic research, as precondition for the development of all persons, of the society and of the international community.

### ***C. Other Chapters of the University 2010-2020 Agenda***

The higher education world tended to think of itself as removed from and perhaps above the world of law and lawyers.

Higher education [...] was often viewed as a unique enterprise that could regulate itself through reliance on tradition and consensual agreement. It operated best operating autonomously [...]. An outsider would, almost by definition, be ignorant of the special arrangements and sensitivities underpinning this environment. And lawyers and judges as a group, at least in the early days, were clearly outsiders.<sup>15</sup>

The Law on Higher Education<sup>16</sup> is dealing with governance and management of higher education institutions (HEIs), with a wide range of academic issues, with higher education as businesses, with property and estate issues and dispute management, and – chiefly – with staff and students. Since ten years, there has been growth in the following key areas with respect to the impact of the law upon the campus:

- the application of the principles of consumer law to the student-HEI contract;
- litigation over what reasonable adjustments should be made for disabled students;
- the issue of the degree of affirmative action/positive discrimination over admissions to HEI, not only with reference to race/ethnicity, but also increasingly concerning socio-economic background;

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<sup>15</sup> First chapter, “Overview of Post-secondary Education Law,” in W.A. Kaplin, B.A. Lee, *The Law of Higher Education*, 1995, pp. 1 -75.

<sup>16</sup> Cf. “In modern higher education, few major decisions are made without considering the legal consequences, and though the core functions of higher education – instruction and scholarship – are remarkably free from external legal influences, no one would plausibly deny the increase of legalization on campus. We know surprisingly little about the law’s effect upon higher education, but virtually no one in the enterprise is untouched by statutes, regulations, case law, or institutional rules promulgated to implement legal regimes,” Olivas, M., “The Legal Environment. The Implementation of Legal Changes on Campus,” in P. Altbach, R. Berdahl, P. Gumpert (eds.), *American Higher Education in the Twenty-First Century. Social, Political, and Economic Challenges*, 2<sup>nd</sup> Edition, Baltimore, Johns Hopkins University Press, 2005, p. 226.

- the complexity of the interaction of state and federal law; the need for careful risk assessment/risk management, especially with reference to the HEI's duty of state: to the student on study-abroad programmes;
- the exercise of expert academic judgement in terms of probing whether the HEI really has delivered the academic content that the prospectus has promised;
- a greater emphasis on alternative dispute resolution in handling disputes with students and employees;
- and in the hope of reducing litigation, HEI's more rigorously applying the concept of preventive law as an attempt to ensure that all procedures and processes are legally sound and the individual and collective rights of students on free speech quality assessment (also of the teaching staff), academic planning, study evaluation, university infrastructure and social facilities are respected.

The challenge for law is to keep pace with education by maintaining a dynamism of its own that is sensitive to education's evolving mission.<sup>17</sup>

## **II. The International Legal Setting**

### ***A. General***

The international dimension of educational policy is becoming an increasingly significant aspect of the national educational discourse and of national regulation in educational matters.<sup>18</sup> The most significant reforms in European and OECD countries were often legitimised by references to the international situation. Comparative research and international indicators were more than once used as the perfect excuse for dealing with educational policy.

National sovereignty does not have to be regarded being threatened by this. What's more, various member states have not waited for the Sorbonne and Bologna Declarations in order to give effective content to a common European space for higher education: we can mention the European Credit Transfer System (ECTS), the addition of the diploma supplement, the language regime applicable to certain courses and course components, the external quality assessments, the division into

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<sup>17</sup> Kaplin, W.A., Lee, B.A., *op. cit.*, p. 13.

<sup>18</sup> See our contribution "Perspectieven voor het Internationaal Onderwijsrecht" (Prospects for International Educational Law), in *Journal for Educational Law and Educational Policy*, no. 2, 1993-1994.

undergraduate and graduate level education which has come to us from the Anglo-Saxon world.

International trends have resulted in voluntary convergence and internationalisation within each of the member states.<sup>19</sup> But there is no “Europe-wide model”<sup>20</sup> for the organisation of education and nor is there any need of it. Every country will have to work out for itself how it can best develop structural responses to future challenges. “There are even more systems of higher education than countries in Europe.”<sup>21</sup>

On the one hand it is expected of the national educational system that it guarantees the equality of every citizen in education and that the variety of cultural life is reflected in the educational system. For these reasons, educational systems are highly heterogeneous. The imposition of a uniform educational system, such as it was in the former Eastern Block countries,<sup>22</sup> is thus contrary to the principal of mutual respect and democracy. On the other hand certain uniformity (comparability, readability) between national educational systems is sometimes internally confirmed or sanctioned without proper internal debate. Through this paper, we will refer several times to the question whether higher education reform is still hindered by a “democratic deficit.”

But for legal reasons too there is no room for a purely nationally oriented educational system.

### ***B. The Inevitable Enforceability of the International Norm, also in European Higher Education***

It is worth pointing out that the majority, if not all, of the compulsory provisions of the European Convention on Human Rights (ECHR) have

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<sup>19</sup> However, see also De Groof, J., “Sat cito, si sat bene,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* (Journal for Educational Law and Educational Policy), no. 2-3, 2000-2001.

<sup>20</sup> Scott, P., “Unified and Binary Systems of Higher Education in Europe,” in A. Burgen (ed.), *Goals and Purposes of Higher Education in the 21<sup>st</sup> Century*, Higher Education Policy Series 32, London, 1996, p. 49.

<sup>21</sup> *Trends in Learning Structures in Higher Education*, established jointly by the Confederation of European Union Rector’s Conferences and the Association of European Universities (CRE). Part I by Haug, G., “Main Trends and Issues in Higher Education Structures in Europe”; Part II by Kirstein, J., “Information on Learning Structures in Higher Education in the EU/EEA countries,” both parts of the project report: *Trends in learning structures in higher education*, ESIB, June 1999.

<sup>22</sup> See De Groof, J., *Educational Policy in Russia and its Constitutional Aspects*, Leuven, Acco, 1994; De Groof, J., Spasskaya, V., Rosjkov, I., *Shaping New Legislation on Education in Russia*, Leuven, 1997; De Groof, J., Lauwers, G., Philipov, V., *Adequate Education Law for Modern Russia*, Leuven, 2001.

in one way or another been included in the regulations of the EU member states and that the fundamental rights and freedoms, in principle, enjoy national recognition. Even so it may be expected that when settling educational disputes, the national courts will invoke international legal standards more than in the past. Case law of the European Court of Human Rights (ECtHR) – the primary constitutional court of the member states<sup>23</sup> – remained relatively modest in educational matters. Nonetheless there is no reason to believe that the impact of ECHR in the constitutional sphere will continue to have a minor influence on education.<sup>24</sup>

The test of international law in respect of regulation regarding sensitive aspects of the right to and the freedom of education can be regarded as part of the legislative process: access to education, the ideological and/or philosophical principles of state and state-sponsored schools, the rights of immigrating persons, legal and illegal migrants, observance of fundamental rights in the concrete organisation of the academic community and equal opportunity policies.

The ECHR also becomes visible as a result of the observance of legal principles in educational matters, including the problems of hierarchy in connection with basic rights in the event of internal conflicts between rights and freedoms. The criteria for “justifiable unequal treatment” and application of the non-discrimination principle for example, as determined by the ECtHR, serve as model<sup>25</sup> for internal jurisprudence. Comparative law is invoked in the approach to third party action (occasionally with the applicability of basic rights in private relationships).

The systematic penetration of international conventions and declarations<sup>26</sup> into the domestic legal system is inevitable. Every validly signed treaty forms an integral part of the internal legal system. And, in principle, the direct effect of a treaty leads to enhanced legal protection. It may be expected that the citizen will more than ever invoke interpretations of internal legal standards that conform to the convention

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<sup>23</sup> From the very start, the Court of Justice recognised the fundamental rights and freedoms as general principles where of the observance had to be ensured by the Court. Since then this position has been formalised by means of Article 6, §2 of the *Union Treaty*, as amended by the *Treaty of Amsterdam* (1997).

<sup>24</sup> See the special issue of the *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid* (*Journal for Educational Law and Educational Policy*), no. 5-6, 1993-1994.

<sup>25</sup> For example De Groof, J., *De Grondwetsherziening van 1988 en het Onderwijs* (The 1988 Constitutional Reform and Education), Brussels, Kluwer Rechtswetenschappen, 1989.

<sup>26</sup> See *infra*.

and where applicable to (one of the degrees of) its direct effect. Some constitutional courts now also apply constitutional rules of equality and non-discrimination in respect of all rights and freedoms, including those with immediate effect that arise from international conventions. Courts have derived a *standstill obligation* from Article 13 of the International Covenant of Economic, Social and Cultural Rights (ICESCR) in connection with the desire to achieve cost-free education.

The opinion that the consistent recognition of the *ius cogens* of the international legal standard in educational matters, as set out in Article 13 IPESCR<sup>27</sup> should be avoided and appears to be outdated. This counts also for higher education. Conventions can not be ignored by national lawmakers. Some provisions are apparently self-executing; provisions of conventions require states parties to the convention in all cases to adopt suitable measures via a regulatory intervention.

The ICERD (the International Convention on the Elimination of all forms of Racial Discrimination) and Guideline 2000/43/EC comprising the application of the principle of equal treatment of persons regardless of race or ethnic origin e.g., are also applicable in the higher education sector. It may moreover be expected that international provisions in connection with minorities will be used as a touchstone for drafting of policy and national regulations in such matters.<sup>28</sup> This is even the more applicable in the light of the negotiations currently being conducted on the expansion of the Union.<sup>29</sup> How can the question of minorities in our own country continue to be unresolved if similar questions are raised as objections to the membership of candidate members? Recent statistics demonstrated the urgent need for the drafting equal opportunity plans by governments and institutions, fostering interculturality within tertiary education.

### ***C. The Far-reaching and Irreversible Nature of European Union Law***

The multiple principles of free circulation and non-discrimination on national educational systems have a fundamental impact on the educational system of each member state (EU). It is possible to speak not only of a common market for education but also of a common

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<sup>27</sup> And not alone Article 13, sections 1 and 3.

<sup>28</sup> De Groof, J., Fiers, J., *The Legal Status of Minorities in Education*, Leuven, Acco, 1996, p. 435.

<sup>29</sup> See our contribution: "Education Law as 'Trait d'Union' between National Communities within the Broad European Framework and within a National State," in *European Journal for Education Law and Policy*, vol. 4, no. 2, 2000.

educational policy. This *acquis communautaire* (or community attainment) can only be extended further. Since Maastricht the constitutional powers of the Union include a “contribution to education and training with a high content.”<sup>30</sup> Despite this, it can still be said that a European education law has been formed through European primary and secondary legislation as well as through the case law of the Court of Justice of the European Union because many decisions not directly related to education law have nevertheless had an effect on education systems in the member states.

European education law is therefore at present an interesting mixture which shows that the European Union does not have a regulating or harmonising power in the field of education but that the European Union’s impact on national education has been large and is ever increasing. The Court of Justice of the European Union delivered in a more extensive way judgements<sup>31</sup> concerning aspects of education. This mixture of powers has many sources. Firstly, the EC Treaty itself is a primary source. Secondly, many European action programmes based on Articles 165 and 166 TFEU have had a profound impact in the member states. Examples are the ERASMUS and SOCRATES programmes for student exchange. Thirdly, the European Union has adopted developments which have begun outside the umbrella of the European Union, like the Bologna Declaration and the changes in higher education which have sprung from it.

Admittedly, the agreements regarding “The European Higher Education Area” are based on a merely intergovernmental procedure, something that is open to criticism. On the other hand, the intergovernmental approach does have the virtue of a measure of efficiency. A community action would indeed not have achieved such a result in a short period of time. Similarly, the Lisbon Convention relating to the academic recognition of diplomas continues to labour under the weakness of its legal enforceability.<sup>32</sup> “Harmonisation” in consequence of the European directive no longer appeared to be feasible or has in the meantime been abandoned – even with respect to the

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<sup>30</sup> Articles 3, 9.

<sup>31</sup> Judgment of the ECJ (European Court of Justice), case C-147/03, *Commission v. Austria*, [2005] ECR, 7 July 2005; ECJ, case C-374/03, *Gaye Gürol v. Bezirksregierung Köln*, [2005] ECR, 7 July 2005.; ECJ, case C-142/04, *Maria Aslanidou v. Ypourgos Ygeias & Pronoias*, [2005] ECR, 14 July 2005; ECJ, case C-141/04, *Michail Peros v. Techniko Epimelitrio Ellados*, [2005] ECR, 14 July 2005.

<sup>32</sup> See *inter alia* Scheele, J.P., Maassen, P.A.M., Westerheijden, D.F., “To be continued... Follow-up of quality Assurance in Higher Education,” in *European Journal for Education Law and Policy*, vol. 2, no. 2, 1998.



recognition of diplomas for professional purposes – and replaced with the equivalence principle. In doing so, this links up with the general principles of community law, which are based on mutual trust and equivalence.

The “European dimension” of the national educational system should be regarded as an essential characteristic of the culture and education of each member state. Quality assurance and mobility demand “not less but more from Europe.” Whether the struggle for convergence<sup>33</sup> (and not – at the first glance<sup>34</sup> replace for “harmonisation”) offers full protection for a national interpretation of the concept of education, of the syllabus, of the “final objectives” or “development aims,” still remains very much the question.

Moreover internationalisation, where such is nonetheless intrinsically necessary, is still not consistently applied. The accreditation of “tertiary” education, as it is now viewed in (draft) legislation in several member states, is a good example of this kind of incomplete arrangement. In the absence of certain communal rules of transparency and a minimum uniformity of criteria, virtually no advance in the “Common European Educational Space” can be expected with respect to quality control and moreover the credibility of the envisaged accreditation mechanism as such is very much in question.<sup>35</sup> Should moreover the quality agencies of other member states not be given every opportunity and does not an excessively national interpretation come into conflict with the rules on fair competition,<sup>36</sup> whereof moreover its application to education will demand urgent and thorough examination? In the recent period, several measures were taken to shape a coherent and partly common quality control and accreditation space.<sup>37</sup>

Because of the observance of the (intergovernmental) procedure and the far-reaching nature of the Sorbonne and Bologna Declarations,<sup>38</sup> the

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<sup>33</sup> In itself this is a principle that can be deduced from Arts. 149 and 150. De Groof, J. Friess, B., “Opportunities and Limitations for a European Education Policy,” in *European Journal for Education Law and Policy*, vol. 1, no. 1-2, 1997, p. 9.

<sup>34</sup> See *infra*.

<sup>35</sup> Already Van Damme, D., “Internationalisation and Quality Assurance: Towards Worldwide Accreditation?,” in *European Journal for Education Law and Policy*, no. 1, 2000.

<sup>36</sup> And consumer/student law?

<sup>37</sup> J. De Groof, F. Hendriks, “Accreditatie in het Hoger Onderwijs in Vlaanderen en Nederland,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Education Law and Policy)*, no. 4-5, 2005-2006, pp. 247-356.

<sup>38</sup> Even though the term “*harmonisation*” no longer appeared in the latter *Declaration*.

appeal to the principle of subsidiarity<sup>39</sup> has been somewhat neglected. The classic arguments for resisting the “interference of Europe” no longer sound particularly credible in this context. Countries who wish to nourish a diversity of culture and language within a further expanding Europe will nonetheless have to continue making use of them.<sup>40</sup>

The open coordination method could be an acceptable halfway position between a theoretical communal harmonisation and the fearful preservation of national autonomy. This method was already described in further detail as an alternative to European (co-)regulation in the “*White Paper on European Governance*” dated 25 July 2001<sup>41</sup> of the European Commission, including the common objectives and guidelines.

#### ***D. The Relative Autonomy of National Education Law***

The “complementary role of the Union” in educational matters continues to be stressed in the European Parliament,<sup>42</sup> whether a further mutual sharing of responsibilities between the Union and the member states depends on the specific measures in accordance with the relevant community educational programme. As yet there is no detailed common European policy but on the other hand, the loyalty requirement in respect of Europe will constantly question the national administration.

Even though the right to education “is calling by its very nature for regulation by the State, regulation which may vary in time and place according to the needs and resources of the community and of individuals” – according to the ECtHR<sup>43</sup> – the conformity of national law to EU and ECHR<sup>44</sup> will have to be carefully checked in future. Here

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<sup>39</sup> As set out in Article 5 of the *Convention*.

<sup>40</sup> While not forgetting that this principle constitutes two-way traffic, thus also on behalf of a community approach. De Groof, J., “Subsidiarity and Education. Aspects of Comparative Educational Law,” in the *First Report of the European “Educational Law Association*,” Leuven, Acco, 1994.

<sup>41</sup> COM (2001) 428 final.

<sup>42</sup> See e.g. the *Lamassoure report*, in the Committee on Constitutional Affairs (European Parliament), preparing the European Union’s *Charter of Fundamental Rights*, signed as a political declaration (December 2000) in preparation of the Convention.

<sup>43</sup> In its first judgement on the principle dated 23 July 1968, Series A, no. 32.

<sup>44</sup> See also Berka, W., “Human Rights: A Challenge to Educational Law: A Survey within the Systems of the European Convention on Human Rights,” in J. De Groof, R. Malherbe (eds.), *Human Rights in South African Education*, 1997, p. 199 *et seq.* Compare with the USA: Lenaerts, K., “Fundamental Rights in the European Union,” in *European Law Review*, 2000, p. 575. See Mentink, D. and Goudappel, F., “The

the interpretation will be considered of the basic rights as “general principles of Community Law,” where these rights arise from Article 6 (ex Article F) of the Maastricht Treaty<sup>45</sup> arising from the “common constitutional traditions of the Member States,” albeit within the (educational) competence of the Union.<sup>46</sup>

The authors of Article 2 of the First Protocol of the ECHR brought the matter of education into the field of application of the ECHR with the greatest of care. In view of the “complexity of (national) educational law” and despite the fact that the sphere of activity of the European Union with respect to education was regarded with suspicion, there was a growing realisation that no member state (party to the respective Conventions) could allow itself to (continue) to be isolated. The Community educational space demands a common educational policy and must be supported by the same principles of law, leading to coherent regulation. This must lead to “harmonisation,” used in this correct legal definition and meaning “coordination” – but not “unification.”

Common objectives and standards do not prevent education from continuing to be embedded in national traditions and based on specific cultural, social and confessional values, as well as on a diversity of social and economic policies. Both European educational policy and basic rights relating to education, however, raise a continuous series of questions about the discretionary space that the member states dispose of. National regulation should be more (emphatically) justified in respect of its European and human rights dimensions.

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Education Provision in the Charter of Fundamental Rights of the European Union: a Bleak Perspective,” in *European Journal for Education Law and Policy*, vol. 4, no. 2, 2000, pp. 145-148; Berka, W., “The Right to Education in the Charter of Fundamental Rights in the European Union,” in *European Journal for Education Law and Policy*, vol. 5, no. 1, 2001; cf. with respect to the right of education as it is guaranteed in international human right’s documents: Delbrück, R., “The Right to Education as an International Human Right,” in *German Yearbook on International Law*, 1992, 92, p. 100 *et seq.*

<sup>45</sup> Dated 7 February 1992 “concerning the European Union.”

<sup>46</sup> Compare with the USA: Lenaerts, K., “Fundamental Rights in the European Union,” *op. cit.*, p. 575.

### **III. The Implementation of Standards and Principles in the European Higher Education Sector (EHEA): “Articles 165-166 TFEU”**

#### ***A. Introduction: the European Context and the Parallelism between “Lisbon” and “Bologna”***

The imminent expansion of the Union with the admission of new member states points to the need for a variety of solutions on the one hand, whilst strengthening rather than diluting the European project on the other hand. The search for this balance was already making itself felt in the previous Union of fifteen member states in the 1990s and must continue to contribute to an escalation of the finality of Europe. Culture and education, universities and colleges of further education have a special role to play in this respect.<sup>47</sup> In particular, centres in Eastern and Central Europe invariably refer to “improving the cohesion of the European Higher Education Area as one of the four roads to development of European universities.”<sup>48</sup>

Concern about the need to put the economic approach to education into perspective (expressed polemically as: functionality *versus* spirituality?), and the continuing need for diversity within unity (uniformity *versus* authenticity?), were factors borne in mind by the implementation of the Sorbonne<sup>49</sup> and Bologna<sup>50</sup> Declarations.

The crucial issue is not whether the system has a unitary or binary structure. That the diversity of learning structures need not mean that there is a huge gulf between different learning trajectories.<sup>51</sup> It would not be worthwhile trying to develop uniform systems across Europe. Furthermore, it was not clear how the adoption of a two-level system (bachelors and masters) across Europe could be realised in the context of Articles 165 and 166 TFEU. The implementation of the convergence

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<sup>47</sup> E.g. Marga, A., *The Cultural Legitimacy of the European University*, Cluj University Press, 2006. Comp. with *Les universités dans leur milieu social et économique*, Conférence Nationale Tempus, Romania, November 1998, published by Romanian Tempus Office, Bucharest, p. 304.

<sup>48</sup> As well as “strengthening quality in higher education, restructuring the universities, changing the system of financing European universities in social integration.”

<sup>49</sup> Joint Declaration on Harmonisation of the Architecture of the European Higher Education System, 25 May 1998.

<sup>50</sup> The European Higher Education Area, 19 June 1999.

<sup>51</sup> OECD, *Redefining Tertiary Education*, Paris, 1998.

principle<sup>52</sup> has to remain in conformity with the responsibility of the member states. Reference is regularly made to an *Anglo-Saxon* or *US model*. However, nowhere is there such a huge discrepancy between the quality of universities and personal and social development opportunities as in the USA.

The reshaping of the higher education landscape provoked also a reflection on the progress and outcomes of courses, the best way to structure higher education courses and co-ordination of academic courses. This includes the debate around the naming of diplomas and minimum study periods to attain diplomas. One cannot avoid looking at this from an international perspective: a new generation, as it were, of initiatives for voluntary convergence and internationalisation of the education systems in each of the member states.

Comparability of degrees has to be based on *proven* (not just claimed) academic quality. The credibility of the quality control and inevitable claim to “an enhanced European dimension in quality assurance and evaluation”<sup>53</sup> would seem to be more effective than “harmonisation” that is difficult to achieve. As soon as Article 126 (later Article 149) EC Treaty<sup>54</sup> had been ratified, it was predicted that one of the most urgent tasks of the Union would be the promotion of quality care. There are convergences in this area, too, but educational research also indicates that the *context* of each individual educational institution is still a decisive factor in quality analysis.<sup>55</sup>

Transferability of credits is even more important. The establishment of a generally accepted and applied system of credits requires agreement (a fortiori in relation to the non-university sector) on objectives and

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<sup>52</sup> See, for example: Lenaerts, K., “Subsidiarity and Community Competence in the Field of Education,” in *First Report of the European Education Law and Policy Association (ELA)*, in J. De Groof (ed.), *Subsidiarity and Education, Aspects of Comparative Education Law*, Leuven-Amersfoort, 1994, p. 117 *et seq.*

<sup>53</sup> But not necessarily “accreditation.” The eagerly worded appeal for “accreditation agencies” to be set up, independent of national and European authorities and working along subject lines, as outlined in the above-mentioned document *Trends and Issues in Learning Structures in Higher Education in Europe*, in preparation for the Bologna Declaration, does not tally with the primacy of the academic authorities’ powers to recognise objective standards themselves, individually and jointly.

<sup>54</sup> Especially the first sentence: “The Community shall contribute to the development of quality education [...]”

<sup>55</sup> E.g. Shah, T., “Quality Management, Quality Assessment and the Decision-Making Process. The IMHE Project on Institutional Impact,” in J. Brennan *et al.*, *Standards and Quality in Higher Education*, Higher Education Policy. Series 37, London, 1997, p. 214.

levels including of course the “readability” and “comparability” and the awarding of credits as a means of quantifying minimum effort.

Agreement needs to be reached about the fundamental features that constitute a “university.” There needs to be complete clarity on the admission requirements for a person to enter higher education (i.e. twelve years in primary and secondary education, not counting any time spent in school before the age of six); and on whether a possible professional bachelor qualification (following three years of education outside the university) counts the same as an academic bachelor’s degree for admission to postgraduate courses.

It is of no hazard that quality assurance is situated at the core of the internationalisation of higher education. The involvement of the European institutions in the developments regarding higher education quality assurance is (partly) based on Articles 165 and 166 of the TFEU which relate to education,<sup>56</sup> as already mentioned. In the past, these Articles have been the basis for recommendations regarding quality assurance and higher education. Particular reference can be made to a *Council Recommendation on European Cooperation in Quality Assurance in Higher Education* of 1998. Generally speaking, member states are called upon to (1) support and, if necessary, develop transparent systems for quality assessment, (2) base mechanisms for quality assessment on the elements contained in the recommendation and (3) stimulate cooperation and the creation of a network between the agencies assessing the quality.<sup>57</sup>

In 2004, the European Commission published a report about the implementation of this recommendation, which, according to the report, is “a marked success.”<sup>58</sup>

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<sup>56</sup> Treaty establishing the European Community, OJ C.325, at: <http://eur-lex.europa.eu/en/treaties/index.htm>.

<sup>57</sup> Council of the European Union, *Council Recommendation on European Cooperation in Quality Assurance in Higher Education*, 98/561/EC, 24 September 1998, OJ L.270, 7 October 1998, pp. 0056-0059.

<sup>58</sup> It is remarked that during the reporting period, almost all member states had set up bodies to improve quality through external assessment. However, among member states there are differences regarding the implementation of quality assurance systems, which are caused by, among other factors, the different national education systems. The report mentions that synergy effects may be possible between the official accreditation bodies, international accreditation bodies and professional accreditation bodies. It is important to note that a climate of trust has been created, with the help of bilateral and regional cooperation agreements, which allows for the mutual recognition of quality assurance systems and assessments. The report closes with the following paragraph: “The moment has come to take decisive steps to achieve genuine mutual recognition of quality assurance and accreditation systems

The report also, quite rightly, remarks that two political developments, i.e. the Bologna process and the Lisbon strategy, have added a new momentum to the quality agenda.<sup>59</sup> The official discourse regarding (national) educational policy and scientific research appears to be dominated by the objectives set by the European Council of Ministers.<sup>60</sup> For example, the Lisbon strategy has been influencing the national (educational) agenda for a long time. The Barcelona EU summit (March 2002) stated that in “*a competitive knowledge economy*,” improved quality, transparency of diplomas and qualifications and the facilitation of universal access are absolute requirements.<sup>61</sup>

From the start, the Sorbonne/Bologna processes took a similar approach towards improving global competitiveness. Strictly speaking, these strategies and processes may not contain any national topics, but the objectives contained therein appear to be so fundamental that no government can afford not to explicitly focus on them. Thus, national legislators attach a virtually legislative importance to certain community techniques,<sup>62</sup> despite the fact that, upon closer inspection, they are merely based on voluntary mechanisms and, at best, on *soft law*.<sup>63</sup>

The European standards still hold great effect from other perspectives. The bachelor and master degrees are defined using the so-called Dublin descriptors, determining the level of knowledge and

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and assessments and let quality assurance contribute effectively to our shared objective of making European higher education a ‘world quality reference.’ Progress can and must be made in this important field.” *Commission Report*, COM (2004) 620 final, 30 September 2004, Brussels, pp. 7-8.

<sup>59</sup> *Commission Report*, COM (2004) 620 final, 30 September 2004, Brussels, p. 2.

<sup>60</sup> Cf. also the European Parliament Resolution, *Universities and Higher Education in the European Learning Area*, PB. L., C/272 E, 5 September 2002, pp. 455-460.

<sup>61</sup> The Council of European Ministers had previously produced an official statement that Europe was to become the most competitive and dynamic, science-oriented economy in the world, (Commission report, *The Concrete Future Objectives of Education Systems*, COM (2001) 59 final, 31 January 2001, Brussels. Council approval on 12 February 2001). A first objective is therefore to improve the quality of education and training systems, by means of common quality criteria and the credit transfer system. The position that higher education is uniquely able to contribute to and benefit from internationalisation and globalisation can only be met with partial approval. Compulsory education also plays a crucial role in achieving these objectives, in concrete terms. Further elaboration of this point would fall outside the scope of this paper.

<sup>62</sup> Such as, for example, the “method of open coordination” and benchmarking. However, in some cases the “naming and shaming” technique may prove very efficient.

<sup>63</sup> See *infra*.

competences the graduates must obtain, so as to improve comparability of trainings and degrees. The Dublin descriptors had been included in the qualification framework for the European Higher Education Area approved in Bergen (19 and 20 May 2005). A division of qualification levels based on learning outcomes is considered.

In order to valorise these learning outcomes, within a proper qualification framework, reference should be made to ECTS credits. In Bergen, the ministers already approved a qualification framework for the European Higher Education Area and reached an agreement on the ECTS values and learning outcomes. In 2007, the Bologna ministerial follow-up conference in London determined to which extent the member countries have introduced a qualification framework in accordance with the Bergen model. Some parliaments officially proclaimed that the “*European Standards for the External Quality Assurance of Higher Education*” would be used as the “*bottom line*” for accepting external quality assessments and, in addition, would adjust their legislation accordingly. Given the principle of legal certainty and the requirement to make legislation public, it must be assured that the parties involved are allowed access to the contents of these standards.

European cooperation is also beginning to take form in the field of accreditation. A major study should be carried out to see to which extent the legislation appears to be similar and to which extent the Bologna parties are being monitored for progress by the follow-up group.

Current legislation is clearly influenced by internationalisation. The recent development, explicitly focussed on by the legislators, is the inclusion of the “*European Standards for External Quality Agencies*” as a guideline for internal quality care inside the accreditation agencies themselves.<sup>64</sup> The question of whether this will turn out to be the next stage in a truly international quality assurance system,<sup>65</sup> which would partly absorb the national and transnational systems or whether it will

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<sup>64</sup> Implementing Article 10 of the ratification decree (governance principles), which states that the NVAO (Nederlands-Vlaamse Accreditatie-organisatie) develops and uses an internal procedure for quality assurance, specifically focussing on consistent decision-making. The *Memorandum of Illustration* clearly states that, to this end, the afore-mentioned *Standards* will be employed: *Parl. St.*, Fl. P., 629/1, 2005-2006, p. 7.

<sup>65</sup> See Van Damme, D., “Higher Education in the Age of Globalisation: The Need for a New Regulatory Framework for Recognition, Quality Assurance and Accreditation,” in J. De Groof, G. Lauwers, *Globalisation and Competition in Education*, Nijmegen, Wolf Legal Publishers, 2003, pp. 27-40; Van Damme, D., “Internationalization and Quality Assurance: Towards Worldwide Accreditation?,” in *European Journal for Education Law and Policy*, vol. 4, no. 1, 2000, pp. 1-20.



stay limited to a European meta-evaluation, has already been raised elsewhere.<sup>66</sup> The question should also be answered from the point of view of constitutional competence. Both the Dublin descriptors and the Qualification Framework to which the “Bologna Working Group” and the European Commission provided an essential contribution on the one hand, and the standards for external quality control on the other hand play a decisive role in the national education systems.

Let us focus on some specific techniques, combining European norms and standards with the national responsibility in education. First we define shortly the division of power between the national and supranational levels.

### ***B. Level of Competence National-supranational: Paradoxes***

It is sufficiently known that, as a result of the expansive interpretation by the Court of Justice of the concept “professional training,” positively mentioned in the EC Treaty, “education” is part of the Community arena, as a consequence of the application of the non-discrimination principle of member state subjects regarding access to education and of the principle of free movement. In a sense, Articles 165 and 166 are the reflection of the series of European programmes that had been developed by the Community before the Union expressly included education, professional training and culture as a community objective – albeit within the framework of an application of the subsidiarity principle.<sup>67</sup>

The Union’s sphere of action increased evermore, although it was the result of a voluntary system, of incentive measures and competition. While the distrust that originally accompanied the creation of Article 1 of the second ECHR Protocol started to wane,<sup>68</sup> there grew a sense that the European dimension had a positive influence on the national education systems.

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<sup>66</sup> De Groof, J., Hendriks, F., “Accreditatie in het Hoger Onderwijs in Vlaanderen en Nederland,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, no. 4-5, 2005-2006, pp. 247-356.

<sup>67</sup> Lenaerts, K., “Subsidiarity and Community Competence in the Field of Education,” *op. cit.*, 1994, pp. 117-144; De Witte, B., “Equivalentie van Studieperiodes en Erkenning van Diploma’s,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, no. 5-6, 1992-1993, p. 290; De Groof, J., “The Scope of and Distinction between Articles 126 and 127 of the Treaty on European Union and the Implementation of the Subsidiarity Principle,” in J. De Groof (ed.), *Subsidiarity and Education, op. cit.*, pp. 77-114.

<sup>68</sup> Cf. De Groof, J., Lauwers, G., *No Person Shall be Denied the Right to Education*, Nijmegen, Wolf Legal Publishers, 2004.

The Bologna process is also a paradox. On the one hand, it is part of the community momentum, particularly for topics related to quality assurance; in that sense Bologna belongs to the community actions and programmes, but on the other hand, it goes beyond the Treaty stipulations. The intergovernmental nature of the Bologna process has prevented a careful assessment of the criteria and procedures of the subsidiarity principle – as described in the Treaty – including the monitoring by national parliaments and the principle’s influence on the central, regional and local levels.<sup>69</sup>

The aforementioned Articles 165 and 166 have become largely obsolete, certainly as far as higher education is concerned, also as a result of how the facts have changed, even though the member states are refusing to admit to this in so many words. They refer to the lack of resistance when applying tools such as benchmarking, good practices and open coordination, even though they are the ones who determine the momentum of the (European) interpretation. “Fewer” European norms and procedures can therefore lead to “more Europe.” “Harmonisation” is an explicit objective, but only if it falls outside of the standard procedures. Moreover, both the Lisbon and Bologna strategies are tied to specific dates. This tense relationship will have to be reconciled in time.

The focus on diversity depending on the national educational systems and as a consequence of the member states’ exclusive competence – unlike in the field of “research,” which has become an area of shared competence – and the variety of languages and cultures, are continuously repeated as being the guiding principles, also in the field of quality assurance.<sup>70</sup> However, the Commission is now granted a more important role than simply carrying out administrative duties and financing symposia. The Commission is expected to monitor the process and the European Council has integrated the Bologna process in its benchmarks and recommendations. In line with Article 165 TFEU, the Economic and Social Committee is also given a role.

The fact that the member states and parties have no legal obligation under the Bologna process and therefore tend towards harmonisation, forces legal experts not only to take a more modest view, but also to design innovative techniques. The update of the “European Constitution”<sup>71</sup> and the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Union missed

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<sup>69</sup> Cf. Articles 9, 3 Part III Draft Treaty establishing a Constitution for Europe.

<sup>70</sup> From Berlin to Bergen, *l. c.*, p. 14.

<sup>71</sup> OJ C. 306, 17 December 2007.

the chance to present the member states involved with this opportunity. The support of the Council of Europe, together with the implementation of Article 165, par. 3 TFEU, offer an opportunity for opening up to other countries.<sup>72</sup>

Another issue relating the Bologna process is the either supposed or real democratic deficit in the decision-making process regarding the fundamental choices that are thus made regarding the future of higher education in Europe.<sup>73</sup> Here again, we see a paradox: there are grounds for criticism, but reference must be made to the decision-making process in each of the member states and the direct involvement of the institutions in the draft legislation. For the lack of debate, the universities and colleges are also partially to blame.

However, unlike the benchmarking exercise and the Lisbon strategy, we notice that the academic community has indeed taken ownership of the restructuring of higher education. It cannot be repeated too often that the ownership of the Bologna process should be with the individual institutions and their stakeholders. We are immediately reminded that in the constitutional tradition of several member states, the autonomy and accountability of institutes of higher learning are still of great importance.<sup>74</sup>

The completion of both the Lisbon strategy and the Bologna process also creates the opportunity to provide feedback to the policymakers regarding the proven or alleged progress. Educational users can only stake their claims if solid strategies and processes are included in the legislation. The question of legal status therefore appears to be a decisive argument in favour of measuring the democratic deficit. Legislation should be analysed from this perspective without hampering the European momentum.

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<sup>72</sup> Cf. also Article III. 225 of the Draft Treaty establishing a Constitution for Europe.

<sup>73</sup> Cf. *infra*.

<sup>74</sup> Cf. De Groof, J., Glenn, Ch., *Balancing Freedom, Autonomy and Accountability in Education*, Nijmegen, Wolf Legal Publishers, vol. 3, 2005; De Groof, J., *De Grondwetsherziening van 1988 en het Onderwijs. De Schoolvrede en zijn Toepassing*, Brussel, Cepass, 1989, p. 233; De Groof, J., *La Révision Constitutionnelle de 1988 et l'Enseignement. La Paix Scolaire et son Application*, Bruxelles, Cepass, 1989.

### **C. The Legal Methodology for the Creation of the European Higher Education Area (EHEA)**

#### *1) Bologna Process and “Soft Law”*

The Bologna process is considered as the perfect example of *soft law*, with a stronger impact than originally expected. The process has at the political and chiefly economic aim to make Europe “the most competitive and dynamic knowledge-based economy” and to improve the “attractiveness and competitiveness of higher education institutions.”

The process contains voluntarily committed intents by states, parties to the Declaration, not enforceable in courts, but in parliament. Governments, seldom formally approved by separate acts of parliaments, declared the will, through newly drafted legislation, to shape a framework of “comparable and compatible qualifications” in terms of level, learning outcomes, competences, profiles, study load, etc. “Mobility” and “recognition,” – two major EU principles in education law – are used as the dominant *techniques* shaping the wider Europe, – the founding fathers of the original EC Treaty could just dream of it.

The use of soft law, – such as declarations, recommendations, guidelines, programmes, codes of practice, etc., can be typified as a long-standing Community instrument that no legally binding force has been attributed to. Nevertheless, the Bologna process can be interpreted as of a *para-law* rank, with a quasi-binding effect, not just aimed at closer cooperation but even at harmonisation between states.

The Bologna process debates the traditional (top-down and supranational) EU method and explores to what extent new forms of European governance (intergovernmental and non-governmental) can be promoted. The use of this instrument, alternative to the formal adaptation of the EC Treaty, aimed not just at more effectiveness of transparent ejecting members’ community action (and the application of the Treaty). It contributes also to the enlargement of the Union. New members may accede, simply by agreement of existing members.

The question remains how far the Bologna process acts as an adequate and sufficient means to realise the ambitious goals. Does the Bologna process put enough pressure on the EU member states and to the other parties to the Bologna Declaration to implement and enforce the specific “norms?” The credibility of the follow-up mechanism seems to be at stake if concrete legal measures are still lacking: no procedure is foreseen for ejecting members who do not succeed in their (voluntary engaged) commitment.

It is important to note that there is more debate surrounding, more research is done into and a clearer picture is painted of the relationship

between the Bologna process and EU legislation.<sup>75</sup> In a joint, interim report from the Council and Commission regarding the Lisbon objectives, the relationship with the *Bologna* process is described (albeit covertly) under the heading “*Implement the Process more effectively*” stating that this should be included in the Lisbon process.<sup>76</sup>

In a way, this position has also become obsolete: the process already appears to belong to the *acquis communautaire* and if there is no strict need for EU legislation, there are other ways to enforce *soft law*: “no legally binding force” does not equal “no legal effect at all.”

## 2) *The Open Method of Coordination*

The Lisbon strategy introduces a philosophy of governance that is new – certainly as far as education is concerned<sup>77</sup> – for Europe, i.e. the “open method of coordination.” This governance tool appears to be of particular relevance to the field of education policy, as Articles 165 and 166 of the EC Treaty only provide Community institutions with the possibility of taking stimulative actions and making recommendations. What is essential is that the EU should contribute towards the development of high-quality education by fostering cooperation between member states and, if necessary, by supporting or supplementing their actions and these be aimed at, among other aspects, improving student and teacher mobility, for example by stimulating the academic recognition of diplomas and periods of study (Article 165 par. 2 TFEU). However both Articles also explicitly exclude harmonisation.

The open method of coordination is based on common objectives, naturally with different timeframes, indicators and benchmarks, regarding the integration of the guidelines in nationally and regionally established action plans relating to regular monitoring and peer review.

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<sup>75</sup> For a similar plea, cf. Verbruggen, M.L.W., “De Bolognaverklaring kritisch Getoetst aan het Europees Onderwijsbeleid,” SEW, 2003-6, p.21.

<sup>76</sup> In diplomatic terms: “For the 31 countries involved in ‘Education & Training 2010,’ there should also be closer coordination with the Bologna process. Generally speaking, the case for non integrated parallel action will be increasingly weaker in the future, be it in higher education or in vocational training, unless it is manifestly more ambitious and more effective.” Cf. *Education & Training 2010. The Success Of The Lisbon Strategy Hinges on Urgent Reforms*, Joint interim report of the Council and the Commission implementation of the detailed work programme on the follow-up of the objectives of education and training systems in Europe, OJ C. 104/1, 2004, p. 12.

<sup>77</sup> As before, the Union used this method for the member states’ social policy, specifically concerning employment policy and retirement issues.

In addition, the method<sup>78</sup> – put in schematic terms – allows for (national) diversity instead of uniformity, for flexibility instead of enforceable legal follow-up, framework objectives instead of detailed requirements and freely determinable timeframes instead of binding entry dates. The regular consultation, performance screening, feedback and follow-up procedures reinforce both the governments' responsibility and accountability duties, without the threat of stringently interpreted procedures, which are seen as a nuisance. This last aspect may seem tempting, but contains an important drawback, as policy measures depend on the goodwill of national governments and a common education area remains largely hypothetical or even haphazard when a party chooses to opt out. The "Europe moving at different speeds" is becoming more of a reality. On the other hand, a Europe of mobile students or scientists, or a Europe of "citizens," if you will, is becoming less of a reality in a certain respect.

The "*Wetenschappelijke Raad voor het Regeringsbeleid*" (Dutch Scientific Council for Government Policy) (WRR) has analysed the open method of coordination on the basis of the following characteristics. It is a combination of national adjustment and European cooperation; it takes place within the EU frameworks; it opts for a non-binding type of cooperation; in general, most member states take part, however differentiation is possible; decisions are reached via consensus.

The WRR remarks that the openness of the coordination is a result of the fact that the desired policy adjustments are formulated in non-binding guidelines and that participation in the coordination process is open to various parties.<sup>79</sup> This is how certain objectives within the EU framework are reached.

It is also fair to add that the member states (or parties) and the European Council are the only major actors involved and that the involvement of the European Commission and the European Parliament may vary and that the Court of Justice is not given any role. The member states jointly determine both the objectives and the common evaluation method, they implement them autonomously, however subsequently they insist on being cautious when it comes to interpreting comparable data.

All this would indicate that a certain degree of voluntary participation is present; however, this may be misleading. The fear of

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<sup>78</sup> It is certainly worth looking into the compatibility with the subsidiarity principle, which is far from obvious. Cf. *infra*.

<sup>79</sup> Wetenschappelijke Raad voor het Regeringsbeleid, *Slagvaardigheid in de Europabrede Unie* (Report no. 65), The Hague, SDU, 2003, p. 39.

being excluded from a process related to areas that are perceived to be essential for the development of an (educational) system, appears to be the reason why many member states are willing to comply with the objectives.<sup>80</sup> Consequently, the coordination's "openness" appears to be relative. The more refined the common objectives, the more binding the process is perceived to be. Even though the general perception is that this is a means of "soft governance," the immediate expectation was that the national educational systems would have no choice but to follow the adjustments inspired by Europe.<sup>81</sup>

However, some member states beat around the bush. They still support the position that education is a matter of national competence and they state that the European Commission is however able to make proposals for cooperation in fields where the Community's competence is limited to stimulating and supporting cooperation between member states. These governments do realise that this cooperation, which is only voluntary in theory, clashes with Article 165 of the TFEU. Within other countries there are no such reserves and the fairly unanimous position is to favour the European approach.

The intention is to meet the Lisbon objectives through open coordination. The recent adjustment of the objectives by the European Council does not take anything away from this approach.<sup>82</sup> The Bologna process also contains characteristics of this governance philosophy, taking into account that, formally, this process falls outside of community legislative powers.<sup>83</sup>

Materially, however, the situation is much more complicated. "Quality assurance" will be the key for taking further steps in the common European area of the various educational systems, without implying a restriction on the national authorities' competence. At least

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<sup>80</sup> Lenaerts, K., "De Grondwet voor Europa, Onderwijs en Raf Verstegen," in *Ad amicissimum amici scripsimus (Liber Amicorum Raf Verstegen)*, Die Keure, 2004, p. 173.

<sup>81</sup> Cf. also De Groof, J., "On 'the European Higher Education Area' after the Bologna Declaration of 19 June 1999," in *European Journal for Education Law and Policy*, no. 4, 1999; Zoontjens, P.J.J., "'Europa' en ons Onderwijsstelsel," in *School en Wet*, 2004-8, p. 316.

<sup>82</sup> <http://www.consilium.europa.eu>.

<sup>83</sup> Verbruggen, M., "De Bolognaverklaring en het Europees Onderwijsbeleid: Enkele Juridische Kanttekeningen," in *Het Europa van het Hoger Onderwijs*, The Hague, Educational Counsel, 2002, pp. 51-55; Verbruggen, M. "De Bolognaverklaring Kritisch Getoetst aan het Europees Onderwijsbeleid," in *School en Wet*, 2003-6, p. 211. Cf. also Zoontjens, P.J.J., "'Europa' en ons Onderwijsstelsel," *op. cit.*, p. 316.

not in theory, as one of the explicit objectives contained in the *Bologna* Declaration is reinforcing the European dimension of quality assurance with a view to developing comparable criteria and methodologies. As mentioned above, Article 165 of the TFEU allowed the Community institutions to carry out stimulative actions and provide recommendations relating to quality assurance.<sup>84</sup>

As the Community institutions (and specifically the European Commission) were granted a facilitating role in the *Bologna process*, albeit reluctantly, the distinction between the *Bologna process* and the general competences granted to the Community under Article 165 of the TFEU is fading. It is possible that, as a result of both mechanisms, legally speaking there is an “open coordination,” but that it does not appear anymore from the *de facto* situation. It should not be concluded that this is inevitably in conflict with the subsidiarity principle and the exclusion of harmonisation, as mentioned in Article 165 of the TFEU, which only became possible as a result of the voluntary nature of the *Bologna process* signing.

In our opinion, the convergence between the *Bologna process* and the competences granted to the Community under the EC Treaty lead to a (legal) balancing exercise on the tight-rope. It would be interesting to suggest that since 2008, higher education has been in the “*post Article 165-166*” era.<sup>85</sup>

### 3) *The Principle of Trust*

Regardless of which procedures are used with respect to national and European legislation relating to diplomas, i.e. “recognition,” “equivalence” and “equality” or the procedure of “harmonisation,” all these various mechanisms in fact refer to the principle of “mutual trust” – which, for that matter, is also an essential community principle.

Regardless of the quality assurance techniques that are provided by national legislation, the international (quality) standards are converging into one general guideline, for both the accreditation of programmes and of institutions. The *meta-evaluation* or *meta-accreditation* examine the credibility of the national systems.<sup>86</sup>

The national governments continue to exert a real influence on the formal accreditation systems of the institutions relying on public funds

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<sup>84</sup> Cf. also the recommendation mentioned below. It dates back to 1998 and was therefore issued before the *Bologna* statement had been drafted.

<sup>85</sup> Cf. *infra*.

<sup>86</sup> In that case, a *meta-evaluation* may be considered a contribution towards a rationalisation of legislation.



or grants and whose diplomas and certificates are granted an official *effectus civilis*. In Europe, this is generally done by governmental recognition agencies or by a *meta-accreditation* authority, such as the federal *Akkreditierungsrat* in Germany which gives its own accreditation to the country's accreditation agencies.

Most assessments and accreditations in Europe (still) take place at the national or regional level. It is expected that these assessments and accreditations will become ever more comparable, i.a., by using international standards, procedures and guidelines. However, there is also room for transnational assessments and accreditations, for example for strongly internationally-oriented trainings such as business studies, medicine or technical trainings.

International professional organisations and institutions specialising in certain areas (engineering, animal medicine, tropical medicine, *business schools*, etc.) often give out their own authoritative accreditations based on strict, objectives standards. It will therefore become essential for governments to reach an agreement with these internationally accepted, non-governmental bodies to allow them to present legally-binding recognitions.

The European Commission supports the introduction of and tests using trans-national assessments and accreditations of study programmes that may be organised jointly. One of the underlying ideas is that institutions for higher education in need of an accreditation that is also valid abroad would tend to look at US agencies, for lack of a "European accreditation."<sup>87</sup>

Sooner than expected, internationalising is becoming a guideline in the reform of national legislation. Not only the smaller member states will be forced to come up with transnational formulas, as full transparency will become a new interpretation for the free movement of students, teachers and researchers.

#### 4) *Brief Considerations* *on International European Legal Practice*

Contrary to Article 165.3 of the TFEU on European Union, which held out the prospect of special collaboration with the Council of Europe, the activities of the Council of Europe do not figure in several recent "strategic" documents. Nevertheless, collaboration with the

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<sup>87</sup> Recommendation of the Council and the European Parliament on *Further European Cooperation in Quality Assurance in Higher Education* (submitted by the Commission), COM (2004) 642 final, Brussels.

Council of Europe does seem to be important, as does incorporating these results into the legal order of the Community.

It would be relevant here to investigate what progress has been made on, for example, the *Recommendation of the Committee of Ministers on Access to Higher Education*,<sup>88</sup> including the provisions on admissions (point 4) and student progress (point 5); and the extent to which the *Convention on the Recognition of Qualifications concerning Higher Education in the European Region*<sup>89</sup> is already aiming to fulfil a number of the objectives of the Sorbonne and Bologna Declarations; albeit by means of a simpler request for the recognition of the equivalence of a diploma issued in another member state.<sup>90</sup> This would mean an application, as it were, of the general principle of “Community trust” in implementing Article 4(3) TEU, in particular the recognition of the diploma of a subject of a different member state, by evaluating such a diploma carefully and on equal terms, as upheld by the Court of Justice in a judgment of 7 May 1991 in the case of *Vlassopoulou*,<sup>91</sup> in accordance with a transparent technique and making it enforceable before the Court of Justice.

Further, we need to avoid any disadvantages that may arise from the proposed *intergovernmental cooperation* to achieve basic objectives, in particular “the objective to establish the European area of higher education and to promote the European system of higher education in the world.” In federal regimes, this kind of platform is known as “*the third level*,” in particular any voluntary inter-state consultation separate from the federal authorities, usually with a view to voluntary harmonisation or even unification. Thus, we need to prevent European institutions being weakened, the emergence of diverse “education areas” among the various member states (and the creeping in of a fast track/slow track Europe), or – despite statements to the contrary – the direct or indirect mortgaging of the autonomy of the university. It was

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<sup>88</sup> Recommendation no. R (98) 3, dated 17 March 1998.

<sup>89</sup> Council of Europe, *European Treaties*, ETS no. 165, Lisbon, 2 April 1997.

<sup>90</sup> See, in particular: Section III (Basic Principles Related to the Assessment of Qualifications) and Section IV (Recognition of Qualifications giving Access to Higher Education). Section V contains a number of regulations on Recognition of Periods of Study. Thus the key article, Article IV.I, provides: “Each Party shall recognise the qualifications issued by other Parties meeting the general requirements for access to higher education in those Parties for the purpose of access to programmes belonging to its higher education system, unless a substantial difference can be shown between the general requirements for access in the Party in which the qualification was obtained and in the Party in which recognition of the qualification is sought.”

<sup>91</sup> ECJ, case C-340/89, *Vlassopoulou*, [1991] ECR, 7 May 1991, p. I-2357.

highly questionable whether an international arrangement for accreditation of courses and educational institutions would be compatible with the competences of national governments and the universities' autonomy.

In point of fact: compatible credit systems, understandable degree structures, increased European dimensions on quality assurance and a more European labour market are *structural improvements*. They contribute to better learning opportunities for all. That is the essential message of the Bologna Declaration. Furthermore, national governments need to make sure that the remaining obstacles, which are still entrenched in national social security systems, are removed.<sup>92</sup> They should be invited to report to the European institutions on this from time to time.

The Bologna Declaration also contains an appeal for more practical and democratic educational administration.<sup>93</sup> "Flexibilisation" is currently the keyword used for the reform of educational organisations, training programmes, the student profile and personnel policy. These are not really objectives as such, but merely an instrument serving a real objective that is the university's ability "to innovate." "Knowledge management" requires a more daring form of innovation than "educational technology" for instance. The innovative education post in higher education needs to unleash a real revolution on many fronts.<sup>94</sup>

It remains to be seen whether European universities are able to take a pioneering role in this at an international level.

### 5) *Convergence*

"*Convergence*" – i.e. focussing on a shared frame of reference – is becoming a reality for European higher education, and not just because

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<sup>92</sup> It is not clear exactly what the Bologna declaration means by "remaining obstacles." Are they, for example, financial obstacles or perhaps linguistic obstacles? The elimination of financial obstacles to mobility would, of course, be a very desirable aim, but no doubt extremely difficult to achieve. The elimination of linguistic obstacles would again be very desirable, but the provision of further language training may have considerable cost implications. Again, it would be helpful if the declaration could be more specific as to the exact nature of the obstacles envisaged.

<sup>93</sup> For information on European concepts in this area, see also: De Groof, J. Neave, G., Svec, J., "Democracy and Governance in Higher Education,," in Council of Europe, *Monograph Series of the Legislative Reform Programme*, Strasbourg, Dordrecht, 1997.

<sup>94</sup> Nonaka, I., Takeuch, H., *The Knowledge Creating Company*, New York, Oxford University Press, 1996; Thurlings, B., Debackere, K., "Trends in the Management of Technology and Innovation: Lessons from Field Research," in *Research Technology Management*, July 1996.

of the Union's "supporting, coordinating or supplementary actions" and the "Declarations or Agreements" in this field. The integration of the labour market and professional training and lifelong learning systems are also a contributing factor. Europe's effect is felt less directly on the organisation of compulsory education. However, the hope is that increased workers' mobility, and, as a result, an increasing mobility of parents, will have a "mobilising" effect. The same can be expected from international benchmarks and comparative "good practices."

Even if the parties' or member states' educational systems continue to converge, partly under the influence of economic and monetary integration, no uniformity is to be expected in the "organisation" or "contents" across the various national education systems. The Bologna process focuses explicitly on structures and procedures and not, or at least not directly, on course content, curricula and the educational concept. Even the duration of training may differ. In light of the divergent preparatory trajectory (compulsory education) that is to be followed, this does not come as a surprise.

Having a more diversified educational content should eventually pave the way for a more competitive European Higher Education Area. The European Commission has concluded that "detailed instructions for organisation, control and management" have led to too much uniformity within the member states. The Commission continues:

This pressure for uniformity has led to generally good average performance, but has increased fragmentation of the sector into mostly small national systems and sub-systems. These render cooperation difficult at national, let alone European or international, level and impose conditions which prevent universities from diversifying and from focussing on quality.<sup>95</sup>

However, in some territories a different type of convergence is materialising between trainings and institutions as a direct or indirect consequence of the Bologna reform. The example of the "Lower Countries" could be followed by similar tendencies for transnational cooperation, e.g. in the Balkan region.<sup>96</sup> The three-folded system in Flanders and the distinction between the Dutch "HBO" (Higher

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<sup>95</sup> Communication from the Commission to the Council and the European Parliament, *Delivering on the Modernisation Agenda for Universities: Education, Research and Innovation*, COM (2006) 208 final, Brussels, 10 May 2006, p. 3.

<sup>96</sup> De Groof, J, "Een Gemeenschappelijke Onderwijsruimte voor de Lage Landen? Onderwijs, Kwaliteitszorg en Accreditatie: Bevoorrechte Domeinen voor Samenwerking tussen Vlaanderen en Nederland," in J. De Groof, A. M. Hagen, A. Schramme, *Gedrag na Verdrag: Balans en Toekomst van de Samenwerking Nederland-Vlaanderen*, Leuven, Davidsfonds, 2004.

Professional Education) and “WO” (Scientific Education) is fading. A greater convergence and even uniformity in higher education is helped by the visitation and accreditation procedures.

Another form of convergence relates to the institutions. An injecting experiment is in process in Flanders (Belgium). The *associations* between universities and colleges play a decisive role in the so-called “academisation” of trainings (i.e. making non-university programmes consequently “academic” in nature). Their influence touches the very core of the aimed research-based quality of the trainings involved, but also human resource management, infrastructure, status of the staff, etc. Associations introduce the perspective of a confederate or integrated institutional structure.<sup>97</sup> The Dutch universities are also considering associations or mergers with the “HBO institutions,” partly to ensure a through-flow of HBO bachelors into master trainings, as is the case in Flanders. Reinforcing the scientific potential is an important motivation in both cases.

Quality assurance as a vehicle for mobility is becoming a stringent EU objective.

#### 6) *Harmonisation*

Articles 165 and 166 TFEU do *not* give the Community the competence to act with regard to content and objective of the educational institutions of the member states (see also par. 1.4 regarding the limits to the competences of the Community).<sup>98</sup> Nonetheless, the scope and influence that may result from the execution of these treaty provisions on the political agenda of the member states in this respect is not inconsiderable. It is, indeed, the unflinching obligation of the member states that they keep striving in concert to realise the objectives of the Community.

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<sup>97</sup> Cf. already at De Groof, J., “Hoe Confederaal Worden Universiteiten en Hogescholen? Een Toekomstverkenning over de Structuur van het Tertiair Onderwijs: een Relatie in de Kering?,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, no. 2-3, 2000-2001, pp. 90-106.

<sup>98</sup> Verbruggen, M., “Europa, wel Bevoegd voor Onderwijs?,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, 1991-1992, pp. 131 *et seq.* and De Groof, J., “Some Observations on the European Law on Education,” *op. cit.*, pp. 105 *et seq.* and Lenaerts, K., “Het Onderwijs in het Europees Recht na ‘Maastricht’,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, 1992-1993, pp. 264 *et seq.*

The handles that are being offered by the Articles are, on closer scrutiny, not to be underestimated.<sup>99</sup> They concern measures of incentive and recommendations (Article 165, point 4, TFEU), respectively complementary, strengthening, and promotional measures (Article 166 point 1, and 2, to point 4, TFEU).<sup>100</sup> In this, the Community needs to respect the member states' responsibility for the content of education and the development of the educational system and their cultural and linguistic diversity (Article 165, point 1, TFEU), as well as the member states' responsibility for the content and the development of the professional training programmes (Article 166, point 1, TFEU). In addition, the application of these handles must not lead to the harmonisation of the legal and administrative regulations of the member states (Articles 165, point 4, and 166, point 4, TFEU).

In this, some nuances must be drawn: the prohibition of harmonisation is valid only in so far as the action of the Community is based exclusively on Articles 165 and 166 TFEU, not in the case where the community action rests on different provisions. The obligation to take into account the "community *acquis*" implies that harmonisation measures based on other treaty provisions remain possible.

### *7) Community Loyalty and the Subsidiarity Principle*

Article 4 (3) TEU demands from the member states that they take all "appropriate measures, whether general or particular, to ensure fulfillment of the obligations arising out of this Treaty or resulting from action taken by the institutions of the Community," and that they at the same time shall "abstain from any measure which could jeopardise the attainment of the objectives of this Treaty." This negatively and positively formulated prescriptions fulfil the obligation towards *cooperation in good faith* that is the responsibility of the member states in their relation with the Community and in their mutual relationships.<sup>101</sup>

This sentence shows that the principle of cooperation in good faith, in concert with the rights to free movement, obliges the member states for example to assess whether the diploma of the EC national is the equivalent of the domestic diploma that is being demanded for the exercise of the profession in question. The member states are indeed not

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<sup>99</sup> De Groof, J., "Opportunities and Limitations for a European Education Policy," *op. cit.*, p. 9 *et seq.*

<sup>100</sup> Bekemans, L., Balodimos, A., *op. cit.*, pp. 103-104.

<sup>101</sup> Kapteyn, P.G.C, Verloren Van Themaat, V., *The Law of the European Union and the European Communities*, Austin, Kluwers, 2008, p. 97 and Lenaerts, K., "Fundamental Rights in the European Union," *op.cit.*, pp. 514-522.

entirely at liberty in determining the relevant assessment procedures. That examination procedure must enable the authorities of the host member state to assure, on an objective basis, that the foreign diploma certifies that its holder has knowledge and qualifications which are, if not identical, at least equivalent to those certified by the national diploma. That assessment of the equivalence of the foreign diploma must be effected exclusively in the light of the level of knowledge and qualifications which its holder can be assumed to possess in the light of that diploma, having regard to the nature and duration of the studies and practical training to which the diploma relates.<sup>102</sup>

In addition, refusal to evaluate the foreign diploma as non-equivalent to the national one must be justified, and the right to legal appeal must be available.

Finally, the certification procedure must be readily accessible to anyone and not dependent on payment of exorbitant administrative costs,<sup>103</sup> as the *Kraus case* shows: Kraus, a German national, has studied law in Germany and finished his studies in 1986, sitting successfully for the “*erste juristische Staatsexamen*.” After post-graduate work, he obtained on November 26, 1988, the degree of “Master of Laws” from the University of Edinburgh. After working for some time as science assistant at the University of Tübingen, he took in Baden-Württemberg a number of practical articling courses for lawyers in preparation of the “*zweite juristische Staatsexamen*” in the course of 1992. He wished to practise with his British degree from Edinburgh in Germany but needed to apply formally for a license to do so. He was of the opinion that this was inconsistent with the Community Law. According to the federal state of Baden-Württemberg, the Community law admitted of the licensing procedure process for bearing academic degrees on the basis of guideline 89/48 EEC.

The principle of subsidiarity is being formulated as follows:

In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.<sup>104</sup>

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<sup>102</sup> See the judgment in *UNECTEF v. Heylens*, [1987] ECR 4097, paragraph 13.

<sup>103</sup> ECJ, case C-19/92, *Kraus*, [1993] ECR, 31 March 1993, p. I-1663.

<sup>104</sup> Bekemans, L., Balodimos, A., “Le Traité de Maastricht et l’Education, la Formation Professionnelle et la Culture (The Treaty of Maastricht and Education, Professional Training, and Culture),” in *R.M.U.E.*, 1993, p. 99. Also see the protocol to the Treaty of Amsterdam regarding the application of the subsidiarity and proportionality

The underlying idea is clear: the European Union needs to leave the member states sufficient room in order that they may, each on their own, contribute to the objectives of a proposed action if and in so far as the member states are individually capable of doing so.<sup>105</sup> Thus, the Community should not wish to do everything on its own, even though it may possess the necessary official competence, but it has the general obligation to ask prior to every action if the objectives for it can only be realised by its own intervention.<sup>106</sup>

Thanks to a relatively extensive explanation by the institutions of the Community of their existing contiguous competences, they were able to exercise considerable influence on the education policies of the member states. In reality, this spillover effect meant a centralisation of the competences, without the member states having the actual possibility of exercising control over the process. In order to keep a tighter rein over the process, reference was made to the subsidiarity principle.<sup>107</sup>

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principles: 3. The subsidiarity principle leaves intact the competences granted by the Treaty to the European Community as explained by the Court of Justice. The criteria of article 3B, second paragraph, of the Treaty relate to areas for which the Community does not possess an exclusive competence. The subsidiarity principle functions as the guiding thread for the manner in which those competences need to be exercised on the Community level. Subsidiarity is a dynamic concept and needs to be applied in the light of the objectives set forth in the Treaty. It makes it possible to extend the action of the Community within the boundaries of its competences when circumstances do so require, as well as to restrict them or to terminate them when their application is no longer justified.

<sup>105</sup> “In the text of Articles 149 and 150 EC, the principle is clearly identifiable: the Union can only in the case of certain exhaustively summarised objectives support, strengthen, and complement the activities of the Member States. For this reason, the decisions that are taken by the Community on the grounds of these competences should at all times be legitimised by referral to the role of the subsidiarity principle during the drafting of the Articles,” Leenknecht, G., *Subsidiarity and European Integration. An Old Wisdom in a New Context*, Zwolle, W.E.J. Tjeenk Willink, 1995, p. 93 *et seq.*

<sup>106</sup> Van Gerven, W., “De Beginselen ‘Subsidiariteit, Evenredigheid en Samenwerking’ in het Europese Gemeenschapsrecht,” in *Rechtskundig Weekblad*, 1991-1992, pp. 1241-1246; Lenaerts, K., “De Europese Unie: Doel of Middel?,” in *Rechtskundig Weekblad*, 1998-1999, p. 700 *et seq.*; Lenaerts, K., Van Nuffel, P., *European Law in its Main Lines*, Deurne, Maklu, 1999, pp. 148-156.

<sup>107</sup> De Groof, J., “Perspectives for the International Law on Education,” *op. cit.*, p. 114. Also see De Groof, J., Friess, B., “Opportunities and Limitations for a European Education Policy,” *op. cit.*, p. 9; Lenaerts, K., “Subsidiarity and Community Competence in the Field of Education,” *op. cit.*, pp. 129-131.



### 8) *Mobility and Transnational Cooperation*

Through accreditation, a different objective of the Bologna process is achieved, i.e. student and teacher mobility. This requires a guaranteed and transparent basic quality of the accredited trainings. Only if this requirement is met, will the commitment to bring about a growing *professional* and *academic* European mobility be in line with the national evaluation of diplomas, as is prescribed by law and custom. Education should become embedded in the cultural process and its mission therefore interlinked with historical, ideological, philosophical or language-specific identities and with other national characteristics. It is Europe's mission, together with equality and quality in education, to actively stimulate cultural diversity. This concern should remain a part of the Bologna process, in line with Articles 165 and 166 of the TFEU.

Automatically recognising the equivalence of diplomas obtained by students and graduates in other EU member states and, by extension, in the other countries that have signed the Bologna declaration is, as yet, not a part of the formal, international legal system. That is why the comparability of diplomas and qualifications ("*readability*," "*comparability*" and "*compatibility*") is essential for the implementation processes of the ministerial signatures under "Sorbonne" and "Bologna." This is a unique opportunity for transnational cooperation, not only in the field of quality assurance, but also of accreditation, recognition and validation of diplomas.

Those graduating from a transnationally accredited training, for example, will be considered to have obtained a similar degree as those graduating from a corresponding accredited training. The degree will be equivalent for the purposes of meeting the entry requirements, allowing the students to move on to another accredited higher education training within the "transnational education space." The recognition procedure of individual diplomas could also be greatly simplified. Institutions will maintain their entry requirements, but diplomas from nation A will be treated in the same way as the diplomas from nation B for the purposes of accessing higher education trainings, and *vice versa*.

### 9) *Transnational Cooperation and Upholding the Subsidiarity Principle – the Concrete Case of Dutch-Flemish Accreditation Procedures*

A research project focuses on the unclear international law status of transnational institutional cooperation and will be supported by the

Dutch and the Flemish government.<sup>108</sup> The Treaty establishing NVAO (Accreditation Agency of the Netherlands and the Flanders) does not bestow general competences, but only competences that are necessary and useful for carrying out the assignment and that need to respect national competences.<sup>109</sup>

Consequently, the assignments of the accreditation agency that are not clearly mentioned should be interpreted within the framework of the treaty, while observing the subsidiarity principle. This implies that (1) the assignment cannot be better performed at the national level; and (2) the objectives are better reached through supranational initiatives (i.e. by the accreditation agency). What factors justify this intervention on a bilateral level?

The aforementioned Treaty starts from the subsidiarity principle, on the one hand, relating to the responsibility of the institutions regarding organisation and quality of education and the recognition of the freedom of education, as enshrined in the constitution of both countries and, on the other hand, relating to the desirability of a joint accreditation of trainings and the recognition of new trainings, if this provides added value. Consequently, Flanders and the Netherlands are still responsible for a number of subjects, while at the same time respecting the mutual constitutional prescriptions. Moreover, the treaty can only be interpreted within the aforementioned framework. The assignments to be carried out by the accreditation agency have to be interpreted on the basis of the treaty and must be in compliance with the subsidiarity principle. On the other hand, the national objectives are only achieved through the supranational level, given the inherently international nature of quality assurance and the added value both parties attach to an Accreditation Agency created by a treaty.

The subsidiarity requirement will only be met if it is proven that accreditation is better organised at the Flemish-Dutch level than at the national level. There is no doubt any more that the Flemish-Dutch level offers clear added value. Quality requires accreditation; accreditation requires, in the Flemish-Dutch context at least, a supranational tool. However, the question may be raised of which (additional, delegated) competences<sup>110</sup> fall under the subsidiarity principle and which do not

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<sup>108</sup> See the Transnational Accreditation example from the “Low Countries.”

<sup>109</sup> Preface: “This Accreditation Agency should be given the necessary competences under Dutch and Belgian law needed or useful to fulfil its mission, within the limits imposed by this Treaty and national legislation”; the Explanatory Note, point 3 states: “The Treaty leaves the national competences in the field of higher education unimpeded.”

<sup>110</sup> Following Article 1, par. 2 of the Treaty.

necessarily belong to the NVAO (*Nederlands-Vlaamse Accreditatie-organisatie*). Even more so, as certain matters are covered under the stipulation “the parties to this treaty will remain responsible for their own education.” For example, is “maintaining an educational register” not best performed by the national education administration, which, at the same time, is also able to control the exponential growth of trainings (and their requirements)? The institution is appointed via a simple decision from the Flemish government.<sup>111</sup> In addition, a link with the “central database”<sup>112</sup> should be an objective. Observing the proportionality principle raises the question of how far the responsibilities, procedures and actions of NVAO can reach.

The debate in Flanders regarding the introduction of accreditation did not create such a stir, as was the case in other recent (national) examples where fundamental reforms to higher education were carried out. The VLIR (Flemish Inter-University Council) hardly paid any attention to it. Some underwent the changes without protest, probably still baffled by the volume of legislation facing the educational arena; others did not find it worth debating, as they assumed that their institution would hardly be affected. It may also not be assumed that the academic community saw accreditation as something that was self-evident. Parliamentary debates devoted very little time to this milestone as well. For a long time, accreditation was a non-issue.

Before the extent of the accreditation became known, no university or college found it necessary to put this issue on the management meeting’s agenda. The resemblance to the signing of the Bologna Declaration, which passed almost without protest, is striking. The current situation is different, however. A shock wave ran through the higher education system, which was felt down to the department and faculty level. The realisation that an unfavourable accreditation or opinion on macro-effectiveness from the “Recognition Commission” could have financial and other implications, together with the proposed rationalisation, with no doubt have contributed to this.

#### ***D. European Union Citizenship***

In the Treaty of Maastricht, a “European citizenship” was established.<sup>113</sup> The question arises as to what should be understood by

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<sup>111</sup> Article 64, par. 2 of the *Structuurdecreet* (Structural Decree). Previously, the second sentence read: “This drafting and update should always be ratified by the department of Education.”

<sup>112</sup> Article 113 *bis* of the same decree.

<sup>113</sup> Now in Article 17 EC.

this European citizenship. “European citizenship” is a somewhat vague concept with which various elements are associated. A first initiative can be found in the decision of the ECJ regarding the free movement of services. In the *Cowan*<sup>114</sup> judgement, the Court established that not only was discrimination of receivers of services prohibited, but that potential receivers of services are protected by the discrimination ban as well. Given the fact that everyone is a “potential” receiver of services, the Court expanded the potential discrimination ban to all EU citizens. This judgement, which is considered by doctrine to be the first practical application of European citizenship, could then also imply a general right of entry to and residence in the territory of other member states for all EU citizens. The Maastricht Treaty, however, did not go that far. Article 18 EC determines that “every citizen of the Union shall have the right to move and reside freely within the territory of the Member States, subject to the limitations and conditions laid down in this Treaty and by the measures adopted to give it effect.”<sup>115</sup>

The provision of citizenship has added value for the group of economically non-active EU citizens, to whom the right of equal treatment is important. Admittedly, so the Court says, that right is subject to limitations and conditions, which lay in the fact that the right of residence must not become an “unreasonable” burden on the host member state. The general principles of Community law and in particular the *principle of proportionality* must be respected.<sup>116</sup> The implementation of education in reference with the concept of EU’s citizenship should be seen as a privileged opportunity for member states.

An overview of the judgments shows that the Court dealt with a wide range of application of the principle of “European citizenship,” being:

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<sup>114</sup> ECJ, case 186/87, *Cowan*, [1989] ECR, 2 February 1989, p. 195, par. 17: “When Community law guarantees a natural person the freedom to go to another Member State the protection of that person from harm in the Member State in question, on the same basis as that of nationals and persons residing there, is a corollary of that freedom of movement. It follows that the prohibition of discrimination is applicable to recipients of services within the meaning of the Treaty as regards protection against the risk of assault and the right to obtain financial compensation provided for by national law when that risk materializes. The fact that the compensation at issue is financed by the Public Treasury cannot alter the rules regarding the protection of the rights guaranteed by the Treaty.”

<sup>115</sup> See also ECJ, case C-413/99, *Baumbast and R.*, [2002] ECR, 17 September 2002, p. I-7091.

<sup>116</sup> See also ECJ, case C-153/02, *Valentina Neri v. European School of Economics* [2003] ECR, 13 November 2003, p. I-13555.

the right to vote and to stand as a candidate in municipal elections,<sup>117</sup> the declarations by the United Kingdom concerning the definition of the term “national” of the British Overseas Citizen,<sup>118</sup> the handing down of surnames to children of nationals of member states and the dual nationality,<sup>119</sup> the principle of the right to move freely and to reside in the member states<sup>120</sup> and the deductibility from taxable income of maintenance paid by a taxpayer resident in Germany to his former spouse resident in Austria and the proof of taxation of maintenance payments in that member state.<sup>121</sup>

Other judgments concerned the allowances for young people seeking their first employment, more precisely the grant being conditional on completion of secondary education in the member state concerned.<sup>122</sup>

The Court focussed on a wide variety of aspects of real life within the common European space and judged the following cases as well: the right of Union citizens and their family members to move and reside freely in the territory of a member state, more precisely of family members who are nationals of non-member countries (nationals of non-member countries who entered the host member state before becoming spouses of Union citizens),<sup>123</sup> the private international law relating to surnames and the applicable law determined by nationality alone about a minor child born and resident in one member state with the nationality of another member state and the non-recognition in the member state of which he is a national of the surname acquired in the member state of birth and residence,<sup>124</sup> the benefits granted to surviving spouses of victims of war and the conditions of residence on the national

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<sup>117</sup> ECJ, case C-323/97, *Commission of the European Communities v. Kingdom of Belgium*, 9 July 1998.

<sup>118</sup> ECJ, case C-192/99, *The Queen v Secretary of State for the Home Department*, ex parte Manjit Kaur, 20 February 2001.

<sup>119</sup> ECJ, case C-148/02, *Carlos Garcia Avello v. Etat Belge*, 2 October 2003.

<sup>120</sup> ECJ, case C-224/02, *Heikki Antero Pusa v. Osuuspankkien Keskinäinen Vakuutusyhtiö*, 29 April 2004.

<sup>121</sup> ECJ, case C-403/03, *Egon Schempp v. Finanzamt München V.*, 12 July 2005.

<sup>122</sup> ECJ, case C-258/04, *Office National de l'Emploi v. Ioannis Ionnidis*, 15 September 2005.

<sup>123</sup> ECJ, case C-127/08, *Blaise Baheten Metock, Hanette Eugenie Ngo Ikeng, Christian Joel Baheten, Samuel Zion Ikeng Baheten, Hencheal Ikogho, Donna Ikogho, Roland Chinedu, Marlene Babucke Chinedu, Henry Igboanusi, Roksana Batkowska v. Minister for Justice, Equality and Law Reform*, 25 July 2008.

<sup>124</sup> ECJ, case C-353/06, *Stefan Grunkin, Dorothee Regina Paul, Leonhard Matthias Grunkin-Paul, Standesamt Niebüll*, 14 October 2008.

territory,<sup>125</sup> the protection of personal data and the principle of non-discrimination on grounds of nationality (the concept of necessity and the general processing of personal data relating to citizens of the Union who are nationals of another member state and the central register of foreign nationals)<sup>126</sup> and the assessment of validity for nationals of a member state of professional activity in another member state and the level of remuneration and duration of the activity and the retention of the status of “worker” and the right to receive benefits in favour of job-seekers.<sup>127</sup>

It is of no hazard that most of these issues do cover the question, often raised by the modern and the mobile citizen, how far the primacy of their European citizenship will impact the boundaries of the Union. Perhaps this principle can have a much more powerful consequence than the founders of the Maastricht Treaty ever expected.

## **IV. The University Concepts – Autonomy and Accountability**

### ***A. The Mission of the University***

#### *1) The “Idealistic” versus the More “Functional” Concept of the University? A New Synthesis?*

One of the advantages of the Bologna Declaration that could be put forward is that it immediately debunks the myth of “the University.” “*University*” is understood to mean all sorts of institutions of higher education which issue qualifications or titles of this level, regardless of their label in the member states, according to the Decision 819/95/EC of the European Parliament and the Council of 14 March 1995 establishing the Community action programme “Socrates.”<sup>128</sup>

Even philosophers have occupied themselves with attempts to classify the concept of “the University” in categories, ranging from the classical model of the unconditional and pure *idea* of the university to the more market-oriented and government-influenced concept of the

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<sup>125</sup> ECJ, case C-221/07, *Krystyna Zablocka-Weyhermüller v. Land Baden-Württemberg, Bundesrepublik Deutschland*, 4 December 2008.

<sup>126</sup> ECJ, case C-524/06, *Heinz Huber v. Bundesrepublik Deutschland*, 16 December 2008.

<sup>127</sup> ECJ, joined cases C-22/08 and C-23/08, *Athanasios Vatsouras (C-22/08), Josif Koupatantze (C-23/08) v. Arbeitsgemeinschaft (ARGE) Nürnberg 900*, 4 June 2009.

<sup>128</sup> OJ L 87/10 of 20 April 1995.

*function* of the university, namely, the public service which, in certain countries, used to be a part of the state administration.

Humboldt wrote about the “lonely freedom” of science, Whitehead spoke of the university as a “service to society.”<sup>129</sup>

The synoptic table here that gives a concise representation of various concepts of the university, which – when these concepts are translated to their modern counterparts – points to the current complexity of the missions and expectations of the contemporary university.

### Summary Table of the Five Concepts

Chapter	Part One: Idealistic Concept			Part Two: Utilitarian Concepts	
	I – A seat of learning	II – A community of scholars	III – A centre of progress	IV – An intellectual mould	V – A production factor
Principal author	J.H. Newman	K. Jaspers	A.N. Whitehead	Napoleon	Council of Ministers of the USSR
Goal	The fulfilment of the individual's desire for learning	The fulfilment of mankind's desire for truth	The fulfilment of society's desire for progress	Political stability of the state	Edification of the Communist society
General concept	A general and liberal education, universal learning	Unity of research and education, covering all the sciences	The symbiosis of research and education, in the service of the creative imagination	Professional and uniform education, entrusted to an organised staff	A functional tool for professional and political training
Principles of organisation	-pedagogy of intellectual development	-a rational organisation into faculties	-professional and creative staff	-an administrative hierarchy	-controlled manipulation of the granting of diplomas
	-boarding school and “tutors”	-academic freedom	-students capable of applying some general principles	-uniform programmes	-recourse to all the productive forces of the nation
Conclusions with regard to the problem of offering education to the masses	A diversified range of institutes of higher education, among which the universities maintain their originality			An official uniform network for both the masses and the elite	Gearing of the number of students to economic needs and diversification of institutes

<sup>129</sup> Dreze, J., Debelle, J., *Conceptions de l'Université*, Paris, 1969, pp. 8-22.

Many of these contradictions seem to have become artificial. For instance, training young people to take up executive functions or to form a professional elite is not incompatible with the mission to search for “*Truth, Justice and Beauty*.” However, there is a real danger that certain highly specialised courses, even though they are of an academic level, remain devoid of the question as to meaning of “universality,” and that the critical mission of the university fails to extend to certain courses.<sup>130</sup>

The university may not turn aside, for example, to become merely a research institute or a narrowly specialised higher technical school. One of the specific characteristics of the European-oriented concept is precisely the refusal to make a selection between the “*researcher discipline-based loyalty*”<sup>131</sup> and the “*teaching, institutional loyalty*,”<sup>132</sup> in accordance with the American school of thought.<sup>133</sup>

Or – in the same vein – an unacceptable restriction could also be placed on the academic mission by the complete deletion of historical, philosophical or cultural curriculum content.<sup>134</sup>

May I refer to a statement by one of the most brilliant minds of our time, the language philosopher, Georges Steiner, who in his famous *Bluebeard’s castle* wrote:

We know now that formal knowledge and the distribution of education is not necessarily accompanied by an increase in rationality and morality. Libraries, museums, theatres, universities and higher technical schools, in which the transfer of the arts and the sciences takes place, can prosper right beside concentration camps.<sup>135</sup>

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<sup>130</sup> In the sense of the remark of the late rector of the Jesuit University in Antwerp, Van Bladel s.j., who wrote in his contribution: “De Pretentie van een Universiteit,” in *Streven*, March 1971: “We can resign ourselves to the apparently inevitable state of affairs and allow the universities to continue to develop themselves into extremely specialised professional training schools, so that ‘university education’ is also revealed as fiction.” Elsewhere, he postulated that advanced professional training in the specific method of a particular scientific discipline and the study of its technical aspects must go hand in hand with research into the social implications and philosophical foundation of that discipline: a combination of “*the scientific, the philosophical, and the social*.”

<sup>131</sup> Characteristic of the American top (research) universities.

<sup>132</sup> Of overriding importance for *community colleges*.

<sup>133</sup> The standard article in this area remains: Gouldner, A., “Cosmopolitans and Locals,” in *Administrative Review Quarterly*, vol. 1, no. 2, 1957.

<sup>134</sup> In this connection, remember the controversy some time ago in the medical faculty of UCA and in the law faculty of UG.

<sup>135</sup> Steiner, G., *Bluebeard’s Castle: Some Notes Towards the Redefinition of Culture*, New Haven, Yale University Press, 1971.



University education, including the need of critical, philosophical thinking, should not be revealed as a fiction.

## 2) From “University” to “Multiversity”

It is interesting to note that the way in which higher education has diversified in Europe has varied widely from one country to another.<sup>136</sup> But in most member states efforts have focussed for many years now on increasingly extending further, non-university education, including further education of an eminently vocational type.<sup>137</sup>

As a consequence, it is often said that the growing tendency over at least the last fifty years has been to convert – to borrow Clark Kerr’s expression – *university* into *multiversity*. Kerr was referring to what had happened to major universities, spread out across different and distant sites. He expressly stated that a corporation of this type could not continue to be considered a single “*community*,” since it actually included many different communities, even some opposed to others.

To merit the title of academic community, it would have to have common interests, like those of the teachers and students of

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<sup>136</sup> E.g. Scott, P., “Back to the Future? The Evolution of Higher Education Systems,” in B.M. Kehm (ed.), *Looking Back to Look Forward. Analyses of Higher Education after the Turn of the Millennium*, Kassel, Incher, pp. 24-25.

<sup>137</sup> *Fachhochschule* [...] Britain, on the other hand, which already had a very large further education sector dependent on its Local Education Authorities, bestowed the status of universities on the major institutions of which this was composed (polytechnics and similar establishments) in 1992. France has followed a mixed route; on the one hand, from the early 1970s it had already begun to turn some of its technical colleges into university institutions and to create other new institutes of a similar kind (*Les Instituts Universitaires de Technologie*). It then continued this enterprise by creating des *Instituts Universitaires Professionnalisés* and even *Instituts Universitaires de Formation de Maîtres*, which went some way to replacing the old *Écoles Normales* teacher training colleges; and yet it has kept outside the university domain – and preserved as a particularly prestigious elitist sector – its *Grandes Écoles*. The Bologna process urged the Government to rethinking the shape of higher education institutions and, to some extent, guaranteed some autonomy to the French universities. In other countries, higher education acts led to the institutional inundation of the university and the disappearance of any type of further or non-university education: as a consequence higher – or university – education is the only type that now exists. Within this diversification of institutions some models – specifically the Soviet model – appear to have almost completely vanished. It would also be worth considering what is really left of the old Napoleonic model in France itself, not to mention other countries, including Spain. In neither England nor Scotland does the typically “Oxbridge” system appear to be the predominant model today.

medieval times. In the “multiversity,” on the other hand, there were many varied and even conflicting interests.

3) *Associative Institutional Networks and “Concentric Circles?”*

How could the changing relations between institutes of tertiary education, both within and outside the universities be shaped?

I would like to use an image which is supported, in a certain sense, by the writings of the French science philosopher Paul Ricœur, namely, the image of concentric circles. The concept of concentric circles of higher professional schools, with the universities in the centre could give a ground for a global reorganisation of higher education institutions. The concentric model could be defined as a structure which opens up access routes in both directions and increases the possibilities of mutual influence.

The coherence in each of the “concentric circles,”<sup>138</sup> the unity in diversity, must be made explicit in the mission or “charter” of the institute of scientific education. This applies to all institutes “of an academic level,” the world over.<sup>139</sup>

It has been predicted earlier that the market-oriented approach or “*market culture*” of the university would clash with the Humboldtian education ideal and its accompanying “*basic assumptions and beliefs.*” According to a Dutch analysis,<sup>140</sup> the solution can only be found in a redefinition of the core tasks of the university,<sup>141</sup> “with broader attention for tasks geared towards society and the market.” In a more recent version of their research, the authors argue – as indicated above – that the law should clarify, specify, and tighten<sup>142</sup> regulations on these

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<sup>138</sup> De Groof, J., “Hoe Confederaal worden Universiteiten en Hogescholen? *op. cit.*, pp. 90-106.

<sup>139</sup> One of the most disappointing moments after the joint drafting of the new law on the universities and academies in Russia, which provided for their autonomy for the first time in history, was the demand of the Russian conference of rectors – with the exception of the Moscow Lomonosov University and the State University of St. Petersburg – for concrete guidelines and models from the government, before drafting their own *Charter*.

<sup>140</sup> Mouwen, C.A.M., Bijsterveld, S.C., “Von Humboldt in een Modern Jasje,” in *Academia, Juridisch Beleidsmatig Tijdschrift*, VNSU, no. 5, 1998, pp. 16 *et seq.*

<sup>141</sup> In the aforementioned contribution, limited to scientific education and scientific research.

<sup>142</sup> Van Bijsterveld, S.C. Mouwen, C.A.M., “De Universiteit op een Keerpunt. De Hybride Universiteit en de Rol van de Overheid,” in *N.T.O.R.*, no. 2, 2000, pp. 55 *et seq.*

matters.<sup>143</sup> In some European regulations, the balance has been found, in the past, in the triple mission of the university (and later of the college, too).

The “mission” is the core of the “*Networks on Higher Scientific Education*” that must display the following characteristics:

a) The Primacy of Scientific Research

This is what Paul Ricœur<sup>144</sup> calls the “*préséance*” of the permeation of science and research into all branches of education. To a certain extent, this also includes the active interaction of lecturer and student in their common search. There has to be a resonance of the *intellectual adventure*, for instance in the sense of rejecting a strictly one-way educational relationship between an all-knowing teacher and students who do not have that prerogative (remember the wise words “I learnt a lot from my teachers, more from my fellow students, but I learnt the most from my students.”). Subsequently, an academic *community* needs to be formed – a “*communio*,” which demands much more than a tidy campus complex.

b) The Touchstone of Academic Freedom

This brings us to the old and new, challenging and vast principle of *academic freedom*. It is probably no accident that it is mainly the new democracies that give this freedom so much attention, even down to their constitution,<sup>145</sup> as every freedom implies a right. Here too, we could draw a lot of inspiration from e.g. the highly creative writings of South African universities, which remind us that old democracies should remember the fundamental questions more often.<sup>146</sup> Academic freedom needs to be supported by autonomy of management and administration, but it also implies the great task of assuming shared responsibility and joint management. “Academic freedom requires that faculty make decisions about other faculty and the content of their instruction, on the basis of academic excellence alone,” is the core of a broad Anglo-Saxon

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<sup>143</sup> E. g. “in the context of specifying the justification and supervision, and of guaranteeing that accounts are kept in such a way that the various flows of funds remain clear and distinguishable.”

<sup>144</sup> Dreze, J. Debelle, J., *Conceptions de l'Université*, op. cit., 1969, pp. 8-22.

<sup>145</sup> Cf. De Groof, J., Neave, G., Svec, J., *Democracy and Governance in Higher Education*, The Hague, Council of Europe 1998.

<sup>146</sup> Malherbe, R., “A Fresh Start I: Education Rights in South Africa,” in *European Journal for Education Law and Policy*, vol. 4, no. 1, 2000, pp. 49-55; Malherbe, R., “A Fresh Start II: Issues and Challenges of Education Law in South Africa,” *ibidem*, pp. 57-68; and his contribution: “New Beginnings: Introducing the South African Constitution and Bill of Rights,” in J. De Groof, R. Malherbe, A. Sachs (eds.), *Constitutional Implementation in South Africa*, 2000, pp. 10-27.

study. The American Association of University Professors adds: “The professor does not speak for the institution, nor the institution for the professor.”

This joint management of all levels – the so-called *Drittelparität* of the German and Austrian universities (students, faculty, staff, and, in certain cases, stakeholders, too) – is something which several higher education institutes in Europe find hard to uphold in practice.

c) The Underlying Values

Furthermore, there is the *ethos* of the institute. The scientific centre will place itself in the context of a broader cultural project, while seeing to it that the institute remains or becomes a locus of innovation and critical reflection, and of the education of students. This education does not necessarily have to be aimed at producing new scientists, but it must always be geared towards educating them to be independent persons who can participate in science and culture. This is, in the end, the ultimate service to society.

## ***B. Autonomy and Accountability***

### *1) Definitions*

The concept of institutional autonomy implies that the institution enjoys freedom from government regulation in respect of the internal organisation of the university, its governance, the internal distribution of financial resources, in the generation of budgets from non-public sources, the recruitment of its staff, conditions of study and finally, the freedom to conduct teaching and research. Put succinctly, institutional autonomy is that condition which permits an institution of higher education to govern itself without external interference. Such is the theory. In practice, the higher education system is not free from external influence nor control. Furthermore, institutional autonomy is not a constant over time.

Institutional autonomy is “relative” or “conditional” – that is, it is dependent on, and its extent determined by, an institution’s fulfilling certain previously defined criteria of cost, output or performance measured in some other manner. The expansion in the range of responsibilities assigned away from central administration of government down to the individual establishment, whilst adding to the sphere of activities in which institutional self-regulation operates, is also conditioned by a parallel strengthening of the principle of accountability, performance assessment and audit. Institutional autonomy has never meant an absence of law or rules. Tertiary education institutions are answerable to general legal instruments, as

well as to the expanding of the law which deals specifically with higher education.

One of the more interesting aspects is the distinction in legal and administrative practice and doctrine between “substantive autonomy,” “procedural autonomy” and what certain legal writers have termed “organic autonomy.” Since they have direct bearing on both the range of activities which fall under the *purlieu* of the institution and their nature, it is useful to spell them out.

*Substantive* autonomy is the right of a university to determine its own study programmes and their goals. *Procedural* autonomy involves the right of a university to determine the means it shall devote to fulfil priorities agreed upon beforehand and assigned to it as part of national (governmental) policy. *Organic* autonomy recognises the right of institutions of higher education to determine their own academic organisation, whether it is to be based on faculties and departments, schools, institutes, professional areas, etc.

The drive towards decentralisation of decision-making away from central administration down to the individual university and the gathering *momentum* of deregulation was accompanied by some significant changes in institutional status. In the non-state sector, universities were guaranteed corporative status. In the state sector, universities were endowed with full administrative autonomy with respect to internal budget distribution, the presentation of accounts and in staffing policy.

## 2) Appreciation

The concept of “remote steering” assigns the formulation of national strategy to central government whilst conferring a wide degree of latitude in determining how this strategy would be fulfilled by the individual university and through cross-sector planning also by the non-university institutions. Not only was this thought to increase flexibility in subject provision, but also flexibility in meeting student demand. Both were designed to improve the employability and appropriate qualifications amongst graduates.

Institutional self-regulation in the process domain is itself dependent on success and good performance in the area of “product control.” The rise of *a posteriori* financing, performance monitoring and, last but not least, the flourishing quality assessment “industry” points to the fact that, greater institutional autonomy in the process domain is not always reflected by a similar latitude in the product domain. Indeed, the price to be paid for enhanced self-regulation in the process domain appears to be closer surveillance over institutional performance judged within the

sphere of the product domain.<sup>147</sup> The rise of the use of performance contracting in the university sector confirms this tendency.<sup>148</sup>

The higher education legislation of the early 1990s shaped a policy based on the principles of *deregulation*, *autonomy*, and *accountability* and that this would be similar for the universities and the non-university higher education institutions, state and non-state. They determine their mission statement, have a legal personality, own their buildings, borrow funds, spend budgets to achieve their objectives, design the *curricula* of the fields of study, which themselves are set by the legislation, employ and dismiss staff, determine the professional career of their staff, decide about student policy. The organising body of the higher education institution is responsible for the diplomas and certificates that are automatically “recognised” by the Department of Education, mostly without official diploma “homologation” procedures.

### 3) *Characteristics of the three Dimensions to Autonomy in Governance*

#### a) External Autonomy

External autonomy is a criterion pre-eminently formal. The institution stands as an independent legal personality as it may also be if the status of an “organising power” is either conferred upon it or transferred to it, by law. For their legal protection, the higher education institutions can no longer depend on the Department of Education, but have to defend their interests themselves in court, as independent legal persons. The state institutions stand not any more as “administrative service” of the state.

Non-state institutions may become subject to general university legislation once they accept government subsidies or once their diplomas are recognised officially. To this should be added the practice to enter into contractual agreements (*contractualisation*) with other partners in the private sector and/or with the state.

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<sup>147</sup> Neave, G., Van Vught, F.A. (eds.), *Prometheus Bound: The Changing Relationship between Government and Higher Education in Western Europe*, Oxford, Pergamon; De Groof, J., *The Legal Status of Teachers in Europe. Mobility and Education*, Leuven, Acco, 1995.

<sup>148</sup> Houtman, C., “De Plaats van Prestatie-Indicatoren in Beheersovereenkomsten binnen het Hoger Onderwijs en het Wetenschappelijk Onderzoek,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, no. 5, 2004-2005, p. 407.

b) Organic Autonomy

Organic autonomy confers upon the university the capacity to determine its own internal forms of academic organisation. State institutions, for the most part, have traditionally an identical arrangement across all establishments within the public sector. Non-state institutions follow the provisions laid down in their act of foundation or deed of incorporation. In this latter instance, organic autonomy derives from the constitutional right to found educational establishments outside the public sector.

There are, however, certain developments the importance of which merit attention. Also some state institutions are under the obligation to conform to the laws, decrees, governmental circulars and statutes which touch upon their internal academic organisation. However, provided the institution remains within the general guidelines, the thrust of this legislation is increasingly to allow the possibility of individual variations between establishments. The more the relevant decrees were based on a large consensus among institutions. Yet, it can be argued that both administrative and academic organisations should become more uniform, irrespective of the legal status, public or private, of the establishment, the better to facilitate *entre autres*, international exchange and student mobility – even implementing the Bologna process.

The specific identity of an institution of higher education is set down in its charter or founding statutes. Neither the specific identity nor the degree of administrative autonomy an institution enjoys prevent government from requiring that it implement certain procedures – for example, setting down internal regulations governing disciplinary proceedings, disputes over examinations or public tendering – measures justified in the name of clarity in decision-making.

c) Administrative Autonomy

Administrative autonomy or, autonomy grounded in institutional self-coordination is the touchstone of institutional independence. Under this rubric come freedom to choose priorities, to decide *vis-à-vis* duties and opportunities. It also embraces the power to set complementary detailed procedures for institutional administration, budgetary control and personnel policy. Such discretionary powers are limited on a first level by the charter or by government legislation and at a second level by the regulations issued by administrative instances in the execution of their powers. The exercise of this particular dimension within institutional autonomy is clearest when applied to staffing policy, the organisation of teaching and research and in finance, budget and management.

- Staff

The largest single heading in the university budget are personnel costs. Within the sphere of staff policy – over and above the issue of salaries, pension rights and social security – a division of responsibility between national administration and institutional management, is to be found. The career structure, conditions of appointment, assessment procedures, the salary structure within each rank, are often laid down at the national level, as too are sickness benefits, vacation allowances, etc.

Yet freedom for an institution to appoint its staff is crucial, but the principles of good administration should be respected.<sup>149</sup>

- Teaching and Research

Though there are notable exceptions, the subjects offered by universities are often confined to the areas of study for which they have obtained validation, recognition or accreditation from government (or the competent agencies, as mentioned before) and that the corresponding diplomas to which such courses lead, are likewise recognised. Furthermore, such validation also ties in with legislation on the financing both of institutions and of particular courses. The state did not set down norms for estimating the numbers of students to be accepted and even the numbers themselves as a condition for granting public funding (except eventually the rationalisation norms). Institutions are in most countries not free to offer courses that are not mentioned in an official *Register*, except in the “post-academic” programme sector.

Amongst the normative regulations laid down by central authority and which surround teaching are length of study time, the number of credits, course points required, conditions governing transfer between courses and registration procedures, course programmes, etc. In addition, each university lays down its own regulations for courses and examinations, determines the teaching programme, timetable, the method of assessment and criteria for evaluating individual student performance.

- Management of Administration and Finance

Despite the noise and clamour that have accompanied the introduction of the idea of “market-driven” higher education and despite outstanding examples of research units attracting funding and support from the private sector, for the greater part reliance on public funding remains the rule. Income from student registration fees, investments, gifts and legacies as a percentage of total yearly expenditure, tends to be meagre indeed. Moreover, most governments do not permit registration

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<sup>149</sup> De Groof, J., *The Legal Status of Teachers in Europe*, *op. cit.*



fees to exceed what is set down by law, primarily to avoid the accusation of sacrificing the talented but less well-off and infringing, thereby the basic principles of equity and merit.

One of the prime concerns of national framework legislation as it applies to higher education, is to seek to strike a balance between budgetary continuity for the institution as a whole as against its intellectual freedom *vis-à-vis* the State as prime paymaster.

No public funding authority will base higher education finance on the issuing of blank cheques. Universities are answerable for their funding and the governing council must show without peradventure that the institution falls fully in with the public standards and requirements of financial rectitude. Furthermore, the government insists on an internal audit, just as the institution has itself to show how quality control bears out its own policy and priorities. In the case of the institution's own assets and its own income, the principle of freedom to follow its own priorities should hold valid. However, legislation regulates the use of an institution's self-generated funds, often on the grounds first, that such funds are used to top out basic running costs and second, because the prime source of an institution's internal funds is the state budget.

Since the budgetary cycle is annual, so is the presenting of accounts. However, regulation applies a multi-annual planning cycle (this applies also to investment and research policy) and requires therefore that institutions present budgetary headings and line items according to a similar format.

#### 4) *The Changing Meaning of Autonomy and Accountability*

From the 1990s, the concept of autonomy was fiercely juxtaposed with the requirement for accountability. A range of external policies created new demands on universities which were regarded as leading to an erosion of autonomy.<sup>150</sup> Government required a reformatting of academic qualifications that were assembled along the lines of a national qualifications framework. Government indicated that the subsidy formula for funding universities would privilege certain academic subjects or disciplines and, in this way, discourage others. Government required a process of quality assurance that pushed for explicit declarations of performance in academic enterprise.

Government required a tough planification schedule including mergers, associations and incorporations of higher education

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<sup>150</sup> See Heijnen, B., De Groof, J., Jansen, J., *The 21<sup>st</sup> Century Dean. A Manual for Effective Management and Authentic Leadership*, Flounder, Flemish Community, 2003.

institutions, with dramatic implications for staffing, students and programmes. Government required strict good governance in institutions which provoked new legislation. In a short period of time, government had intervened quite directly in higher education institutions both to guarantee quality management but also to require compliance with a new regime of academic regulations. This raised sometimes charges against government on the basis of infringing on institutional autonomy. The response from governmental authorities was to make the point that autonomy was never meant to be absolute, and that accountability for public resources was an important part of the equation.

On all legal dimensions, as above described, autonomy was questioned:

Education is more closely audited, assessed and centrally controlled than at any time in history. This has formed an important part of the centralisation of power over the direction of education policy and the management of the system to meet various political and economic goals. The relationship between law and politics in the context of education reform is important to an understanding of the way that the politicisation of education during the past 30 years has shaped its legal framework and the structure of control and regulation within the system.<sup>151</sup>

This interventionist position of government was not the only source of changes to the meaning of autonomy in higher education. The transition from academic self-rule to a new “managerialism” has as much to do with the practices and policies of the new class of professionalized university managers as it has with external intervention by the democratic state. The transnational cooperation within the higher education landscape directly provoked such changes in the institutional behaviour.

### *5) Institutional Changes?*

European universities are encouraged to become strong players in the global knowledge society. This requires a change in governance and management. According to the European Commission, Europe needs modernised universities to face the well known changes that are currently taking place in the European higher education area and which have a direct impact on the roles of deans and other senior academics, requiring them to interact as managers and leaders with academic and other staff.

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<sup>151</sup> Harris, N. “Diversity, Inclusion and the Role of Education,” in N. Harris (ed.) *Education, Law and Diversity*, Oxford, Hart Publishing, 2007, pp. 31-32.

One of the outcomes of the annual conference of the *European centre for strategic management of universities* in September 2007 on managing people in changing European academic environments was that while European universities confirmed that their biggest asset lied in their people, they generally did little to recognise the critical importance that the management of such people played in the successful fulfilment of a university's mission. How can people be managed in academic environments? Should they be managed? What is distinctive about such management in academic environments? Can we learn and adapt approaches from other sectors? How can human resource strategies be designed and implemented to support the overall university mission and strategy?

In the Trends IV Report<sup>152</sup> entitled "*European Universities implementing Bologna*" the outcomes of the Bologna process in European higher education institutions were formulated. Many universities and colleges noted that the Bologna reform process had served as a special opportunity for strengthening institutional coherence, enhancing institutional transparency and coordination and reinforcing horizontal communication channels, resulting in different combinations of the following features: strengthened leadership, better distribution of work and resources, reduction in the number of faculties, organisational reforms driven by improved inter-faculty cooperation, more coherent post-graduate programmes across the university and better integration of administrators. University management became familiar with techniques of private law and in some cases with the public-private partnership.

The Trends IV Report also mentioned the different approaches throughout Europe, regarding the more or less forced implementation of the Bologna process, the role of the governments and the institutions. Some universities had a proactive attitude to the reforms, reflecting successful institutional leadership. Other universities progressed as far as possible with internal changes before the government of their country could pass the relevant legislation and framework. The internal implementation processes were greatly affected, helped or hindered by the guidance, support and regulations at national level.

Complaints were also frequently voiced in the Trends IV Report about either premature of unnecessary administrative overregulation which interfered with institutional autonomy.

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<sup>152</sup> Reichert, S. Tauch, C., Trends IV: European Universities implementing Bologna, EUA Publications, 2005.

In this context the Ministers' conviction expressed in the Berlin Communiqué in 2003 as part of the Bologna follow-up process should be recalled:

Aware of the contribution strong institutions can make to economic and social development, Ministers accept that institutions need to be empowered to take decisions on their internal organisation and administration. Ministers further call upon institutions to ensure that the reforms become fully integrated into core institutional functions and processes.

Integration of reforms into the core institutional development is naturally more difficult to achieve if core elements cannot be shaped by the institution itself. Such lack of autonomy was noted most often in the Trends IV Report with respect to staff management and recruitment, as well as to student selection.

Higher education institutions should be transfer-agencies of innovative thinking by definition.<sup>153</sup> This is their core business. The answer to the question how to run and regulate an organisation that produces graduates and publications is quite different from how to run and regulate an institution on innovation through education and research. Each intervention of the state in higher education affairs may be acceptable as such, but the sum of them might not be. Allocation models, directives, incentives, performance indicators, quality assessment and end-terms as such should not be seen as restrictions of autonomy. But the institutional leadership request flexible legislation. Checks and balances require an elaborate ratio of participatory and professional management.

### ***C. A Tense Relationship between New Regulations and the Autonomy of the Universities?***

There are strong indications that regulations governing universities will continue to evolve towards an imbalance between an initially detached lawmaker and government on the one hand, and the autonomy of the universities (and other institutions of higher education) on the other. Under the explicit banner of deregulation and administrative autonomy, competency in a wide range of areas has been left to the institutional authorities.

It was apparently the legislator's intention for the institutional authorities henceforth to be able to regulate at their own discretion in

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<sup>153</sup> Cf. Kwikkers, P., "Governance Through Checks and Balances. An Approach to Drafting Regulations for Higher Education and Research," in *European Journal for Education Law and Policy*, vol. 1, 1997, pp. 57-80.

core decision areas. This primacy of universities' autonomy seemed to tie in with a broad international trend. Solemn statements regarding the relatedness of institutional autonomy and greater restraint in government regulation are reaffirmed on a regular basis, including from within the civil service itself.<sup>154</sup>

Increasingly, however, the question arises whether the legislator has since committed to continuing to couple with the responsibilities of the institutions with the intention of broadening the autonomy of the universities. Or has the pendulum perhaps swung the other way and have the contours of the autonomous space that is to be safeguarded consequently shrunk?

Certainly at a moment when the uniformity/convergence in regulation seems almost complete for all universities – irrespective of the legal status of the organising authority – and at a time when a legal framework for universities and other institutions of higher education is written in the stars, the notion of autonomy assumes an even greater urgency. Had a shift taken place to a more controlling attitude on the part of government, this would, moreover, have been coupled with a tendency to issue excessively detailed regulations. It should, for that matter, be noted that the institutional authorities, too, have been guilty of over-regulating.

Hence, the question is whether the “*amended regulation that is to be re-amended*”<sup>155</sup> will jeopardise adherence to the principles of care and transparency in governance, as well as the continuity and quality of internal policy-making. Democratic decision-making presupposes the accessibility and implementability of regulations for all users of and sections within the universities. This principle should always be a

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<sup>154</sup> See, for example *Bijdrage Vlaamse Administratie aan het Regeerprogramma van de Aantredende Vlaamse Regering*, part 5, on “Education and Training,” where it is asserted in the paragraph on the optimisation of government policy and the autonomy of educational institutions that “to restrict government control to the main outlines fits into the evolution from ‘government’ to ‘(good) governance’ which is manifesting itself across Europe. It is linked with the notion of delegation to the most functional level (cf. the debate on subsidiarity and core tasks 7) and the simplification of regulation (regulatory management). ‘Good governance’ also aims to replace one-sided, imperative government prescriptions with clear agreements, and it is based on reciprocity, voluntarism and flexibility.”

<sup>155</sup> De Groof, J., “De Gewijzigde Regelgeving Voor de Universiteiten in de Vlaamse Gemeenschap – et Globale Kader,” in *Tijdschrift voor Onderwijsrecht en Onderwijsbeleid (Journal for Educational Law and Educational Policy)*, no. 1, 1992-1993.

concern for the regulator,<sup>156</sup> and draft legislation should invariably be tested against it. With every new legislative initiative, one must therefore consider whether it might not increase rather than reduce the regulatory and administrative obligations of the institutions.

If new regulation will demonstrably worsen the *planning burden* – or, if you will, the degree of “bureaucratisation”<sup>157</sup> – then the regulator must question its necessity and efficacy, in accordance with the principles of good legislation.

But there is more. When looking at ways of reducing the legislative *corpus*, invariably questions arise with regard to the regulatory role of government in higher education as well as to the future profile of the administrative authority and its toolset. *Ideally*, this debate, too, should be held in advance. Apparently, regulation encompasses aspects of both the *state supervising* and the *state control model*.<sup>158</sup> Legislative policy, especially in the educational field, is hardly policy neutral. The questions arise which competencies the state should never shed and how the regulator should translate this into practical terms.<sup>159</sup> The accelerated developments in education and the consequences of internationalisation for institutions of higher education require an up-to-date answer.

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<sup>156</sup> See the studies by the Schoordijk Institute of the University of Tilburg – Centre for Legislative Studies, and, among others, Geelhoed, L.A., “Deregulering, Herregulering en Zelfregulering,” in Ph. Eijlander, P.C. Gilhuis., J.A.F. Peters, *Overheid en Zelfregulering*, Zwolle, 1993, pp. 33 *et seq.*; Zoontjens, P., “Naar een Wet Algemene Bepalingen Onderwijs?,” in Ph. Eijlander, *et al.*, *Wetgeven en de Maat van de Tijd*, Zwolle, W.E.G. Tjeek Willink, 1994, pp. 191 *et seq.*; Eijlander, Ph., *De Wet Stellen*, Zwolle, 1993.

<sup>157</sup> See the finely nuanced considerations by the Audit Commission for Quality Care in Academic Education in Flanders, *Aandacht voor Kwaliteit in de Vlaamse Universiteiten*, Brussels, 1998, p. 47.

<sup>158</sup> See, for example, Maasen, P.A.M., *Governmental Steering and the Academic Culture*, Utrecht, Cheps, 1996, pp. 69 *et seq.*; De Groof, J., Neave, G., Svec, J., *Democracy and Governance in Higher Education*, *op. cit.* Compare also with the reflections of Van Heffen, O., Verhoeven, J., De Wit, K., “Higher Education Policies and Institutional Response in Flanders,” in B. Jongbloed, P. Maasen, G. Neave, *From the Eye of the Storm. Higher Education's Changing Institutions*, Dordrecht, Cheps, 1999, p. 291: “[...] the Flemish government loosened the reins by introducing a state-supervising model. Expressing very specific positions [...] does not fit in a steering model which allows institutions to shape their own future within a general system of quality control. From this point of view it is easy to comprehend that such a governmental policy will not be implemented without major transformations. A more rigid implementation without major changes is only possible after adaptation of the present steering model. But such one-sided control would ruin the much improved relation between government and universities in Flanders.”

<sup>159</sup> Which evolutions are unfolding with regard to the basic concepts, as formulated by Kells, H.R., *Self-regulation in Higher Education*, London, 1992, pp. 57 *et seq.*

# Multi-level Governance and Intercultural Dialogue: The Prospects for 2020

Luc VAN DEN BRANDE

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The new thematic network of the Jean Monnet Centre of Excellence of the University of Padua focuses on capacity building and curriculum development in the area of “intercultural dialogue” and “multi-level governance,” two themes which are not only particularly important for maintaining internal cohesion within the European Union but which are also a *sine-qua-non* for the success of the Union’s external relations.

After the publication of the Centre of Excellence’s academic *Opus Magnus* on “*Intercultural Dialogue and Citizenship*” in 2007,<sup>1</sup> it seems almost natural that the University should, once again, break new ground and take the lead by establishing the new thematic network on “Intercultural Dialogue, Human Rights and Multi-level Governance.”

All three concepts are crucial to achieving our vision for Europe in 2020. This is not only a vision for smart, sustainable, and inclusive growth as enshrined in the Commission’s proposal, but, above all, a vision of a political union based on common values, in which human dignity and respect for fundamental rights are central; a Union in which not only goods, capital, services and citizens can move freely, but also a Union in which regions, cities, social partners, and civil society actors can all freely cooperate, engage in dialogue and become equal partners in the pursuit of a European “multi-actor” unity!

I intend to offer a more general framework of analysis, advocating that the trends in current EU policy making are ideal to realise the

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<sup>1</sup> Bekemans, L. *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007.

inclusive political Union we want to achieve by the revealing year “2020.”

## **I. EU “2020 Vision”**

First of all, public authorities, states, international organisations and their institutions will always have to adapt to their changing environment. This adaptation might be gradual, but eventually they will have to take account of the new ways in which societies, firms, peoples and persons interact.

Secondly, organisations should embrace innovation and technology. They should capitalise on the work done by networks, foster synergies, help to build new platforms for change, and equip themselves with the appropriate tools for detecting in good time what the potential and interests of these “functional groupings” are.

Thirdly, they should be prepared for the future, make a SWOT-analysis of their current situation, and agree upon a shared vision for the future.

Fourthly, organisations should remain as open, transparent, coherent and effective as possible, whilst encouraging participation. These very principles were identified in the Commission’s 2001 *White Paper on European Governance* as the five core values underpinning “good” governance.

Fifthly, respect for fundamental rights, shared values, human dignity, solidarity, and respect for what Emmanuel Levinas calls “the other,” are all “intangible public goods” that are to remain at the core of the organisation’s first legal Codex.

As the European Union is both a supranational organisation with important federalist features and a common area of freedom, security and justice, I take the view that it is well equipped to make its “2020 Vision” a success. However, European leaders will have to take proper account of each of the five above-mentioned conditions if they want to make the vision a reality.

Moreover, as opposed to the current trend towards more intergovernmentalism, it is essential that the EU’s federalist structure is also strengthened over time. As a process of ongoing change is inherent in the EU, due to the tension that exists between the unity and the diversity of its constituent parts, federalism is the only system that is dynamic enough to take account of the constantly changing conditions within the Union. Furthermore, the European Union is increasingly affected by external factors, too. Today, it is a fact of life that globalisation and internationalisation go hand-in-hand with regionalisation and decentralisation.



Therefore, the EU should not only become a truly federalist union of peoples, but should also be organised as an intelligent system of multi-level governance. Finally, Europe should invest heavily in consolidating and building platforms and new gateways for intercultural dialogue.

## **II. Building the Intercultural Society**

Whilst developing the potential of the new gateways and platforms for intercultural dialogue, the Union itself should further develop into an open intercultural society. The EU's Stockholm Programme precisely envisages the way forward for the European Area of Freedom, Security and Justice for the next five years and tackles all areas within this framework: fundamental rights, immigration and asylum, judicial cooperation in civil and criminal matters as well as police cooperation.

Citizens and their fundamental rights are at the focus of the implementation of this newly adopted Stockholm Programme and its upcoming Action Plan, expected towards the end of the Spanish Presidency term. In its recent opinion on the Stockholm Programme, the Committee of the Regions points out that the participation of regional and local authorities is a key element of the process of building a "Citizens' Europe." For the Committee of the Regions, the promotion of a system of "multi-level protection" of fundamental rights is precisely at the heart of the EU's Stockholm Programme.

Indeed, along with Europe's regions and cities, the Committee of the Regions encourages citizens' participation in the political, social and democratic life of their community or city. We clearly highlight the role of regional and local authorities in ensuring effective access to justice as a means of guaranteeing a "Europe of rights." Moreover, regions and cities should be involved in the effective application of community security and police legislation, too. Their contribution to the implementation of immigration, integration and asylum policies, as well as their important part in the fight against corruption needs to be stepped up.

As a concrete example of multi-level fundamental rights protection, the Committee, in an upcoming opinion, will clearly highlight the indispensable contribution of local and regional authorities in developing preventive approaches aimed at safeguarding the dignity and rights of minors, especially abandoned or unaccompanied minors, often victims of trafficking, and confronted with the risk of poverty and social exclusion. Again, regions and cities have a key role as regards access to education, health care, and social protection and to the job market for young people. In this respect, cooperation and more effective partnership among all levels of governance should be supported.

Children's rights are first and foremost a tool to ensure a safe, comprehensive and beneficial environment for children development, in order for them to become conscious, socially responsible members of respective local communities, member states as well as of our whole intercultural European society. Fundamental rights of the child are therefore to be regarded as a cross-cutting issue, touching upon multiple dimensions, and must therefore be mainstreamed into all relevant European and national policies. This objective can only be met with a comprehensive "multi-level" and "multi-actor" partnership among all actors concerned, but first and foremost Europe's regions and cities, as they are standing in the frontline of upholding children rights.

### **III. Making the "2020 Vision" a Reality together**

The Commission's proposal of 3 March 2010 for a "2020 Strategy" consists of a strategy for smart, sustainable, and inclusive growth in Europe. Commission President Barroso believes the strategy will deliver more than 2% growth across the EU.

However, when the heads of state and government met for the first time under the presidency of Herman Van Rompuy in the Bibliothèque Solvay in Brussels on 11 February 2010, they were presented with a sobering account of the economic "State of the Union." The presentation was made by that very same Commission President Barroso. I would like to highlight some key figures in the Commission's analysis:

- GDP growth declined by 4% in 2009, the worst since the 1930s;
- industrial production fell by 20% to 1990s levels;
- 23 million persons are unemployed, with a rise of 7 million in twenty months. This is expected to reach 10.3% in 2010, again back to 1990s levels. Within this total, youth unemployment amounts to 21%;
- notwithstanding some early signs of recovery, the economic crisis has halved the EU's long-term growth potential on a no policy change basis.

Only a few weeks after this rather gloomy analysis was made, the Commission presented its "2020 Strategy" for smart, sustainable and inclusive growth. To this end, five EU headline targets are proposed:

- 75% of the population aged 20-64 should be employed;
- 3% of the EU's GDP should be invested in R&D;
- the "20/20/20" climate/energy targets should be met;

- the share of early school leavers should be under 10%, and at least 40% of the younger generation should have a higher education qualification;
- 20 million fewer people should be at risk of poverty.

Although the percentages and numbers might still be changed, there is a broad consensus at this stage that the objectives of the proposed headline targets are a move in the right direction. However, what is crucial for the success of making the vision a reality is its potential to engage all the partners involved and thus to provide for an intelligent system of governance and dialogue. It is precisely these issues that are at the core of the delivery of the strategy.

As I will demonstrate, both multi-level governance and intercultural dialogue are indeed essential for the delivery of each of the five headline goals proposed. New governance and dialogue structures are therefore to become the main catalysts for pragmatic drives towards growth and cohesion on the ground. Let me now give some examples according to some of the EU headlines proposed.

### ***A. 3% of the EU's GDP should be invested in R&D***

Coming back to the current global crisis, we have learnt that regions and cities generate 16% of the EU's overall GDP. That's more than fifteen times the current EU budget! Together they stand for more than two thirds of public capital investments. Moreover, many regions have major responsibilities in cluster, research or education policies.

Innovation and research clearly start at the local level, and therefore regions and cities play an essential role in implementing the European Economic Recovery Plan and, more particularly, will have to play a major role in delivering the 3% R&D target. An analysis of the much discussed Lisbon Strategy has taught that we will only achieve the 3% target if we work closely together. I therefore greatly support the intention of Máire Geoghegan-Quinn, EU Commissioner for Research and Innovation, to develop "European Innovation Partnerships," and to tie the Framework Programme much more closely to the major challenges facing society. Indeed, the challenge will be for the EU to coordinate political action to aid recovery in order to suggest a more balanced alternative of sustainable development and territorial cohesion through the cooperation of various actors, the direct involvement of cities and regions, and recourse to the instrument of public-private partnership.

### ***B. The “20/20/20” Climate/Energy Targets should be met***

Regarding the challenge of addressing climate change, we can cite the “Covenant of Mayors,” which has already been signed by more than 1,000 cities in Europe, as a new horizontal instrument for cooperation and concrete results on the ground. The signatories signed a commitment to take steps that are within the powers of local authorities in order to mitigate climate change. Cities will be able to deliver because they can invest in energy saving and the organisation of transport, or make it more difficult to use cars within their territory. One can measure the effectiveness of their delivery as well, because clear objectives and evaluation and monitoring machinery are in place, as provided for in the Covenant.

In December 2009, in Copenhagen, the CoR, together with the US Conference of Mayors, clearly demonstrated this new horizontal “contract” for local delivery in the field of climate change as a good practice. Following the COP-15 UN Copenhagen Summit, cooperation with the US Conference of Mayors will be deepened. So, this level of authority – if organised and monitored in a coordinated way – can deliver results and push the signatories of the UN Climate Convention to go beyond their lowest common denominator.

The Committee of the Regions is now analysing whether it will be possible to develop new covenants in other policy areas – e.g. those related to the migration/integration of newcomers or the pursuit of very concrete “EU 2020 Strategy” headline goals. Also, we should study whether this form of “contractualisation” can be extended, for example so as to bind the regional level too at the highest political level.

### ***C. 20 Million Fewer People should be at Risk of Poverty***

Given current developments the European Commission intends to set up a genuine “European Platform against Poverty.” The aim is to ensure economic, social and territorial cohesion, building on the current European year for combating poverty and social exclusion so as to raise awareness and recognise the fundamental rights of people experiencing poverty and social exclusion, enabling them to live in dignity and take an active part in society.

Therefore, the open method of coordination on social exclusion and social protection will be transformed into a “platform for cooperation,” peer review and exchange of good practice, and into an instrument to foster commitment by all public and private players to reduce social exclusion, including through targeted support from the structural funds. It is essential that the benefits of economic growth are spread to all parts of the EU, including its outermost regions, thus strengthening territorial

cohesion. It is all about ensuring access and opportunities for all. Europe needs to make full use of its labour potential to face the challenges of an ageing population and rising global competition. Again, action needs to be taken at all levels of governance.

Also, intercultural dialogue platforms need to be strengthened in this respect, not least with the partner countries in which the – often poor – newcomers to Europe have their origins. Only recently, I launched the Social Inclusion Regional Grouping whose precise aim is to become a frontrunner in Europe, uniting eight regions on this issue.

Moreover, the CoR, together with the European Movement, organised a conference in May 2010 on “*Territorial Strategies for Social Inclusion.*” In the same year, as part of the University Open Days in Brussels, the most innovative strategies against poverty developed at regional level were analysed by academic experts in order to create greater synergies and spillover effects between regions that are leading the combat against poverty. All this helps other regions to act more efficiently on poverty, which we hope will result in a better life for poor people and their families.

#### **IV. Three Key Platforms for Fostering Intercultural Dialogue**

Having provided some important developments in the field of multi-level governance in the EU headline targets of the proposed “EU 2020 Strategy,” it is important to underline that these developments go hand-in-hand with the development of new platforms for intercultural dialogue. Three examples can be given: the European Grouping for Territorial Cooperation, the new emerging “macro-regions” in Europe, and the Assembly for Regional and Local Politicians of the Mediterranean.

##### ***A. The European Grouping for Territorial Cooperation***

Policies must be adapted to new developments at all levels of government. One example is territorial cooperation, where national borders lose their function in some areas. The new EU Regulation for a European Grouping for Territorial Cooperation (EGTC) makes it possible to establish an authority with its own budget and staff originating from different member states. A European Grouping for Territorial Cooperation constitutes an authority based on the nature of the problem and its geographic location, instead of following a way of thinking that sees national borders as institutional boundaries. Several EGTCs have been set up to date, with others in the pipeline.

These EGTCs represent a new governance model for partnership and dialogue within the European Union. They thus pool their members' qualities together with a long-term sustainable legal framework for consolidating mainstream policies in a new functional geographical area. Indeed, the challenges linked to globalisation are increasingly taking shape with little regard for national borders, hence the need for "area-based" policies.

In this context, the EGTC has a great deal to offer:

- It gives legal stability to cooperation and allows a variety of forms of multi-level institutional formatting and dialogue;
- It incorporates the genetics of "soft cooperation" and has the capacity to deliver structural development projects;
- For the first time, we have an instrument which is European in nature, and has a strong territorial basis.

The CoR will contribute to the process of establishing the EGTCs of the second generation. Following these "European" Groupings for Territorial Cooperation, we should envisage "international" groupings for territorial cooperation, allowing the establishment of new functional areas beyond European frontiers. Within the framework provided by the groupings of the second generation, it should also be possible to cooperate on non-material matters. Hence, partner-regions could, for example, work closely together in the field of fundamental rights protection. Last but not least, I believe the European Commission should be fully committed and taken on board in a bid to monitor and facilitate delivery of the EGTCs. This is a time to bring "European territorial pacts" to life, based on new forms of "contractualisation," respect for the principle of subsidiarity, the smart integration of policies, territorial cooperation and intercultural dialogue.

## ***B. Macro-regions***

Secondly, the establishment of the new "macro-regions" is also a pragmatic answer to real problems on the ground that goes way beyond mere cross-border cooperation. For example, the Baltic Sea is an area with a common history and a common identity. For centuries there has always been commercial and cultural activities covering the entire region. Today, it is possible for this region to build itself a new role in the EU based on this common history. The only problem is that public structures are mainly national.

The EU's new Baltic Sea Strategy therefore is a new architecture for pragmatic cooperation comprising twenty-seven action programmes (e.g. tourism, education, environmental protection, etc.). Within this framework, the member states have to address the regions and cities and

their social partners if they want to participate in this programme. Currently the new macro-region for the Danube River is under discussion, too. At least twelve other potential “macro-regions” could be identified. The development of “macro-regions” in Europe will therefore strengthen both regional identity and intercultural dialogue.

### **C. ARLEM**

Europe also needs to export this new partnership logic abroad, through its external policy. The recent establishment of the “Union for the Mediterranean,” for example, provides for yet another innovative structure through which regional and local politicians, from all states bordering the Mediterranean, can meet and engage in an intercultural dialogue. It will be in this Assembly for Regional and Local Politicians of the Mediterranean (ARLEM) that representatives from the EU member states and non-member states alike will translate the EU’s objectives at local level so as to make joint actions happen, for example in the field of university cooperation, protection of the cultural heritage, tourism or the maritime environment of the Mediterranean. We have to ensure that this partnership approach is enshrined in any future external policy of the EU with our partners in the North, in the South, and from the East to the West – be it via the Antarctic Dimension Initiative, the renewed partnership agreement with Russia, or the EU’s prospective “Eastern Partnership.” Only with the involvement of public authorities at all levels on the one hand, and civil society on the other, will the EU’s external policy be successful.

### **V. The “2020 Strategy”: bringing Multi-level Governance into Practice**

In 2008, the world was brutally shaken by a systemic crisis. Its shock waves are still being felt today. The imbalances in the economic and financial system are being exposed, as is the vulnerability of many of our fellow-citizens. In order to foster economic change on the ground, there is a need for new forms of governance and dialogue.

As outlined in the Commission’s proposal for an “EU 2020 Strategy” the “interdependence” between member states, regional and local authorities, and socio-economic partners at all levels of governance favours a “multi-level” approach in the follow-up of the Lisbon Strategy. The recognition of this fact is a very positive starting point, as the priority that will be given in the 2020 Strategy to policy measures in the fields of education, training, research, innovation, entrepreneurship, a green and sustainable transformation of society, socio-economic

recovery and sound budgets at all levels, will have major implications for powers that are often decentralised.

The results of the consultation on the White Paper on Multi-level Governance confirmed the broad support for our proposal to reform the EU governance model in order to adopt a more inclusive approach towards regional and local authorities, for example by adding a territorial dimension.

This idea of multi-level governance is intrinsically linked to participatory democracy, as society is becoming more pluralistic. People want to participate, decision-making is scattered, and top-down or unilateral decisions are simply no longer acceptable in our democracy. Multi-level governance offers a participatory answer in providing tools for participation and dialogue to regions, cities and, ultimately, the citizen. Moreover, it favours cooperation and eventually democratisation itself as it multiplies the opportunities for citizens to influence government.

The alternative to multi-level democracy is not simple democracy, but ineffective democracy. Multi-level governance structures are thus a highly valid way to strengthen the democratic debate within the Union. The respondents to our consultation also consider that there is still significant scope for applying multi-level governance principles to the new “EU 2020 Strategy” too, particularly in the drawing-up and implementation of the so-called “National Reform Programmes,” which they feel have to be primarily based on regional and local programmes, with the inclusion of civil and socio-economic partners.

The “2020 Vision” therefore needs to cultivate partnership, a cross-sector integrated approach and a smarter mix of regulatory reform, whilst providing an overarching framework to deliver better targeted solutions on the ground. Over the last decade, numerous new networks and platforms have been established at various levels of governance. Many of these functional groupings go beyond the mere exchange of best practices, and constitute a launch path for action, both politically and in concrete tangible operations on the ground.

New e-techniques and social websites obviously contribute to the growing understanding that we live in a networked world. “Knowledge is power,” but in the networked world of today “shared knowledge” is even more powerful.

The European Union therefore has to adapt to this reality in order to promote, preserve and export its unique model. Not only do we need a different kind of cooperation between the institutions to tackle the challenges of today and the future more efficiently, we also have to invite all the relevant actors – including those in neighbouring countries



– to take part in this debate. We have to put an end to the silo mentality and foster a culture of partnership and dialogue instead.

The European Union – as a dynamic federal structure – is well placed to make both multi-level governance and intercultural dialogue a reality. Accordingly, and in the follow-up to its White Paper, the Committee of the Regions is ready to initiate the adoption of a “*European Charter on Multi-level Governance*,” as a common basis for cooperative governance and inclusive dialogue platforms in Europe. It will make our Union stronger both internally and externally, and will provide us with a soundly-based window of opportunity to actually deliver on our “2020 Vision for Europe.”

Let us build a political Union that is inclusive, open, and owned by every single citizen, resident in our European society. I therefore advocate not only a “multi-actor” and “multi-level” Europe, but above all the true “multi-ownership” of our European construction!

I heartily welcome Padua University’s thematic platform for “Intercultural Dialogue, Human Rights and Multi-level Governance.” It is path for innovative thinking, top scientific research, and tangible results on the ground. “Costruiamo insieme Europa!”



## **PART II**

### **GOVERNANCE OF INTERCULTURAL DIALOGUE**



# Introduction

Léonce BEKEMANS

Part II concerns the governance of cultural diversity and intercultural dialogue in its multiple dimensions. The papers in this second part deal with some perspectives and challenges of governance, propose sectoral approaches and illustrate a few case studies, in particular in relation to the local and territorial governance practices of intercultural dialogue. It explores the institutional challenges in the international system as well as the need to manage cultural diversity at local and regional governance levels within a broad multipolar world. Issues range from cultural interactions and multiculturalism in European societies, the relevance of the new world order for the local and regional authorities and action-oriented reflection on the urban context in its local and regional dimension with reference to innovative concepts and interconnective practices by cities, local and regional governments.

Subsection I “Perspectives and Challenges” presents contributions which analyse the governance issue from cosmopolitan, regional and public sphere perspectives. The paper by Léonce Bekemans “*A cosmopolitan perspective of multi-level governance in Europe*” proposes a cosmopolitan shaping and understanding of the emerging European polity of multi-level governance structures. Point of departure is the weakening of the spatial paradigm of territoriality and identity-building by the globalisation forces. The major working hypothesis is that the concept of cosmopolitanism contributes to understanding the transformation of the European societies. It is argued that the viability of cosmopolitan democracy rests on its ability to facilitate a new understanding of multi-level governance and intercultural dialogue.

In the article “*Multi-level Governance in Regional Perspective,*” Frank Delmartino discusses the essential features of multi-level governance and then elaborates on an ‘actor-centred’ approach of policy-making towards (active) citizenship on European level and participation on the regional and local level. It is said that in a democratic society, citizenship implies rights but also responsibilities *vis-à-vis* the “*res publica.*” In other words, Delmartino argues that the practice of multi-level governance is the most eloquent plea for a

fundamental re-assessment of the crucial contribution of local and regional players in the common endeavour of all levels of governance.

The contribution “*Active Citizenship and the European Public Sphere*” by Luciano Morganti defines the European Public Sphere (EPS) referring to the Habermasian idea of public sphere and communicative action theory. The author further explores its development, assets and shortcomings and analyses the challenges the EPS has to face to fully develop into a public space of critical debate about the EU project. He concludes with some research indications and concrete actions to foster the EU integration project through a critical and informed citizenship base.

In Subsection II of this second part, a mixture of scientific and policy papers presents sectoral approaches to the governance of intercultural dialogue. In their paper “*The Committee of the Regions’ White Paper on Multi-level Governance: Perspectives for a Partnership-based EU 2020-2030*” Theunissen and Van den Brande defend the case for a strong European Union based on an intelligent system of partnership and multi-level governance. Moreover “good” multi-level governance is said to be an essential objective to respond to the challenges of the transformation of the European Union towards a low-carbon, digital, cohesive and knowledge-based society. It is said that the White Paper outlines a first set of proposals that could serve as a basis to shape, strengthen and consolidate various multi-level governance instruments in EU policy-making.

Enzo Pace’s contribution “*Diversity in the Cities*” proposes an interesting comparative case study analysis of the political and social impact of policies of intercultural dialogue in the EU. More precisely, the author adopts a bottom-up methodology to examine and measure the impact of the policies of DACAR (Dialogue among Culture and Religion) on a sample of big and medium sized European cities.

In the paper “*The Practice of Territorial Dialogue in Europe: the View of a Practitioner*,” Paul Breyne, the Governor of West-Flanders, Belgium, presents the view, testimony, experience and assessment of a practitioner. In managing cross-border dialogue from a local governance level, in particular the cross-border cooperation of the first European Grouping of Territorial Cooperation, i.e. the European metropolis of Lille-Kortrijk-Tournai.

Subsection III presents a number of interesting case studies, taken from the disciplines of international political and legal studies. Rafał Riedel’s contribution “*The Sub-national Authorities in a Multi-level Governance Setting – the Silesian Case Study*” illustrates the position of a region in a multi-level structure of the European Union. It first

explains the general relations between sub-national authorities and multi-level governance structures and secondly applies the general analysis to Silesia, a region in South-Western Poland. The empirical exercise, focussing on the three Silesian representation offices, allows an evaluation of how the multi-level governance patterns open up new opportunity structures for sub-national actors and how they can be optimised.

In his paper “*Interregional Parliamentary Assemblies: a New Layer in a Multi-level Global Governance System,*” Andrea Cofelice, a young researcher, explores the specific role played by regional parliamentary institutions in the increasing interregional relations. First, the author provides a brief overview of existing interregional parliamentary institutions, by distinguishing two types according to their degree of institutional development: “forums” (or “dialogues”) and “assemblies.” In the further course of the paper the analysis focuses on the specificity, innovativity and key characteristics of interregional parliamentary relations led by the European Parliament. The paper finally assesses the possible contribution of this process to global multi-level governance.

An interesting legal discourse is presented by Paolo De Stefani, an international law professor at the University of Padua, in his paper “*The European Court of Human Rights: a New Actor of Multi-level Governance?*” He says that the case-law of the Strasbourg court has been increasingly dealing with disputes of constitutional relevance, with the aim of obtaining a ruling from the Human Rights Court to be imposed “from above” to reluctant or politically blocked governments, parliaments, public agencies, etc. A strategy seems to take shape of using the Strasbourg procedure to unlock the political debate on sensitive issues. The author argues for a revision of the “subsidiarity” of the European Court which takes into account not only its role as a judicial body in close dialogue with its national and international counterparts in the judiciary, but also as an institution with a potential impact on the political agenda of states.

Claudia Pividori, another young researcher, outlines in her paper “*The International Criminal Court in a Multi-level Governance System of International Criminal Justice*” the emerging system of multi-level governance in the judicial enforcement for the prosecution of serious international crimes. This legal case study focuses on a number of adjudicating bodies, allocated at different levels of authority, which are committed to the common goal of ending impunity for serious international crimes. The paper asserts that the principle of complementarity enshrined in the Statute of the International Criminal Court may be interpreted as one of the key elements of the system. In particular, the analysis concentrates on the modalities through which the

principle of complementarity can shape the relationship between the Court and the national jurisdictions, specifically in regard to the allocation of authority between the two levels of governance.



## **SUBSECTION I**

### **PERSPECTIVES AND CHALLENGES**



# **A Cosmopolitan Perspective of Multi-level Governance in Europe**

Léonce BEKEMANS

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## **I. Premises**

The European integration process is to date the world’s most advanced post-national constellation of states. As such it has become a laboratory for scholars and philosophers of political theory and international relations interested in studying and developing workable models of supranational and/or global and multi-level governance. Prominent among these scholars are those who view the European Union from a cosmopolitan perspective, analysing integration for its potential to realise a cosmopolitan Europe in which the concept of citizenship is crucial.

The new postmodern conceptualisation of governance, citizenship and dialogue in international/global relations requires a multiplicity of citizenship (i.e. post-nationalism), recognition of diverse and multiple identities (i.e. multiculturalism and interculturalism) and a citizens’ participation on all levels of sovereignty (i.e. transnationalism). On the other hand, the growing awareness of the need for global knowledge and global management to realise global goods and the recognition of a shared future favour the interest in universal values and the institutional expression of global norms.

The current multidimensional process of globalisation has a paradoxical impact on external and internal relations of states. The dominant spatial paradigm of territoriality and identity building is being undermined by globalising forces. This paradigm has placed boundaries around some of the most fundamental characteristics of the modern world, notably community, nationality, identity and citizenship. Still the

power of the territorial narrative remains strong through the re-emergence of communal, nationalist and ethnic identities, the misconceived interpretation of sovereignty and the exclusive focus of locally-based communities for sustaining social solidarity. In sum, the globalising world is characterised by some asymmetry between the growing extra-territorial nature of power and the continuing territoriality of the ways in which people live their everyday lives. Its seemingly contradictory nature reveals new opportunities for institutional structures along with new forms of politics and civility and, as a consequence, offers a reading of the process of European integration from a cosmopolitan perspective.

The history of the European integration process shows a development from a (neo-) functional, utilitarian and largely economic project to a more complex and mixed political undertaking, set in a globalising context and today based on the institutional structure of the Treaty of Lisbon. The first decades of the European integration process functioned on the political paradigm of the Westphalian system. A democratic approach to international life outside of the national borders was not at all required. There was equality between nationality, identity and citizenship. The Treaty of Maastricht (1992) brakes down that linear perspective and establishes a political framework for a broader and deeper integration of European states and regions. In addition to consolidating the single market and opening the way for greater cooperation on internal and external affairs, it introduced the concept of “European citizenship,” i.e. a “common citizenship” applied to many nationalities and covering a multiplicity of identities.

Such a broadly defined European citizenship does, however, not replace national citizenship but rather complements it. Moreover, it enhances the legitimacy of the process and promotes a stronger European identity. It is claimed that European citizenship provides equal access to the individually-based legal status of Union citizenship to all nationals, and universal civic protection to all nationals and residents, to be translated into a transcendent European identity. It also means that an active citizenship can develop within a new framework, not that of a closed state on a limited territory, but open beyond national borders and respecting diversities. Europe is therefore evolving towards a social and political body in which one will be able to distinguish a common European citizenship, multiple state and regional citizenships and governance structures, within which there exists a growing awareness of multiple and different cultural identities.

Europe is indeed involved in favouring the development of a “trans-national democracy.” The process of European integration strongly contributes to changing the mentality and conception of the state system.

The role of the state becomes less essential in many sectors of economic life through the “supranational” transfer of decision-making powers to common authorities; similar developments affect its role regionally through the need to adapt to multiple demands of autonomy, identity recognition, and decentralisation. In short, it seems obvious that with the process of globalisation, the demands for the recognition of particular identities and minority rights will strongly develop within national and regional structures, while at the same time requests for more citizens’ participation at the supranational or transnational levels will become more evident, in the name of new European citizens’ rights.

This article argues that a cosmopolitan shaping of the European Union using a complexity of multi-level governance structures is conducive to its underlying objective of legitimating the emerging European polity. The major working hypothesis is that the concept of cosmopolitanism can contribute to the understanding of the transformation of modern societies and of Europeanisation, in particular, by creating an integrated European public and European space. A cosmopolitan reading of Europeanisation and, in particular, of the process of European integration is proposed to understand and assess the viability of a “cosmopolite” Europe and its policy implications as an idea and reality within a European and global context.

## **II. Cosmopolitanism and Post-modernity in the Context of Globalisation**

By globalisation we mean the phenomenon and process of growing concrete interdependence of economic, political, social and cultural relations and of greater consciousness of the world. Globalising processes involve variable, but usually significant shifts in the spatial ordering of personal and social relationships as well as in the organisational political forms and functions. It is an enacted process, one in which the transformative capacity of globalisation reshapes the contours of social action and redefines the political and the identity spaces of individuals and collective actors. In the extensive literature on globalisation studies<sup>1</sup> three conceptual stages can be distinguished. In a

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<sup>1</sup> See amongst others Beck, U., *What is Globalization?*, Malden (Mass.), Polity Press, 2000; Brodie, J., “Introduction: Globalization and Citizenship Beyond the National State,” in *Citizenship Studies*, vol. 8, no. 4, 2004; Stiglitz, J., *Making Globalization Work*, London, Penguin, 2006; Giddens, A., *Runaway World: How Globalization is Reshaping Our Lives*, New York, Routledge, 2000; Bauman, Z., *Globalization: the Human Consequences*, New York, Columbia University Press, 1998; Held, D., *Governare la Globalizzazione*, Bologna, il Mulino, 2005.

first stage the impact of globalisation on national economies was investigated with a conclusion that a neo-liberal world economy government and homogenous world society were on the rise and the national state was in demise. In a second stage the cultural aspects of globalisation were studied with criticism on the convergence thesis and arguments for a fragmented and multidimensional world view. National communities were seen as one of the multiple places of human organisation. The current third phase brings together a multidisciplinary and multidimensional analysis of globalisation, with particular focus on its political manifestation. It concludes that globality and globalism represent the dual character of globalisation, in that they simultaneously generate the conditions of universalism and particularism.

In the following, we first briefly identify the major characteristics and developments of contemporary cosmopolitanism; next we focus on an analysis of a major contribution to the universalist interpretation of cosmopolitanism, i.e. cosmopolite democracy and, finally we conclude with an assessment of the critique presented by constitutional patriotism.

### ***A. Multi-faced Cosmopolitanism***

In the first place we want to clarify the concept of cosmopolitanism, which is often used as synonym for globalisation, globality, glocalism, globalism, universalism, multiculturalism, pluralism and imperialism. The term goes back to the Cynics and Stoics of antiquity; it acquired central importance in the philosophy of the Enlightenment and has regained conceptual strength in the current debates on globalisation against the organising power of the market and the nation-state. In sum, the concept of cosmopolitanism has a very old meaning that points to the future; it is both pre-national and post-national.

Its core premises are the recognition and appreciation of difference of thought, social life and practice, both internally and towards other societies. It rests on the “both/and” principle of regarding others as both equal and different and, consequently calls for new concepts of integration and identity that affirm coexistence across borders without requiring that difference be sacrificed by supposed national equality. It therefore relies on a framework of uniting and universally binding norms that should prevent deviation into postmodern particularism.

Ulrich Beck uses the concept as a social scientific concept to deal socially with cultural differences, distinguished from hierarchical subordination, universalistic and nationalistic sameness and postmodern

particularism.<sup>2</sup> It is important to recognise that cosmopolitanism aims to overcome the dualities of the global and the local, the national and the international. It is not specified in spatial terms and can therefore be applied to regional geographical units such as Europe. Viewed in this way, cosmopolitanism should not only integrate different national traditions and norms, it should at the same time balance various ways of dealing with cultural differences, determined by the “both/and” principle. As such it is both a theoretical and empirical concept.

### ***B. Contemporary Cosmopolitanism***

From the above definition it is clear that contemporary cosmopolitanism provides a suitable ideological framework to respond to the conditions developed in the third phase of globalisation.<sup>3</sup> It represents a way of dealing with difference and similarity within changing societies of a globalised world. Scholars concerned with the impact of globalisation have come to a common understanding that the modernist premises of the national state have been eroded. The Westphalian state is no longer the singular unit of political power with absolute sovereignty. There is the emergence of regional and local democratic entities and communities. Moreover, in multicultural Europe the nation is neither culturally homogenous nor the primary expression of collective identity; national and regional communities are diverse and identities are multiple.

The contemporary expressions of cosmopolitanism seem to represent a logical accommodation of the postmodern challenges to citizenship and dialogue. They represent post-national, multi- and inter-cultural models of political community that preserve identities and facilitate global, regional, local and municipal *loci* of legal status and political membership. Moreover, they are transnationalist, in that they promote an active citizenry that is empowered within an emerging global civil society and enabled to shape political, social and cultural developments.

A common reference point for contemporary cosmopolitan theory is Immanuel Kant’s cosmopolitan theorem built around the vision of world

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<sup>2</sup> Beck, U., Grande, E., *Cosmopolitan Europe*, Cambridge, Polity Press, 2007, p. 12.

<sup>3</sup> Archibugi, D., Held, D., Kohler, M. (eds.), *Re-imagining Political Community-Studies in Cosmopolitan Democracy*, Stanford, Stanford University Press, 1998; Axford, B., “Globalization and the Prospects for Cosmopolitan Society,” in V. Gennaro Lerda (ed.), *Which “Global Village?” Societies, Cultures and Political-Economic Systems in a Euro-Atlantic Perspective*, Westport, Praeger, 2002, Ch. 18; Archibugi, D., *The Global Commonwealth of Citizens: Toward Cosmopolitan Democracy*, Princeton, Princeton University Press, 2009.

peace and a global ethical regime.<sup>4</sup> In his 1795 essay *Perpetual Peace*, Kant puts forward a *ius cosmopolitanum* as a universal guiding principle to protect people from war. It is evident that Kant's theorem was grounded in the modernist understanding of citizenship. In the absence of inter- and supranational legal and institutional frameworks for citizenship, it falls short of post-nationalism. As it is focussed on the universal awareness it does not recognise the notion of cultural diversity.

In the current globalised context, cosmopolitan thought has flowed into several directions, one of which is universalism. The universalist position promotes the expression of global morality in the form of supranational legal systems and political institutions, implying an extension of the modern national state-based theory of citizenship. In the Kantian tradition of universal, trans-cultural authority, Martha Nussbaum<sup>5</sup> pleads for a humanistic cosmopolitanism, insisting that rights, obligations and commitments do not stop at national borders. She suggests a primary allegiance to the worldwide community of human beings, in which educative processes gradually narrow the gap between particular and broader loyalties, and between the local and humanity as a whole.

### ***C. Cosmopolitan Democracy***

A major contribution to the universalist stream is the theory of cosmopolitan democracy centred on David Held's idea of global governance.<sup>6</sup> Held argues that the realisation of the cosmopolitan vision, that of lasting world peace and universal equality of individuals, cannot rely on the states' democratic capacity only. As a result of globalisation, the idea of a political community can no longer be exclusively located within the boundaries of the territorial nation-state and secondly, the locus of effective political power has shifted from national governments to international regimes and forums, international and regional organisations, and a variety of transnational corporations. Consequently, it is argued that democracy must be strengthened within and beyond

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<sup>4</sup> Kant, I., "Perpetual Peace: A Philosophical Sketch," in M. Forsyth, M. Keens-Soper, P. Savigaer (eds.), *The Theory of International Relations*, London, Allen & Unwin, 1970; Kant, I., "Idea for a Universal History with Cosmopolitan Purpose," in H. Reiss (ed.), *Kant's Political Writings*, Cambridge, Cambridge University Press, 1991.

<sup>5</sup> Nussbaum, M., "Patriotism and Cosmopolitanism," in *Boston Review*, October-November 1994.

<sup>6</sup> Held, D., "Democracy and Globalization," in *Global Governance*, vol. 3, no. 3, 1997.



borders and effective democratic law internationalised. An institutionalisation of cosmopolitan principles based on cosmopolitan democratic law is therefore more than welcome. Moreover, in resolving conflict situations between national sovereignty and international law, he very much advocates a democratisation of the intergovernmental international organisations, in particular granting operational power to the UN. In his version of a cosmopolitan democracy, in addition to the existence of overlapping and spatially variable sovereignties, there exists a multitude of political communities with multiple citizenships and different agenda.

Daniele Archibugi<sup>7</sup> elaborates on Held's new democratic condition and examines the prospects for cosmopolitan democracy as a viable and humane response to the challenges of globalisation. He argues that democracy has to function simultaneously on domestic, international and global levels of political authority in order to generate a lasting normative framework. He therefore proposes a renewed model for global citizenship, i.e. institutional cosmopolitanism. He argues that democracy can be extended to the global political arena by strengthening and reforming existing international organisations and creating new ones. Furthermore he calls for dramatic changes in the foreign policies of nations to make them compatible with global public interests and, consequently, advocates giving voice to new global players such as social movements, cultural communities, and minorities. Finally, he proposes building institutional channels across borders to address common problems and encourages democratic governance at the local, national, regional, and global levels.

In short, Archibugi's vision of the cosmopolitan world order is one of a multi-level system of democratic governance, i.e. cosmopolitan democracy in which democratic participation by citizens is not constrained by national borders and where democracy spreads through dialogue and incentives.<sup>8</sup> He applies the cosmopolitan logic to concrete issues such as humanitarian intervention, institutional reform at the UN and democratic transitions.

For both scholars, the linkage of democratic institutions outside the boundaries of the state is indeed necessary in order to complement the inadequate democratic capacities of the postmodern state and to monitor

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<sup>7</sup> Archibugi, D., Held, D., Kohler, M. (eds.), *Re-imagining Political Community*, *op. cit.*

<sup>8</sup> Archibugi, D., "Principles of Cosmopolitan Democracy," in *id. et al. (eds.), Re-imagining Political Community*, *op. cit.*, pp. 207-209; *id.*, "Cosmopolitan Democracy and its Critics: A Review," in *European Journal of International Relations*, vol. 10, no. 3, 2004.

the internal state affairs.<sup>9</sup> Andrew Linklater talks about the necessity to create a post-Westphalian community in which citizens have the right to participate in the decision-making processes of international organisations.<sup>10</sup> The cosmopolitan argument for a federative development of the global landscape and a global legislative institution should therefore be conceived above all as a framework-setting institution.<sup>11</sup>

Such a cosmopolitan approach to democracy has, of course, policy consequences.<sup>12</sup> Firstly, it implies an active membership of individuals in the global community. Global issues, such as human rights, the environment and poverty have a universal impact on all individuals and as such transcend regional, national and international frameworks of cooperation. If global challenges are to be addressed in line with basic democratic principles, citizens should therefore have political representation at various levels of decision-making from the local neighbourhood up to the international level. Secondly, it involves the institutionalisation of a universal and global citizenship status which contains a mandatory core of rights, laid down in the Universal Declaration of Human Rights. Finally, the expression of cosmopolitan citizenship as the empowerment of a nascent global civil society denotes the transnational dimension of the cosmopolitan democracy theory. All these policy consequences require the management of global public goods<sup>13</sup> and the establishment of global bodies that are designed to manage global issues and individual interests in multi-level and multi-actor governance structures.

In short, global citizenship means the transfer of specific elements of national citizenship into the global domain so that specific global issues can be tackled. The cosmopolitan democracy thesis focuses on the

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<sup>9</sup> Archibugi, D., Held, D. (eds.), *Cosmopolitan Democracy: an Agenda for a New World Order*, Cambridge, Polity Press, 1995.

<sup>10</sup> Linklater, A., *The Transformation of Political Community*, Cambridge, Polity Press, 1998; *id.*, "Citizenship and Sovereignty in the Post-Westphalian European State," in D. Archibugi, D. Held, M. Kohler (eds.), *Re-imagining Political Community*, *op. cit.*, pp. 113-137.

<sup>11</sup> Held, D., *Democracy and the Global Order: from Modern State to Cosmopolitan Governance*, Cambridge, Polity Press, 1995.

<sup>12</sup> Archibugi, D., "Cosmopolitan Democracy and its Critics," *op. cit.*, p.456; *id.*, "Principles of Cosmopolitan Democracy," *op. cit.*, pp. 216-217. See also Dower, N., Williams, J. (eds.), *Global Citizenship. A Critical Introduction*, New York, Routledge, 2002; Held, D., "Democracy and Globalization," *op. cit.*

<sup>13</sup> For the literature on global public goods see Kaul, I., Grunberg, I., Stern, M.A., *Global Public Goods: International Cooperation in the 21<sup>st</sup> Century*, New York, Oxford University Press, 1999 and Kaul, I. *et al.* (eds.), *Providing Global Public Goods: Managing Globalization*, New York, Oxford University Press, 2003.

institutional establishment of the cosmopolitan ideal and on the multi-level nature of the emerging system of governance by subscribing to the condition of multiple post-nationalisms. The introduction of a global cosmopolitan citizenship status complements national as well as regional and local *loci* of citizenship and complies with the multiple de-national and de-territorial conditions of citizenship.

A pertinent and interesting account of the impact of globalisation upon democracy is offered by Richard Falk.<sup>14</sup> He argues that the growing importance of transnational relations is weakening national citizenship and reducing the importance of social capital at the level of the nation-state. Because of the fact that the logic of market opportunity no longer coincides with the logic of territorial loyalty, the tendency is likely to create links and solidarities across borders rather than within them. Falk proposes a polity of a globalisation from below for offsetting the tendency for national governments to be shaped by market-oriented forces pressing globalisation from above. In his human governance approach,<sup>15</sup> Falk therefore focuses on the realisation of a system of human government, based on a globalisation from below and beyond national borders which is rooted in civil society and developed in a practice of transnational democracy. He believes in the creation of a normative global democratic structure, but constructed from below and rooted in the global civil society. As a consequence, the task of transnational social movements is to disseminate a global ethics which surpasses the identity of state sovereignty. Marco Mascia shows that the growing importance of civil society in Europe exemplifies the integration from below and supports the hypothesis that this participative dimension provides a new democratic horizon for the EU.<sup>16</sup> This is very important for understanding the practice of multi-level governance of intercultural dialogue and the role of civil society.

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<sup>14</sup> Falk, R., "The Decline of Citizenship in an Era of Globalization," in *Citizenship Studies*, vol. 4, no. 1, 2000.

<sup>15</sup> *Id.*, *On Human Governance*, Cambridge, Polity Press, 1995. See also UNDP, *Human Development Report 1999. Globalization with a Human Face*, at: <http://hdr.undp.org/reports/global>.

<sup>16</sup> Mascia, M., *La Società Civile nell'Unione Europea*, Venezia, Marsilio Editori, 2004.

#### **D. Constitutional Patriotism**

A comprehensive critique of the cosmopolitan democracy thesis is provided by Jürgen Habermas.<sup>17</sup> He endorses the requirement of supranational democratic institutions and transnational civic activity but criticises the premises of the theory. First, Habermas rejects the prospects of a world state, away from a multilayered post-national system of governance. Instead, he envisions a dynamic picture of interferences and interactions between political processes at national, international and global levels.

Second, he claims that cosmopolitan democracy ignores the multicultural dimension and favours an all-inclusive and *a priori* sameness at the cost of multicultural particularism.<sup>18</sup> In short, he asserts that cosmopolitan democracy cannot reconcile universalism and particularism<sup>19</sup> and therefore re-establishes the competitive relationship between the national and cosmopolitan domains of collective belonging. Habermas stresses the importance of a new community-building logic in national and global domains. He argues that the cohesiveness of a community cannot be guaranteed by fostering an exclusionary ethno-cultural identity. Instead, he pleads for the building of a civic form of identity, i.e. “constitutional patriotism.” He reasons that rationally chosen commitments to a common set of constitutional principles, fundamental rights and democratic institutions can provide a common normative framework that is culturally neutral and therefore sufficiently inclusive for binding a multicultural society together.

Habermas’ third critique regards the democratic character of the cosmopolitan democracy thesis.<sup>20</sup> He criticises the so-called pre-existing global morality that holds humans together in a global community. In this context, cosmopolitan rights are understood as pre-defined and universal. Democracy, according to Habermas, is the self-defined and self-legislated power of the public. That is, identity, rights and their institutional expressions are organic and negotiated categories.

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<sup>17</sup> Habermas, J., “The Postnational Constellation: Political Essays,” in T. McCarthy (ed.), *Studies in Contemporary German Social Thought*, Cambridge, Polity Press, 2001.

<sup>18</sup> *Id.*, “Struggles for Recognition in the Democratic Constitutional State,” in A. Guttman (ed.), *Multiculturalism: Examining the Politics of Recognition*, Princeton, Princeton University Press, 1994.

<sup>19</sup> While universalism refers to the individuals’ commitment to abstract principles and rights, particularism refers to the context of a historically specific political culture.

<sup>20</sup> Habermas, J., “The Postnational Constellation,” *op. cit.*

In order to overcome the democratic deficiency of the cosmopolitan democracy theory, Habermas suggests moving away from representative towards a deliberative notion of democracy internally and externally, domestically and globally. In particular, he asserts that deliberative democracy promotes channels of interactive and discourse-based civic activity in addition to the formalised institutional representation and participation of the citizen.<sup>21</sup> Such a deliberative democracy further facilitates a comprehensive notion of the public sphere as a space where individuals can engage in rational critical discourse about common political interests. This might create a socially constructed collective identity that is constantly reproduced and generates legitimacy from below.

Habermas's final criticism of the cosmopolitan democracy thesis refers to its empirical foundations. According to Habermas, it is mistaken to base a cosmopolitan view on the developments of the international domain, the evolution of an international human rights regime and the UN system. He posits the European Union as a viable model of democracy beyond the nation-state.<sup>22</sup> Despite this positive outlook Habermas admits that the European Union is not yet adequately equipped to deliver this promise. He insists that the integration must incorporate the vehicles of constitutional patriotism and deliberative democracy so that the EU's democratic capacity can be strengthened while the multilayered nature of the European polity maintained. Producing a common ethical framework of shared political values, moral norms and legal rights should only transcend but not erode national and cultural particularism in order to provide a viable and meaningful basis of solidarity for the public.<sup>23</sup> In this perspective, the Treaty of Lisbon offers a modest step forwards to create a "European public space" in advancing deliberative capacity of the supranational institutions of democracy, simplifying decision-making and favouring active citizenship.<sup>24</sup>

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<sup>21</sup> *Id.*, "The European Nation State. Its Achievements and its Limits. On the Past and Future of Sovereignty and Citizenship," in G. Balakrishnan (ed.), *Mapping the Nation*, London, Verso, 1996; *id.*, "The Postnational Constellation," *op. cit.*, p. 76.

<sup>22</sup> *Id.*, "Making Sense of the EU: Toward a Cosmopolitan Europe," in *Journal of Democracy*, vol. 14, no.4, 2003, p. 94.

<sup>23</sup> *Id.*, "Citizenship and National Identity: Some Reflections on the Future of Europe," in R. Beiner (ed.), *Theorizing Citizenship*, Albany, University of New York Press, 1995.

<sup>24</sup> See the declaration by Habermas, J., Derrida, J., "After the War: the Rebirth of Europe," in *Frankfurter Allgemeine Zeitung*, 31 May 2003.

### **III. A Cosmopolitan Perspective of Europeanisation**

In the second part of the paper we first present Ulrich Beck's interpretation on cosmopolitanism, as it was developed in his trilogy on "Cosmopolitan Realism; in the next section we analyse and assess the application of his cosmopolite vision to the process of Europeanisation, in particular to the content, policy implications and global setting of "Cosmopolitan Europe."

#### ***A. Beck's Political and Sociological Cosmopolitanism***

Understanding Europe in cosmopolitan terms means defining the European concept of society as a regionally and historically particular case of global interdependence, i.e. a Europe of accepted, recognised and regulated differences in a new era of border transcending and border effacing cooperation. This historically unique and distinctive mixed form of inter-governmental, supranational and inter-societal community escapes the traditional categories and concepts. The development of the EU exemplifies particularly how political and theoretical concepts of the social sciences have become trapped in what Beck calls the conceptual straight jacket of methodological nationalism.<sup>25</sup> Societies cannot any longer be conceived in exclusive territorial terms in which cosmopolite relations are reduced to mere international relations while the reality develops beyond borders in a framework of plural belongings.

In *Power in the Global Age*<sup>26</sup> Beck explores the legitimacy of political authority under conditions of global interdependence. The major answer to a redefinition of concepts such as power, dominance and authority from a cosmopolitan perspective is to include globalisation in the analysis of politics, society and identity-building. Nationalism is about exclusive distinctions and loyalties; cosmopolitanism is about inclusive distinctions and loyalties, being citizens of the cosmos and the polis. It is therefore possible to develop meaningful affiliations without renouncing one's origins.

As was said earlier, globalisation processes signal a rupture with past developments with profound internal and external consequences. In *The Cosmopolitan Vision*,<sup>27</sup> Beck recognises the need to gear national (and regional) objectives to global ends and acknowledges the global civil society as an advocatory movement that generates global values and norms with a self-legitimizing power. He proposes a critical democratic

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<sup>25</sup> Beck, U., Grande, E., *Cosmopolitan Europe*, *op. cit.*, p. 17.

<sup>26</sup> Beck, U., *Power in the Global Age*, Malden (Mass.), Polity Press, 2005.

<sup>27</sup> Beck, U., *The Cosmopolitan Vision*, Cambridge, Polity Press, 2006.

cosmopolitanism achieved through reforms that include new transnational organisations and normative frameworks as well as remodelled multilateral institutions, democratisation of human rights and enforcing of citizens' rights in the globalising context. According to Beck, the cosmopolitan state is a political answer and useful instrument in managing political identities and ethnic fragmentation in the era of globalisation and pluralism.

Applied to the European context, Europe is then seen as a new kind of transnational, cosmopolitan, quasi-state structure, which draws its political strength precisely from the affirmation and managing of diversities. In other words, he conceives Europe as a cosmopolitan state that cooperatively domesticates economic globalisation and guarantees the otherness of the others. In reality, this requires a political Europe which seeks to reconstitute its power at the intersection of global, national, regional and local systems of governance.

His new concept of cosmopolitan critical theory is placed in direct opposition to traditional nation-state politics. His political and sociological cosmopolitanism acknowledges the otherness of those who are culturally different, the otherness of the future and the otherness of nature. In that sense, cosmopolitanism shares some aspects of universalism, namely the globally acceptable notion of human dignity that must be protected and enshrined in international law. Thus, if we are to understand cosmopolitan Europe, we must radically rethink the conventional categories of social and political analyses.

## ***B. Cosmopolite Europe***

### *1) Content*

In *Cosmopolitan Europe*,<sup>28</sup> Ulrich Beck and Edgar Grande further elaborate the cosmopolitan vision in a global age, as it was presented in Beck's two previous books. They propose an analytical and political vision for rethinking Europe, based on the narrative of Europeanisation, defined as a permanent process of transformation which goes beyond the conceptual horizon of national societies and states. Beck calls Europe the last politically effective utopia,<sup>29</sup> i.e. an idea and a reality. Europe is neither a state nor a nation; hence it cannot be thought of in terms of the nation-state. Beck criticises the methodological nationalism practiced by social sciences in the usual national conceptual horizon which neglects Europe's complex realities. As a consequence, a sociolo-

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<sup>28</sup> Beck, U., Grande, E., *Cosmopolitan Europe*, *op. cit.*

<sup>29</sup> *Ibidem*, p. 2.

gical cosmopolitanism<sup>30</sup> is proposed with a positive definition of Europe based on the “both/and” principle: expansion of power at the supra-national level is not equated with loss of power at the lower level; rather the opposite holds, namely power as a whole increases and, as a consequence, nationality, transnationality and supranationality reinforce and complement each other.

A cosmopolitan Europe means simultaneously both difference and integration. It offers an alternative to the existing concepts of European integration which either locate Europe above the states and combat national particularities as obstacles to European integration, or want to subordinate Europe to the nation-states and national interests. This also calls for expanding the concept of the public beyond its national borders and opening it up to an emerging European space. However, such cosmopolitanism also needs political mechanisms for institutionally producing and stabilising collective difference within given spaces. The novel concept of multi-level governance offers a support to this cosmopolitan perspective.

The concept of multi-level governance, introduced by Gary Marks<sup>31</sup> more than a decade ago, refers to “the existence of overlapping competencies among multiple levels of governments and the interaction of political actors across those levels.” Its application to the practice of European governance suggests that the EU is considered a multilayered system of decision-making in dealing with complex societal problems where the institutional redistribution of competences is not based on a territorial dimension but on functional and issue-related criteria.<sup>32</sup>

Following this line of thought, the idea of a cosmopolitan Europe is at once radically new and yet forms part of the continuity of European thought and politics. Beck defines Europe both as a social construct and open political project, guided by vision and political principles as well as by the logic of side effects.<sup>33</sup> The principle of cosmopolitanism offers a new perspective for understanding Europe and opens up new possibilities of social organisation and political participation, though not based on a homogeneous and uniform model of European *demos* or

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<sup>30</sup> *Ibidem*, pp. 17-21.

<sup>31</sup> Marks, G., “Structural Policy and Multi-level Governance in the EC,” in A. Cafruny, G. Rosenthal (eds.), *The State of the European Community: the Maastricht Debate and Beyond*, Boulder (Co.), Lynne Rienner, 1993, pp. 391-410.

<sup>32</sup> A short analysis of the concept is given by Delmartino, F., “The Paradigm of Multi-level Governance,” in Committee of the Regions, *Towards a Multi-level Governance in Europe?*, *Cahiers of the CoR*, vol. 1, 2009, pp. 33-36.

<sup>33</sup> Beck, U., Grande, E., *Cosmopolitan Europe*, *op. cit.*, p. 30.



European *polis*, but characterised by an institutionalised process of permanent change.

This does not imply that Europe has to be completely reinvented. On the contrary, the European process of integration involved a cosmopolitan momentum from its beginning, in that it transcends the idea of the nation and transforms national sovereignty. Cosmopolitanism has been formalised in Europe by a step-by-step approach through the simultaneous institutionalisation of seemingly two competing and conflicting principles, i.e. supranationalism and inter-governmentalism. This process has proceeded in two directions: inwards, through constant extensions of the power of the EU and the resulting structural adaptations in the member states; and outwards, through the constant enlargements and the export of its norms and rules in the exercise of mainly soft power politics.

We agree with Beck's thesis that the process of Europeanisation has reached a critical threshold.<sup>34</sup> Internally, the EU has been confronted with intensifying criticism from its citizens for its lack of transparency, credibility and accountability. Externally, there is much talk of the Balkanisation of Europe within the international political landscape. The real European crisis, as Beck argues, may be the inability to see the contradictory events as part of a common European undertaking. Both the internal and external contexts of European politics and governance are being fundamentally shaped by the opportunities and threats of globalisation. Under these conditions, the institutional reforms in the Treaty of Lisbon alone do not go far enough. Much more is called for to rethink Europe.

## 2) *Policy Implications of a Cosmopolite Europe*

What is European can be termed by forms of identity, ways of life, means of production and types of interaction that go beyond national or regional frontiers. It is about continuous border-crossing. Horizontal Europeanisation has taken place in all sectors of human life. Science, polity and economy are becoming globalised and Europeanised at the same time. This intertwining has various policy consequences and produce different lines of thought and action.

– The dismantling of national borders in Europe has an impact on the European dynamic of socio-economic inequalities. One thing is sure, the nation-based limits to people's perceptions of social inequality have slowly begun to dissolve as Europeanisation moves forward. The recognition of the importance of the social dimension for the European

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<sup>34</sup> *Ibidem*, p. 4.

integration process has policy implications within and beyond European borders, in particular in relation to internal and external solidarity and a sense of belongingness.

– The Europeanisation is initiating a historically new positive sum game: joint solutions serve the national interest. In some occasions and policies, the EU is better placed to solve problems than nations or regions could possibly do acting alone. In other words, the EU is an arena where formal sovereignty can be exchanged for real power, cultures nurtured and economic success improved. A cosmopolitan Europe is first and foremost the Europe of difference of recognised particularity. From a cosmopolitan perspective, this diversity (whether languages, economic systems, political cultures, or forms of democracy) appears primarily as an inexhaustible source of Europe's cosmopolitan self-concept and not as an obstacle to integration. If we understand Europe's actual distress mainly as an inability to grasp and understand the historically new kind of reality that Europeanisation represents, different "both/and" policy alternatives may be envisaged.

– A third line of thought and action is that Europeanisation requires a collective memory culture that spans borders. Beck calls it a Europeanisation of perspective. A cosmopolitan approach to the opening up of communication, the acceptance of interdependence through inclusion of "the other" for the sake of common interests and, to the management of cultural diversity goes beyond tolerance or multiculturalism. It may lead to genuine intercultural dialogue and mutual learning, conceived as an enrichment of one's own integral human development. Such cosmopolitanism is intended to rest up on cohesive and reciprocally binding norms away from postmodern particularism and close to Europe's true identity of an open, dynamic, diversified, multicultural and democratic entity.

– The fourth line is the understanding of European society as a regional world risk society.<sup>35</sup> To avoid the danger caused by a European replica of methodological nationalism, Europeanisation should not be defined and analysed purely in endogenous terms, but in exogenous terms in relation to the frame of reference determined by world society. In this context, Becks refers to the theory of reflexive modernisation<sup>36</sup> in which the experience and dynamics of modernity bears risks in the sense that along with its success modernity also contains negative

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<sup>35</sup> Beck, U., *World at Risk*, Cambridge, Polity Press, 2008.

<sup>36</sup> Beck, U., Giddens, A., Scott, L., *Reflexive Modernization: Politics, Tradition and Aesthetics in the Modern Social Order*, Cambridge, Polity Press, 1994.

consequences. This requires policy coordination and rule setting of both obstacles and opportunities in European and global context.

– The fifth, concluding line concerns the understanding and shaping of new forms of political authority that have emerged in Europe beyond the nation-state. The management of the globalisation effects, specifically the problems related to the flows and crises of global finance and the neglected European dimension of current socio-political developments, requires a more courageous approach, in respect of the various levels and actors involved in the process.

### 3) *Cosmopolite Europe in a World Risk Society*

In the development of modern societies, Beck distinguishes a first and a second modernity and applies this distinction to the process of Europeanisation: the “either/or” model of society and politics of the first modernity is being replaced by the “both/and” model of society and politics of the second modernity. The relation between the two is conceived in inclusive, rather than in exclusive terms. Beck defines Europe as a society of societies, an “empire” composed of states and finally as a product of the secondary modernisation.<sup>37</sup> The transition from first to second modernity is then perceived as a self-transformative meta-change. As such, Europeanisation is understood and analysed as part of a comprehensive process of reflexive social modernisation, a structural and epochal break in the development of modern societies, often as the result of the success of primary modernisation and internal dynamics.

In agreement with this line of argument, cosmopolite Europe cannot be reduced to a territorial expression of a “fortress” Europe, but is a component of the second modernity that is embedded in the world risk society.<sup>38</sup> The conceptual link is clarified by the theory of reflexive modernisation<sup>39</sup> which is characterised by three constitutive elements, namely, the theorem of risk society, the theorem of forced individualisation and the theorem of multidimensional globalisation.

It is argued that the dynamics of reflexive modernisation poses numerous challenges for the nation-state. The nation-state as one of the basic institutions of the first modernity is being transformed by the emergence of a plurality of diverse new forms of transnational governance beyond the nation-state, but remains an integral component of the creation of post-national Europe. In other words, states become

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<sup>37</sup> Beck, U., Grande E., *Cosmopolitan Europe*, *op. cit.*, p. 53.

<sup>38</sup> *Ibidem*, pp. 197-218.

<sup>39</sup> *Ibidem*, pp. 28-49.

integrated in a variety of ways into new international regimes and organisations, new supranational institutions, new forms of regionalism, etc. The result of this development is a new complex system of (global) governance and policy networks. In addition, there is the increasing role of private actors in solving collective problems and providing public goods.<sup>40</sup> The new basic institutions of the second modernity manifest themselves in these emerging transnational political regimes, of which Europe is at once the result and the driving force of this process. The theory highlights the fact that the different regions in the world are affected unequally not only by the consequences of failed processes of modernisation, but also by the consequences of successful processes of modernisation.

In this context, Beck refers to the interesting notion of a regime of side effects.<sup>41</sup> He argues that an inner globalisation of European societies has gradually and largely been taking hold through side effects independently of the political agenda, in the form of a self-propelling meta-change in European social, cultural and individual life worlds. Although the process of Europeanisation, i.e. “the realisation of an ever closer union of peoples of Europe” was intended and the result of political decisions of the founding fathers, its institutional and material consequences were often unintended. This is well explained by the thesis of institutionalised cosmopolitanism.<sup>42</sup>

### ***C. Cosmopolitan Perspective of the European Integration process: a European “Empire”***

Reality is becoming cosmopolitan. As was said earlier, *de facto* Europeanisation has already developed over the past fifty years. The real process of becoming cosmopolitan is taking place through secondary effects often undesired, unseen and usually occurs by default. Scholarly literature agrees that the EU is not a “state,” neither a “superstate” that has assimilated the sovereignty rights of the member states, nor a federal state with a clear division of powers, but neither is the EU a confederation, an international organisation or an international regime. In the context of recent research on Europe in political science, the EU has been defined a network, set of networks, network form of

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<sup>40</sup> Baudot, J., *Building a World Community, Globalisation and the Common Good*, Seattle-London, Royal Danish Ministry of Foreign Affairs Copenhagen and University of Washington Press, 2001; Héritier, A., *Common Goods: Reinventing European Integration Governance*, Lanham (MD), Rowman & Littlefield, 2002.

<sup>41</sup> Beck, U., Grande, E., *Cosmopolitan Europe*, *op. cit.*, pp. 35-40.

<sup>42</sup> *Ibidem*, pp. 19-20.

governance, a multi-level system, a multi-level system of governance or as a multi-level state.<sup>43</sup>

Ulrich Beck and Edgar Grande have proposed a redefinition of the term empire for an appropriate analysis of the political rule in Europe.<sup>44</sup> It is argued that the cosmopolitisation of the state in Europe has created a new political system; they call it a post imperial empire. This European empire is not based on national demarcation and conquest, but on overcoming national borders, voluntarism, consensus, transnational interdependence and on the political added value accruing from cooperation. The cosmopolitan empire of Europe is notable for its open and cooperative character at home and abroad. Its real power lies in the socio-economic model of a cooperative future and in its special form of soft world power. It is characterised by the following constitutive features:<sup>45</sup> an asymmetrical political order subdivided in power zones according to the intensity of cooperation and the number of countries involved; an open variable spatial structure; a multinational societal structure; an integration through law; a consensus and cooperation behaviour; a welfare vs. security objective; a horizontal and vertical institutional multi-level system of governance; a network power marked by non-hierarchical forms of decision-making and participation of a large number of societal actors in integrated negotiating systems and political decision-making processes; a complex cosmopolitan (internal and external) sovereignty; an ambivalence of delimitation and limitation; and finally an emancipatory vs. repressive cosmopolitanism.

The impact of a cosmopolitan perspective on European integration should be clear by now. For a long time, the key concept of integration process consisted primarily of the abolition of national and local differences. This policy confused unity with uniformity or assumed that uniformity is required for unity. In this sense, uniformity became the supreme regulatory principle of modern Europe. By contrast, cosmopolitan integration is based on a paradigm shift in which diversity is not the problem but rather the solution. Europe's further integration should therefore not be oriented to the traditional notions of uniformity inherent in a European federal state. On the contrary, integration should instead take Europe's inherent diversity as its starting point in order to link the call for recognition of difference with the call for the integration of divergences. Understood as a historically tested political model for a post-imperial empire of consensus and law, Jeremy Rifkin's *European*

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<sup>43</sup> *Ibidem*, pp. 50-52 and pp. 69-70.

<sup>44</sup> *Ibidem*, pp. 50-92.

<sup>45</sup> *Ibidem*, pp. 62-72.

*Dream*<sup>46</sup> of a soft world power is a fascinating alternative of a forward-looking vision of a state structure firmly based on recognition of the culturally different other.

In this context, nationalist and regionalist ideas are unsuitable for unifying Europe. A large European super-state frightens people. Beck's cosmopolitan Europe offers an idea of uniting European citizens today because it quietens Europeans' fear of losing identity, makes tolerant interaction, dialogue and mutual learning among the many European nations, regions and peoples enshrined in the treaties and opens up new political spaces and options for action in a globalised world. However, the persistence of nations and regions remains an important condition of a cosmopolitan Europe. The more secure and confirmed Europeans feel in their national, regional and local dignity, the less they will shut themselves off in their territories and the more they will stand up for European values and take responsibility in the world.

#### **IV. Conclusion**

By proposing multi-level governance structures and applying dialogue's frameworks and mutual learning for managing differences, a cosmopolitan perspective outlines a new post-national model of democracy for Europe that no longer marginalises citizens but give them an active role in European decision-making processes.<sup>47</sup> Europe can be understood through the concept of cosmopolitanism because it fully reflects its nature, history and future possibilities. A cosmopolitan Europe guarantees the coexistence of different ethnic, religious and political forms of life across borders, based on the principle of cosmopolitan tolerance and dialogue. Throughout different eras of European history, this concept has been transformed from an ethical-normative ideal of community and open-mindedness into the hybrid patterns of integration. In sum, cosmopolitanism is evolving from a categorical imperative and a rational project into a new modality of practice-oriented awareness. In this way, it acquires an empirical and analytical value inside a reality that seems to become structurally cosmopolitan. This allows a broad applied thinking about the democratic transformation of the EU and its role in view of the present and future challenges.

The cosmopolitan perspective also implies a fading of physical, mental and disciplinary borders. It is shaped by fluxes of capital,

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<sup>46</sup> Rifkin, J., *The European Dream*, Cambridge, Polity Press, 2004.

<sup>47</sup> Mascia, M., *La Società Civile nell'Unione Europea*, op. cit.

information and persons and by processes of spatial-temporal compression, de-territorialisation and de-nationalisation. The new fluxes go beyond traditional borders and refer to the concept of a network of interconnections. Cosmopolitanism becomes the possibility to recognise diversity as a constitutional element of multiple identities. At the practical level, this new consciousness determines the creation of a civilised confrontation sphere where identities are built in dialogue, in relation to a reality of (global) risks that require collective solutions.

For many sociologists, the EU represents the result and the challenge of social transformation. It is said to be characterised by a flexible spatial structure, composed of vertical and horizontal links between models of sovereignty in a transformative interdependence. It presents an asymmetrical integrative order, based on a mixture of inter-governmental and supranational forms of cooperation in which civil society is becoming a shaping actor and meeting place of social and political aggregations. This might lead to a new model of supranational and transcend democracy which, of course, poses the problem of searching for new forms of management of politics and dialogue at various levels of the globalising landscape.

To think and act Europe along a cosmopolitan perspective means recognising the EU as a laboratory of plural democratic forms and analysing the European integration process as a dimension of cosmopolitanisation and transformative cooperation. It is therefore necessary, on the one hand, to consider nation-states in relation to the transnationalisation of their interests and, on the other hand, to understand various forms of governance and dialogue within a context of risk interdependence.<sup>48</sup> EU is then conceived as a new space in which federalism, intergovernmentalism and neo-functionalism are interconnected through a multi-level governance structure which opens up to a participative process and plurality of decision centres. Apparently, the paradigm of multi-level governance contributes to the understanding of the complex political reality in the European and global contexts.<sup>49</sup>

Following this policy line, Europeanisation as cosmopolitanisation is analysed in the discursive interaction between segmented publics which favours integrative dynamics and transformative efficient solutions. In a

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<sup>48</sup> Beck, U., *Power in the Global Age*, *op. cit.*

<sup>49</sup> Examples of European multi-level governance are offered by European Commission, *White Paper on European Governance*, 25 July 2001, COM (2001), 428 (final); Committee of the Regions, *White Paper on Multi-level Governance*, 17-18 June 2009, CoR 89/2009, final; and Committee of the Regions, *Towards Multi-level Governance in Europe?*, *op. cit.*

transnational deliberative democracy, the form of multi-level governance emerges with the realisation of a public sphere that is open to the discursive process and diverging expressions. The legitimacy of subsequent political decisions comes then from the inclusion of knowledge, interests and actors at the various levels of the participative process.

This is not an easy discourse.<sup>50</sup> The multiplicity of links and cultural perceptions stresses the premises of a values-oriented community. Europe should not only find its democratic form through the principle of responsibility in managing (global) risks, but should also apply the principle of reflexivity to the dynamics it put at work. Important is that the recognition of universal rights remain the point of departure of democratic politics in multi-level and multi-actor governance.<sup>51</sup>

Next to a societal reflection, also a meta-reflexive person is therefore needed to valorise the transformation of society in a European and global context. The capacity of transformation and realisation depends on the historical experience of the society as well as the level of social practices of persons. The reflexivity of persons applies to memory, knowledge and action, and links the individual's prospects with that of the society. Therefore it is necessary to re-conquer a space of recognised and accepted difference which is not limited to cultural relativism, but favours a community of cultures and makes intercultural dialogue possible. The fundamental question relates to the objective of integral human development of a person who is conscious of his/her universal rights. Europe should therefore present itself as an open public space where institutional and non-institutional actors, formal and informal ones, meet, recognising their proper rights and obligations. Such a European perspective transforms demands and identity in a constructive way, but requires a respect of personal and collective identities and memories.

Cosmopolitanism is thus not an external credo or an ideological slogan of a normative and political universalism, but more an internal dimension of reflexive action which stretches beyond a nostalgic defence of territorial sovereignty as well as beyond a utopia of universalistic centralism. Cosmopolitanism is mirrored in the diversified and similar history of Europe, a permanently changing multi-faced Europe, situated at the crossroad between past, present and future. A cosmopolitan vision of the process of European integration may

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<sup>50</sup> Taglioli, A., "Il Volto Cosmopolita dell'Europa," in *Società Mutamento Politica*, vol. 1, no. 1, 2010, pp. 189-201.

<sup>51</sup> *Ibidem*.



contribute to identify and clarify the conceptual and empirical characteristics of a multi-level governance of intercultural dialogue, bridging between past and present contradictions in international democratic politics and strengthening the process of Europeanisation.



# Multi-level Governance in Regional Perspective

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## I. Multi-level Governance: a Buzzword?

Since a few years, the concept of *governance* has come to the fore when referring to a novel approach to policy development regarding complex societal issues. Without giving up the essential state functions of legislation and policy implementation, the scope is broadened to include all stakeholders in taking responsibility for problem-solving in society. This way, the classic notion of government, mainly taking place within the political system, is opened up to civil society, seen as a co-responsible actor for shaping a better targeted and more legitimate policy.

Next to the *horizontal* extension of the actors involved in policy-making, the *vertical* dimension is probably the most striking feature of multi-level governance (MLG). In contrast to the traditional textbook presentation, insisting on the hierarchical relations between the state level and the subordinated authorities at home, and the rhetoric on sovereignty in the international sphere, the MLG approach highlights the *interdependency* of all levels implied in negotiation and decision.

Taking environmental policy as an example of a universally recognised crucial issue, it becomes clear that global standards should be set under United Nations auspices, that the EU should speak with one voice on the international scene, since all member states have agreed on the common targets, but that the legislative measures finally belong to the individual states, be it within the framework of EU directives. In some cases, however, regions are actually (co-)responsible for normative measures and concrete guidelines. And, in the end, the local authorities are not only in charge of the final implementation, but

contribute substantially to the mobilisation of the citizens' awareness of their "ecological footprint."

As the example shows, from the perspective of problem solving, the major issue is not that much the question of hierarchical relations within the state or the legal position in the international community, but the need for effective *partnership* among all *stakeholders*, public and private. However, from the outset it should be clear that MLG neither has the pretension to alter the fundamental principles of public law, nor to challenge the right of states to join – or not – whatever international organisation. MLG should, indeed, not be seen as a normative doctrine or even as a scientific theory.<sup>1</sup>

It is just a *paradigm*, established as a result of the analysis of the interactions, currently taking place in real life. In other words, MLG presents in explicit terms what is obvious to all observers, i.e. the shift from a static understanding of legal competences to a dynamic interplay of authorities and civil society at all relevant levels.

A commonly accepted definition of MLG, as the one by Philippe Schmitter, calls it:

an arrangement for making binding decisions that engages a multiplicity of politically independent but otherwise interdependent actors – private and public – at different levels of territorial aggregation in more or less continuous negotiation/deliberation/implementation, but does not assign exclusive policy competence to any of these levels or assert a stable hierarchy of political authority.<sup>2</sup>

In more pragmatic terms, for Thomas Conzelmann, MLG can be operational in all "functional spaces within which common problems exist."<sup>3</sup>

Without elaborating on the diverse forms MLG can take, e.g. in a more institutional setting or rather as an *ad hoc* arrangement,<sup>4</sup> we would, in this article, like to focus our attention on the *sub-state* application of the paradigm. Quite often, indeed, MLG is exemplified in reference to

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<sup>1</sup> Peters, G., Pierre, J., "Multi-level Governance and Democracy. A Faustian Bargain?," in I. Bache, M. Flinders, *Multi-level Governance*, Oxford, Oxford University Press, 2004, pp. 75-92.

<sup>2</sup> Schmitter, P., "Democracy in Europe and Europe's Democratization," in *Journal of Democracy*, vol. 14, no. 4, 2003, pp. 71-85.

<sup>3</sup> Conzelmann, T., "Towards a New Concept of Multi-level Governance," in Committee of the Regions, *The Contributions to the 2008 Ateliers*, Brussels, Atelier of 10 September 2008, p. 6.

<sup>4</sup> Marks, G., Hooghe, L., "Contrasting Visions of Multi-level Governance," in I. Bache, M. Flinders, *Multi-level Governance*, *op. cit.*, pp. 15-30.

global challenges. We already mentioned environmental policy in general and climate change in particular, but could add many other crucial issues such as health care, food safety, migration and even concerns over collective security. In all these examples one can distinguish between a macro- and a micro-level. On the macro-level, the international community discusses the issue, preconises principles and sometimes sets standards. However, the effective tackling of the major collective challenges has been demonstrated on the level of the so-called *macro-regions*, i.e. transnational groupings of states, oriented towards a single purpose, e.g. a free trade area, or with an open end, such as the EU.

Over the last sixty years, the European integration process has indeed developed from a common market into an encompassing Union, dealing with almost all dimensions of transnational interest on the “old continent.” Without hollowing out the member states’ final competences, this arrangement can be seen as the example *par excellence* of well understood multi-level governance, i.e. dealing with the common challenges at the appropriate level.

The paradigm, however, has a sub-national (*micro-*) dimension as well. The regions and local authorities are not confined within the national realm. Their loyalty to the constitutional order does not prevent them from being *actors* in the MLG interplay, since a major responsibility for implementing transnational policies is conveyed upon them. The empirical findings regarding the role they effectively played in preparing and carrying out EU structural policy, were actually at the origin of developing the notion of MLG.<sup>5</sup>

So, although frequently used in recent years, especially in the EU context, MLG is not just a fashionable concept. It is rather a way of broadening our understanding of the present-day policy-making, including a clear supranational and a sub-national dimension, next to the core position taken by the nation-state.

It is, therefore, not by coincidence that the Committee of the Regions, representing local and regional authorities in the EU, has developed its views on partnership relations between the various levels of government under the heading: *The White Paper on Multi-level Governance*.<sup>6</sup> Since this white paper will be extensively presented

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<sup>5</sup> Hooghe, L., *Cohesion Policy and European Integration. Building Multi-level Governance*, Oxford, Oxford University Press, 1996.

<sup>6</sup> Committee of the Regions, *The White Paper on Multi-level Governance*, Brussels, CoR, 2009, p. 46.

elsewhere in this publication, we will not elaborate here on its propositions and on the many illustrations it provides.

## **II. Towards an Actor-centred Approach: Lessons from History**

Having taken distance from a legalistic tradition that puts full emphasis on the exclusive legitimacy and authority of the nation-state, we have rediscovered in recent years the pre-modern form of building up the *res publica*. In essence, the reality of MLG is not a discovery of the 1990s. We should keep in mind that before the wave of “modernisation” that introduced centralism at the end of the 18<sup>th</sup> century, mainly under French influence, the system of local and regional self-government has led in a number of cases to remarkable achievements in terms of economic expansion and the promotion of the sciences and the arts.

Without idealising the democratic qualities of the government of cities and regions in the late Middle Ages and the Renaissance period, one can, indeed, be impressed and even inspired by the potential of local self-government demonstrated at that occasion. Referring more particularly to the city-states in Northern Italy and the cities and regions in North-western Europe, including the Hanseatic towns, a certain parallelism with present-day ambitions and performances can be noticed.

First, whereas, in most cases, princes rule at the regional level, the cities are governed by the local stakeholders of that time, i.e. the socio-professional organisations – the *guilds* – or, at least, the leading families involved in trade and pre-industrial activities. Although we no longer share in our days this formula of democratic representation, one has to admit that the regional and local dynamics, then and now, largely depend on the cooperation of the representatives of trade and industry, especially the small and medium-size enterprises, and the so-called “social partners,” with the regional and local authorities. In other words, self-government is no utopian claim. History as well as current examples prove that a well-determined regional and/or local community can be perfectly well equipped for taking an active role in shaping its own destiny.

However, neither in the Renaissance, nor in the 21<sup>st</sup> century, full *autarchy* was or is an option. Exactly as in the heydays of city and regional autonomy, there always has to be a form of interactive relations with the surrounding world. Sometimes we tend to forget that the highly praised political-administrative self-government of the 14<sup>th</sup> till 16<sup>th</sup> centuries has always taken for granted the broader community of

religious values and culture, and more in general, the intellectual and moral unity of the Christian world. However differentiated the local customs might have been, there was the common ground provided by Roman law. And when universities saw the light, first in Italy, later on in France, Spain, Britain, the German Empire and the Low Countries, their concept and curriculum had to be accredited by the Church. As a result, students and scholars could move freely from Louvain to Padua, from Salamanca to Prague. Only in the late 20<sup>th</sup> century, thanks to the efforts of the Council of Europe and – more specifically – from the European Union, we once again live in a European educational area. The numerous Erasmus students are certainly the most experienced and probably the most convinced adherents of the trans-European cultural space.

Looking back on some glorious pages of common European history has no other purpose than to stimulate our imagination *vis-à-vis* an *actor-centred* concept of community development. Experiences from the past provide us with the proof that communities with an outspoken identity and social cohesion, and especially with a vision on the future, are well positioned for playing a decisive role in shaping their future.

This is no plea for self-sufficiency, neither in the economic-political, nor in the moral sense. From a MLG perspective, no level of governance, even not the central state, should claim *ownership* of collective action. Every level, to start with the local and regional ones, has its specific responsibility. Every level offers particular opportunities for dealing with a specific dimension of the issue at stake. Smart policy-making, therefore, will call upon *all* categories of actors – public and private – on all relevant levels. In our view, the partnership principle should be understood as an open invitation to all potential actors to take their part of responsibility and commitment, however stressing that none of them should claim exclusive rights.

### III. Active Citizenship

From the Greek antiquity on, citizenship has a connotation of active participation. The citizens of the autonomous city-states were not only expected to take part in the decision-making, but to be available for other duties as well. In present-day terminology we call this: rights and obligations. Over time, the *res publica* has been extended to large aggregations of local and regional communities, ending up in the nation-state. Philosophers of the Enlightenment period, such as Thomas Hobbes and Jean-Jacques Rousseau, have linked the idea of citizenship with this state level. They present it as a rational arrangement or even as a *contrat social*: individuals give up a bit of their fundamental liberty, expecting a “law and order” regime from the state. Gradually, political

liberalism will insist on electing the rulers. This way, citizenship is mostly perceived as a fundamental democratic right to freely choose the ones who will govern on the national and local level, in some countries on the regional level as well.

In the 1950s, the European integration process takes a concrete shape and, step by step, the European Communities are being established. Although technocratic thinking prevails in the blueprint of its major architect, the French planning expert Jean Monnet, right from the beginning insists on having a Parliamentary Assembly advising and monitoring the proposed measures. Initially composed by delegations from the national parliaments, this Parliamentary Assembly will become a full fledged Parliament in 1979, when, for the first time, it is elected directly by all nationals of the then European Community. The next decisive step in creating a truly representative democracy on the European scale should be situated in 1992, when the Treaty of the European Union introduced the notion of (European) *citizenship*.<sup>7</sup>

Not too much attention has been given at that time to this novel concept. There were more immediate concerns on the political agenda, mainly the broadening of the territorial scope of the Union, to include Central Europe and a large part of Eastern Europe. But even nowadays, now that the Union has been enlarged to encompass twenty-seven member states and 480 million citizens, we are hardly aware of the uniqueness of this “experiment,” consisting of an almost continent-wide transnational Union that offers all nationals from its member states the status of an additional European citizenship.

The rights linked to this citizenship are well known. All citizens are entitled to take part in the elections for the European Parliament as well as on the municipal level, as voters and as candidates, in the EU country of their actual residence. They can call upon the diplomatic services of whatever EU country, when their own nation is not represented in a particular third country. They enjoy freedom of travelling and residence, although the last opportunity is sometimes only gradually available for the new member states that joined in 2004 and 2007.

Our point, however, is not that much to highlight the EU’s recent institutional innovations, but to draw attention on a double evolution in the concept of citizenship.

Firstly, the *scale* on which the awareness of citizenship is focused on has dramatically evolved over time. Originally mainly located on the

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<sup>7</sup> Article 9 TEU, as amended in the Lisbon Treaty, and Article 20 of the Treaty on the Functioning of the EU (TFEU).



local level, it moved to the state level once the modern nation-states took their present form. Those national authorities were far going in their expectations *vis-à-vis* their “nationals:” a wide array of legislation was enacted, taxes were raised, military conscription introduced and in case of war, (male) citizens were considered to be prepared to the ultimate sacrifice for the country, “*la patrie*.” It is normal that most citizens, therefore, first and foremost, identify themselves with their nation-state. The EU is a newcomer on this scene. Although its rules, standards and policies have a major impact on the daily lives of all Europeans, this newly introduced citizenship is hardly perceived as equivalent with the national one.

The turnout at the elections for the European Parliament provides a striking example of the paradox of European citizenship. Since the first direct elections, the EP has gained a substantial increase of legal power and political impact, nowadays truly being a *co-legislator*. The potential voters, however, did not get the message or have not been convinced of its relevance. The overall turnout has decreased to less than 50% in 2009. Logically, the question of the “feasibility” of a genuine *democracy* arises on this macro-scale, with its twenty-seven member states with their many languages and political-cultural traditions.

Is the Union not setting very high stakes when defining citizenship in the treaties of Maastricht and Lisbon? In other words: is there, next to the issue of scale, no problem of *content*? Anyway, the treaties are most explicit on the issue, insisting on the democratic character of policy- and decision-making in the EU. In Title II of the Treaty on European Union, as amended by the Lisbon Treaty, both the principles of representative and participatory democracy are being given full attention.

Article 10 deals with *representative* democracy, stating that “the functioning of the Union is founded on democratic representation.”<sup>8</sup> This principle is immediately clarified by referring to the direct representation of citizens at the level of the EU by the European Parliament, whereas the member states, meeting in the European Council and the Council of Ministers, are democratically legitimised as well, be it at the national level.<sup>9</sup> So, from the outset it is made clear that the EU is much more than an intergovernmental organisation. Citizens have the right to participate directly in the democratic life of the

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<sup>8</sup> Article 10.1 TEU.

<sup>9</sup> Article 10.2 TEU.

Union.<sup>10</sup> That's the reason why "decisions are taken as openly and as closely as possible to the citizens."<sup>11</sup>

These are remarkable statements, having in mind that they originate from a transnational "body politic" known for its technocratic policy-making. Moreover, the "Fathers of the Treaties," being the member states, have fully subscribed to these principles, by signing and ratifying the Maastricht and Lisbon Treaties. They all agree on the aim of implying as many citizens as possible in legitimising the Union and in orienting its policies. This should not only happen every five years at the occasion of EU-wide elections for the EP, but also on a "daily" basis, by including citizens and their representatives in the shaping of policies that directly affect their lives. Therefore, representative democracy is complemented by *participatory* democracy.

Here as well, the treaties are unequivocally insisting on a systematic and regular consultation and participation, either on the individual level, or – more realistically – via the mediation of organisations for interest representation, of (European) political parties and of civil society in general.<sup>12</sup> Moreover, for the first time, a *citizens' initiative* is made possible, although the concrete modalities are not fixed yet.<sup>13</sup> The idea is that one million citizens from a significant number of member states can request the European Commission to elaborate a policy proposal, of course within the range of its legal competences. This way, an impetus could be given from the grass roots to a concern that is not (yet) shared by the political community. Experience has to be built up with this form of "direct democracy:" will it contribute to an opening of the minds towards new domains, or, on the contrary, serve the cause of reactionary circles?

Anyway, participatory democracy has to be taken seriously. Not only are the treaties insisting in general terms on the opportunity of expressing – directly or indirectly – citizens' views on all relevant matters for EU action; next to the economic, social or ecological actors, they explicitly refer to some categories of civil society one should perhaps not immediately associate with this dialogue: the churches, religious associations and non-confessional philosophical organisations.<sup>14</sup> The EU not only "recognises their identity, but also their specific contribution." No other public authority has ever called for a

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<sup>10</sup> Article 10.3 TEU.

<sup>11</sup> *Ibidem*.

<sup>12</sup> Articles 10.4 and 11.1, 2 and 3 TEU.

<sup>13</sup> Article 11.4 TEU.

<sup>14</sup> Article 17 TFEU.

more encompassing “mobilisation” of all *forces vives* in view of policy support in the economic and social realm. But what can be done “on the ground,” there were citizens really live?

#### IV. Citizenship and Identity

If the EU can hardly be beaten as a promoter of democratic principles, including participation of all categories in society, she feels more at ease in mobilising potential partners in the policy-making process at European level than in exploring the application of these principles at the sub-national level. This is not meant as a criticism. It is well known that the EU has to be most cautious in interfering with the political sensitivities of the member states, attentive not to infringe on what they consider as their sovereign rights. Despite the impression sometimes given by key documents, such as the Draft Treaty on a Constitution for Europe, signed by all partners, but not ratified, the Union is not a federal state. The political principles and values are *shared* by all states, but the internal constitutional order as well as the political culture linked with it, are not directly affected by the innovative reflection and action on the European level.

To be more precise: when the EU introduced its structural policies, renamed *cohesion* policy in the late 1980s, the member states were invited to come to the fore with their priorities regarding economic and social development. The substantial financial contribution from “Brussels” was, however, subject to some preconditions of “good governance,” such as pluri-annual planning and “additionality,” i.e. no European support without national financial contribution. No doubt, the most debated precondition was “partnership,” understood as the participation of local and regional partners – public and private – next to the national and EU actors in shaping and monitoring the implementation of these programmes.

We should not enter here into the debate whether these preconditions have actually been met in reality and not circumvented by some member states. The point we want to make has to do with the fact that the EU sometimes imposes a *modus operandi* to the member states and their regional and local authorities, but only in so far its own EU-subsidised projects are at stake. In other words, the EU advertises the concept of multi-level governance without being in a position to effectively implement it.

The already mentioned *White Paper on Multi-level Governance*, presented by the Committee of the Regions, should therefore be seen as an incentive for reflection and action, aiming at introducing a new way of approaching the interaction between levels of governance. Whereas

the *White Paper on Governance*, presented by the European Commission in 2001, already insisted on including the local and regional authorities as well as civil society in an overall exercise of “good governance,” the Committee of the Regions has given this concept a name: *multi-level governance*.<sup>15</sup> In eight years’ time, quite a progress has been made in the conceptualisation and operationalisation of MLG, however mainly as a proposal offered to the national and sub-national actors. Only rarely can the EU directly influence the institutional setting at local and regional level. Apart from the already mentioned cohesion policy, one can think of the recently introduced European Groupings of Territorial Cooperation (EGTC), described (and promoted) in the CoR’s White Paper.<sup>16</sup>

Summarising our assessment, one should not be blinded by the Treaty provisions and the most promising white papers of the first decennium of the 21<sup>st</sup> century, all very conclusive on a more active understanding of the notion of *citizenship*. The EU, as an “enlightened” actor has very well understood that its macro-strategies on a “competitive knowledge-based society” or on “sustainable growth in a 2020 perspective” will not be successful without a real mobilisation of all *forces vives* at all levels in society.<sup>17</sup> But, in most cases, she can only offer “incentives” and not interact directly with the key actors for putting these strategies into practice.

One could argue that the EU is institutionally not well equipped for this kind of interactions. Indeed, the European Council, mainly consisting of the heads of state and government, launches ambitious programmes as the Lisbon Strategy and its successors, but the same member states have defined the EU’s institutional mandate in a most limitative way. The treaties have not really been designed for these strategies of the 21<sup>st</sup> century!

Apart from this comment, one should not focus all attention on the institutional deficiencies. More important is the reflection on a new understanding of the concept of citizenship, beyond the classic national setting and the opportunities offered by the EU treaties. Multi-level governance can only become a reality when the actors “on the ground,”

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<sup>15</sup> European Commission, *European Governance. A White Paper*, Brussels, 25 July 2001, COM (2001) 428.

<sup>16</sup> Regulation of the European Parliament and of the Council on the *European Grouping of Territorial Cooperation*, no. 1082/2006, 5 July 2006.

<sup>17</sup> Communication from the Commission, *Europe 2020. A European Strategy for Smart, Sustainable and Inclusive Growth*, Brussels, 3 March 2010, COM (2010) 2020.

i.e. on the local and regional level, feel concerned as *active citizens*, be it in the context of a public mandate, an organisational responsibility, or just as participants in a common endeavour to improve the quality of life in society. In other words, local and regional actors should not just be perceived as the “target public” of a “mobilisation” from the “centre,” be it national or European, but are citizens with their own capacity of discernment and their own motivation for action. Citizenship on the sub-national level should therefore be given the institutional position and the trust it deserves, very much in line with the above mentioned examples from our European history.

In our view, therefore, the most important prerequisite for active citizenship is of a mental and moral order. It has to do with a well understood *sense of identity*. In postmodern times, one should no longer exclusively favour a national identity and consider all regional and local entities as mere “decentralised” units. The states are very well established nowadays and no longer need the type of national patriotism that was so characteristic of their period of unification. If we agree that people nowadays live in a series of concentric circles, starting with the local sphere and ending up with the global concerns and arrangements, we should be prepared to direct our sense of belonging to each and every of these spheres.

We are, indeed, to a certain extent “world citizens,” committed to our planet and its endangered environmental situation, but also to the fair relations between North and South, as well as to peace and security in our world. As Europeans, we have achieved a remarkable shift from confrontation in the first half of the 20<sup>th</sup> century to peaceful accommodation in the second. Moreover, out of a successful “common market,” a wide array of legislation, norms, standards and policies has been developed, creating a common space of liberty, security and opportunities that, unfortunately, is sometimes better perceived from outside the Union than from within. As we have seen, a sense of identification with this European project is indeed lacking.

The nation-states still offer the major framework for expressing our attachment to a common identity. However, this loyalty is not that much oriented towards the constitutional order and the institutions. The sense of belonging is more diffuse: it’s a *we-feeling*, that comes to the fore when confronted with the “others,” e.g. in international sports competition, a Eurovision song contests, or when travelling abroad. Similarly, within the country, regional and local attachment can be prominently present as well. It is, most frequently, from an individual psychological, if not sentimental order.

In the past, the national authorities did not use the potential of collective attachment to a particular region, town or village, apprehensive

as they were of any peripheral “particularism.” The centralist Jacobins who abolished the French provinces of the *Ancien Régime* were keen to create *départements* with to tally different delimitations and a new, non-historical name, mostly referring to a river. Modernity, in their eyes, required identification with the “*République, une et indivisible*,” not with its constituent parts. One century and a half later, General de Gaulle, although still subscribing the basic principles of French republicanism, introduced regionalism as a means to mobilise public and private initiative in view of the consistent development of particular territorial areas. In order to make these planning regions more visible in the general public’s perception, he did not hesitate to resuscitate the old provincial names with the aura they had kept in the collective imagination: Provence, Aquitaine, Bretagne, Champagne, etc. It was a clever initiative, since these regions have developed from planning entities into full fledged political-administrative regions, with their directly elected regional council and executive power. People in France know perfectly well to which region they belong and are aware of the many responsibilities this form of self-government is confronted with. Even as a traveller, one notices the specific logos on local trains and the slogans that identify one region from another. In short: development requires identification, even in unequivocally unitary states.

The evolution France has gone through since the late 1950s teaches us a lot on the economic and social potential of regional and local identity within an encompassing state and an overarching European Union. Therefore, our example has neither been taken from constitutionally entrenched federal systems, such as Austria, Belgium or Germany, or from declared regionalised states such as Italy or Spain. A negative example is given by some newcomers on the EU scene, apparently hesitant to recognise or stimulate the dynamism from-below. Since the EU insists on a dialogue with the sub-national level, they have designed administrative or planning regions, rather as subsidiaries of the “centre” than as creative poles of economic and social development. Fortunately, Poland, as the biggest country among the new member states, has very well understood the challenge of combining national identity with regional dynamism.

## **V. Multi-level Governance: the Road ahead**

By way of conclusion, we would like to discern in the present-day situation quite a few opportunities for a new impetus at the level of regional and local policy-making. As we have seen, the concept of governance has widely received acceptance and its multi-level dimension is no longer an intellectual exercise within Academia. By introducing this paradigm into the daily practice of local and regional

authorities, the Committee of the Regions has realised a breakthrough. On the other hand, the democratic principles set forward by the Maastricht and Lisbon Treaties, clearly refer to an advanced level of participation, if not partnership, at all levels and in all citizen-related policy fields.

In this context, MLG should be welcomed as a most appropriate conceptual framework for giving the sub-national operational level of governance the dynamic role it deserves. Instead of the decades-long *jeremiad* on unwilling central authorities and the eternal plea for more competences, local and regional actors can nowadays highlight their effective contribution to global (environment) and European strategies (growth, employment, development), as the ultimate proof of their positioning in a multi-level common endeavour. Even political systems that are not too generous in assigning legal political autonomy, cannot avoid approaching the sub-national dynamic actors as “partners” in an EU-guided strategic effort.

Paradoxically enough, the supranational Union, known for its distant technocracy, is the objective ally of regional and local actors who have understood that joining the common undertaking is the most appropriate way for an updating and upgrading of the centuries-old concept of local autonomy. Therefore, multi-level governance is not just a paradigm. It is instrumental in giving all actors the role they deserve in a dynamic policy environment.





# Active Citizenship and the European Public Sphere – State of the Art and Way Forward

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## I. Introduction: Citizens and the European Union<sup>1</sup>

European citizens are generally in favour of the European Union (EU) integration project and of the principles inspiring it, namely peace, respect for human rights, the rule of law, economic development and, last but not least, social cohesion. According to Eurobarometer 62, at the end of 2004, EU citizens from the twenty-five member states were convinced that membership of the EU was a positive rather than a negative fact (56% vs. 13%). In the same study, 50% of EU citizens had a positive image of the EU against 15% who had a negative image, some 47% nurtured a feeling of hope towards the Union, and respectively 57% and 52% had confidence in the European Commission and the European Parliament. What surprised many, at the time of the study, was that citizens of the EU were in favour of projects like common defence, foreign policy and even a European constitution, which were instead subject to controversy among the EU institutions

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<sup>1</sup> References for this chapter: European Commission, *Communication on a New Framework for Cooperation on Activities Concerning the Information and Communication Policy of the European Union*, COM 354/2001; European Commission, *Communication on an Information and Communication Strategy for the European Union*, COM 350/2002; European Commission, *Communication from the Commission to the Council, the European Parliament, the European Social and Economic Committee and the Committee of the Regions*, COM (2005) 494 final; European Commission, Eurobarometer 62 – Public Opinion in the European Union, 2005; European Commission, Eurobarometer 73 – Public Opinion in the European Union, 2010; European Commission, Eurobarometer 74 – Public Opinion in the European Union, 2011; European Parliament, *Report on an Information and Communication Strategy for the European Union*, 2002/2205(INI).

and national policy makers. This indicated that EU citizens were, most probably, asking the EU to do more, rather than less.

In the same Eurobarometer it appears that most citizens ignore the main achievements of the EU history as some three fourths of them declare not to be well informed about the institutions and the policies of the EU. These figures become interesting when we consider that two thirds of the citizens that declared to be well informed had, at the same time, a positive image of what the EU had achieved so far, while only one out of three citizens had a positive image amongst those who admit not to be well informed. In other words, to know what the EU is and what it does has a direct correlation with a positive feeling about it. Unfortunately, the majority of EU citizens, also those that show to be in favour of EU integration and that regard the EU integration process under a positive light, tend to ignore or are misinformed about the many rights they acquired thanks to EU integration or even about its main achievements.

The negative side of what is reported above is that those who regard themselves as being ill informed were the majority (55%) in the twenty-five countries scrutinised during the study. In response to this lack of information, 75% of EU citizens would have liked to be better informed and up to 85% were in favour of the idea to better inform children at school about the EU and the way it works. Interestingly, EU citizens were asking member states and governments as well as the EU to introduce and reinforce civic education about the EU, its institutions and their working processes.

The conclusions reached at the time of the survey were that the citizens were aware that something important was happening in Europe in which they could not participate or they were not able to participate for a lack of general knowledge and updated information. What the EU citizens requested was better access to European affairs not only for themselves but also for their children.

A few years later, in Autumn 2010, a period of international socio-political uncertainties and economic crisis, in which, usually, the public opinion swings towards conservatism and cultural protectionism, the Eurobarometer 74's figures demonstrate that European citizens clearly see a stronger European coordination and joint action as part of the solution for the EU and its member states to emerge from the difficulties related to the international conjuncture. Also Eurobarometer 73, while showing a decline in citizens' support to the European project, reports however that, in such a critical period for the economy and society worldwide, still 53% of Europeans think that their country has on balance profited from membership. It is also reported that more

Europeans trust the EU more than their own government, in spite of the fact that this trust has declined lately.

In short, European citizens were and still are in favour of the EU integration process. But they are asking the European and national institutions to stimulate more participation through informed dialogue and to develop and implement a clearer communication policy enabling them to being properly informed about and to take part in the debate whether directly or through the representatives they chose.

## **II. The EU Information and Democratic Deficits between Myth and Reality**

“EU information deficit” is the framing given to the above described phenomenon. Many tend to couple this information deficit with a more difficult to solve “EU democratic deficit.” It is largely recognised that the ignorance about the EU, its achievements and the benefits it brings to European citizens reported above, is mostly due to insufficient information to the general public. Where should we look in order to find an explanation for this information deficit in spite of the efforts the EU institutions, and especially the European Commission, is doing to bridge the gap?

Historically, the information deficit probably originates from the early days of the European Communities when the issues of European integration and the processes to implement them were too technical and difficult for the average citizen to follow their developments. Citizens did not find European policy neither interesting nor appealing and left it to the consideration and responsibility of bureaucrats living in Brussels or travelling to Brussels. While this situation could, eventually, be acceptable at the beginning, today it is not acceptable anymore. The EU integration process generates continuously new common policies and laws affecting all sectors of economy and society, and, for this simple reason, European citizens should (be able to) understand and participate meaningfully in EU governance. So, in order to assess the opportunities and challenges of the EU integration process, they need to have factual and critical information on its benefits and drawbacks: the existing and the new ones. A proper framework to participate in critical transnational European debates needs to be developed.

Talking about an EU information deficit implies to turn our attention to the media landscape and its offer of EU-related issues. Classical examples of pan-European media are the *European Voice* and Euronews. The *European Voice*, published since 1995 has reached today a distribution of some 15,000 weekly copies. The *European Voice* is certainly more read in Brussels, with its microcosm of consultants and

EU civil servants, than in the rest of the European Union. Euronews, the most important and successful pan-European broadcasting project, started its activities in 1993 and has continuously expanded in terms of audience and audience reach.<sup>2</sup> In Europe, it has some 2.7 million cable and satellite viewers every day and more than 3.3 million viewers through broadcast windows in other national public television stations. As to the public impact, Euronews reaches 15.7% or 7.6 million viewers every week (CNN scores a share of 15.6%), but its audience remains an elite, with more than 50% of it belonging to the top 10% wealthiest households.<sup>3</sup> The same can be said about the *European Voice*. Arte, another successful broadcasting project, has started as a Franco-German cultural channel in 1991 and has expanded its collaboration to other national channels.<sup>4</sup> In 2007, it had an audience of 9.4 million viewers in France and of 4.2 million in Germany the year before.<sup>5</sup> Arte addresses a specific audience not representative of the average European and most of its broadcasting concerns the cultural sector. Last but not least, websites such as EurActiv.com, EUPolitix.com or Europa-digital.de, whose primary aim is to explain the EU and its policies, are more directed towards EU experts, consultants, researchers and students in EU affairs, and certainly do not involve or attract mass audiences. Also transnational European media (i.e. media that address audiences across national borders), which have emerged in the last twenty years or so, do not reach yet, in spite of their significant growth, a broad audience and remain rare.<sup>6</sup>

The issue illustrated in the previous paragraphs is common in the literature dealing with the European Public Sphere (EPS). It refers to the fact that practically it is hard to find, for the average EU citizen, media that address a wide European audience with specific European content. In spite of the success in terms of audience growth of pan-European media such as the ones outlined earlier, the figures show that there is not

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<sup>2</sup> It can today be received by more than 120 countries and 189 million households.

<sup>3</sup> Euronews, 2011, *Euronews Media Pack 2011*, downloadable at: <http://www.euronews.net> (site accessed on 15 January 2011).

<sup>4</sup> Arte is today distributed to roughly 190 million viewers in 80 million households, Arte, 2010, *Arte rapport d'activité 2009-2010*, at: <http://www.arte.tv> (site accessed on 15 January 2011).

<sup>5</sup> Arte, 2007, *The European Cultural Channel*, at: <http://www.arte.tv>.

<sup>6</sup> Brüggemann, Schulz-Forberg, H., "Towards a Pan-European Public Sphere? A Typology of Transnational Media in Europe," in H. Wessler *et al.*, *Transnationalization of Public Spheres*, New York, Palgrave MacMillan, 2008, p. 78; *id.*, "Becoming Pan-European?: Transnational Media and the European Public Sphere," in *International Communication Gazette*, no. 71, 2009.

a proper pan-European media presence on the continent. While the European media sector is converging for what concerns regulation and ownership following the European competition and audio-visual policy rules, it is not Europeanising when it comes to content and audience.<sup>7</sup> The main audience of the few pan-European media is mostly “top-people in the Brussels micro-polity.”<sup>8</sup> The result is that, apart from the *Financial Times* and a few upmarket satellite news broadcasters, there is no media space in which European citizenship can fully develop.<sup>9</sup>

Confronted with an important information deficit, the European Commission, after years of debates around sound EU information and communication policy and its implementation, publically admitted in the *White Paper on a European Communication Policy*,<sup>10</sup> that the communication with the citizens had not kept pace with the ongoing important political and administrative developments:

The gap between the European Union and its citizens is widely recognised [...]. Communication is essential to a healthy democracy. It is a two-way street. Democracy can flourish only if citizens know what is going on, and are able to participate fully.

This was a public acknowledgment that the information deficit was causing or, more correctly, is correlated to a democratic deficit.

In a vicious circle, the democratic deficit is often used by EU sceptics to explain the indifference and the lack of participation of EU citizens to European politics, which, *de facto*, becomes undemocratic in the media and public perception because people are believed not to take part or being interested in it. This, of course, is far from being true. National citizens can influence the choices of their national political parties, indirectly influencing European politics and policy-making. On the other hand, they can, directly, influence European politics by electing members of the European Parliament. As today most decisions are taken jointly by the European Parliament and European Council, simply by taking part in the national election systems, EU citizens can have an important say on the European stage.

Furthermore, the points of view of European citizens about common policies are also expressed by the national parliaments, which, through

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<sup>7</sup> Bale, T., *European Politics. A Comparative Introduction*, New York, Palgrave MacMillan, 2008.

<sup>8</sup> *Ibidem*, p. 231.

<sup>9</sup> Meehan, E., “Citizenship and the European Community,” in *Political Quarterly*, no. 64 (2), 1993, pp. 172-186.

<sup>10</sup> European Commission, *White Paper on a European Communication Policy*, COM (2006) 35 final, 2006.

the COSAC,<sup>11</sup> may examine legislative proposals or initiatives that might have a direct impact on the rights and freedoms of individuals. Not to say that the COSAC may also address to the EU institutions any contributions that it deems appropriate on the legislative activities of the Union. Later, the Lisbon Treaty opened the possibility for national parliaments to question directly the Commission proposals in relation to the respect of the subsidiarity principle and the possibility to express their opinions about them. It implies that national parliaments and the national political parties within them are instrumental in launching EU policies and in monitoring the EU integration process. Moussis describes the democratic deficit as “another myth propagated by Eurosceptic circles” that, paradoxically, are amongst the “most vehement detractors of the extension of the co-decision procedure to the common foreign and security policy which would practically eliminate the remnants of the democratic deficit.”<sup>12</sup>

It is suggested here that the real issue behind the EU information and democratic deficits lays not entirely in the presumed impossibility for EU citizens to directly influence EU policy-making (which, as we have seen above, does not correspond to reality), but in the absence of pan-European media that are able to reach wide audiences (of real, not of potential, followers) whose palimpsests are mainly driven by EU-related news, in the way news are reported and diffused by European institutions themselves (which is often hermetic, centred around the European Commission position and packaged for experts) and, last but not least, in the absence of EU-related news in national, regional and local media, which tend to forget the EU or to refer to it most often when controversy emerges in the Council of Ministers. Even more than what happens for the national public sphere(s), the European political communication is competing for attention in a highly saturated semiotic environment oriented more and more towards non-political matters and mixing, more and more often, the private with the public.

Instrumental in the information and democratic deficit is the lack of a multi-level political structure where citizens can find the appropriate way of participation and the lack of proper EU-related content easily reachable and understandable by EU citizens in the national, regional and local media they are accustomed to. The paradox here is that, while

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<sup>11</sup> Conference of European Affairs Committees established in 1989 in Madrid and formally recognised in a protocol to the Amsterdam Treaty in June 1997. See <http://www.cosac.eu> (site accessed on 1 December 2010).

<sup>12</sup> Moussis, N., *Guide to European Policies*, Rixensart, European Study Services, (14<sup>th</sup> ed.), 2009, pp.145-146.

the Publications Office of the European Union can be regarded as one of the biggest publishing houses in the world in terms of quantity of documents printed and produced, and while the Server Europa is as well one of the biggest portal of public information, the average European citizen seems not to be interested in looking there for EU information and too often not able to find the information he/she is looking for. The available political instruments and technical tools constitute the major challenges against the full development of a critical and participated EPS.

### **III. Political and Legal Framework and Instruments of the European Public Sphere<sup>13</sup>**

The information and communication policy is not governed by specific provisions in the treaties. It is generally recognised that it flows naturally from the EU's obligation and commitment to explain its citizens its functioning and policies. To be precise, the treaties do not contain, as of today, any specific chapter or article that could constitute the legal basis for an EU information and communication policy. If a legal basis has to be found for it, this has to be searched for in Articles 11, 41, 42 and 44 of the Charter of Fundamental Rights. They are dedicated, respectively, to the right of information and freedom of expression, as well as freedom and diversity of media, the right to be heard and the right of access to documents relating to oneself, the right of access to the documents of the European institutions, and the right of petition. Furthermore, as in many other cases, reference to Article 308 can and should be made for actions for which there are no separate legal basis in the EC Treaty.

The EU information and communication policy has always been present in the European agenda, but it received renewed importance in the aftermath of the non-immediate and straightforward adoption of the Maastricht Treaty. Later and since 2005, after the negative referenda in France and the Netherlands on the ratification of the Constitutional Treaty, it became an institutional priority.<sup>14</sup>

To go more in details, since the shock of 1992, when the Danish had to vote twice to approve the Maastricht Treaty and in France had it passed on a thin majority (probably the very first time “Brussels”

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<sup>13</sup> The concept of PS used in the paper is based on the Habermasian idea of public sphere. A public sphere is a space of free, informed and critical debate about topics and matters related to public political (European) life.

<sup>14</sup> Valentini, C., Nesti, G., *Public Communication in the European Union*, Newcastle upon Tyne, Cambridge Scholars Publishing, 2010, pp. 1-2.

realised that there was a huge gap between the European integration project and the way it was finally perceived by its citizens), the European institutions, and notably the European Commission, have started a conspicuous process of inter-institutional reflection about a better and more efficient information and communication policy. The first resolution, in October 1993, took the form of an inter-institutional “*Declaration on Democracy, Transparency and Subsidiarity*.”<sup>15</sup>

In the following years, many documents were produced and debates took place in order to find the best EU approach to inform and communicate Europe to its citizens. The next milestone was certainly the adoption by the European Commission of a *Communication on a New Framework for Co-operation on Activities Concerning the Information and Communication Policy of the European Union* in 2001. This called on the other European institutions and on the member states to join in their efforts to overhaul the Union’s information and communication policy. For the first time, the importance of the role of the member states in the dissemination of information on EU issues was recognised. One year later, in March 2002, the European Parliament adopted a report calling for improved EU information policies and the development of a comprehensive communication strategy. Soon after, in July 2002, the Commission produced a *Communication on a new strategy for its information and communication policy*. Other initiatives on access to documents, transparency and the opening up of the Council of Ministers’ meetings followed.

If one red line is to be found in all the documents produced in the last decades, it is certainly that of the necessity of a better coordination of efforts amongst the institutional triangle (Parliament, Commission and Council) and the necessity to conceptualise and deploy a common information and communication policy involving and engaging other European institutions like the Committee of the Regions and the European Economic and Social Committee, and also and especially the member states, and the regional and local authorities.

All the efforts listed before, unfortunately were not enough to change the tide of decreasing public support and citizen participation in EU political life. The European Parliament elections of 2004 underlined the citizens’ growing lack of interest in direct participation in EU politics. As a response, the new Barroso Commission reacted by creating a new Commissioner for Communication and nominated former Environment Commissioner Margot Wallström for the job. Mrs Wallström started with a long phase of consultation. In July 2005, she presented her first

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<sup>15</sup> *Bulletin of the European Communities*, 1993, no. 10, pp. 118-120.



Action Plan to modernise the communication practices of the institutions. This was also known as “*Plan-D for Democracy, Dialogue and Debate.*”

In 2006, after a(nother) period of reflection originated in the failure of adoption of the Constitutional Treaty, the Commission published a much-awaited *White Paper on a European Communication Policy*. The Commission recognised that in order to have a successful European information and communication policy, it is important to have the involvement of all the three main players together with the other EU institutions and bodies, the national, regional and local authorities in the member states, European political parties and civil society.<sup>16</sup> In spite of recognising the problem, the Commission did not (dare to?) propose any legal instrument defining a binding European information and communication policy and involving the member states and the other European institutions in it. Instead of proposing a more binding solution, an inter-institutional agreement between the Council, the Commission and the Parliament on communicating Europe in partnership was suggested.

The result of this loose approach is that, today, each of the three European institutions has its own means and instruments to inform the public and to carry out its own information and communication policy. The Parliament and the Commission, while preserving their full autonomy, have established an Interinstitutional Group on Information (IGI) to coordinate their policies. The Commission and the Parliament can carry out jointly some priority information campaigns on subjects of topical interests, while the Commission representations and the European Parliament External Offices in the member states cooperate locally on an *ad hoc* basis. The Council has a separate information and communication policy from the other two institutions. Some instruments, such as the Server Europa and the Europe by Satellite, are shared amongst the three institutions. So, with the exception of a limited and not formally binding cooperation between the Parliament and the Commission and contrary to what was suggested many times in institutional documents, the three main European institutions have independent and heterogeneous information services.

It is widely recognised that today the European Commission is the main and most important provider of information about the EU. Its

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<sup>16</sup> See also Nesti, G., “The Information and Communication Policy of the European Union between Institutionalism and Legitimation,” in C. Valentini, G. Nesti, *Public Communication, op. cit.*, for a historical account on the emergence of a European information and communication policy.

Server Europa provides free access to more than sixty databases, thousands of documents including a main portal page, European legislation, common policies, books and publications, information for citizens and for businesses. Again, the Server Europa is not perceived as the easiest portal to navigate and use, most probably for the simple fact that it keeps on changing, probably reflecting changes in the different DGs' management. This further reinforces the idea that EU-related info is made by specialists for specialists.

Most probably, their reticence of the Institutions and the member states in setting up a proper, common and sound EU information and Communication policy, can be explained by the fact that member states find more politically rewarding to retain control over what is said, when and to whom.

The issue to tackle, then, remains why mainstream national, regional and local media do not dedicate to Europe enough time in qualitative and quantitative terms. They could, of course, have a leading role informing a critical EPS instead of assuming a rather detached or, often negative, position. Again, the reason might be the difficulty in finding an economic return in broadcasting news coming from and related to "Brussels," which, at the end, remain rather technical and difficult in nature. Another reason, probably more close to reality, is that news related to the national, regional or local context, are much more interesting for the average citizen as they can be related to faces, facts, places and contexts they know and are familiar with. The result is that, while Eurosceptic media, on a systematic way provide disinformation rather than information about the EU and its progresses, unbiased and mainstream media rarely report EU decisions. It is also easy to see national media taking the side of their government instead of engaging in a more articulated and critical debate.<sup>17</sup>

At the end, the EPS is confronted with a vicious circle in which governments do not have interest to mandate the European institutions to set up a proper and well-articulated EU information and communication policy; the institutions do not provide interesting information to the media; the media themselves are not interested in EU-related news, and hence do not take the effort to seek information themselves. The result is that national, regional and local media which are closer to citizens than (pan-)European media, do not report to the citizens the activities of the institutions which might be interesting for them and give them the occasion to talk about the EU. It goes by itself that low level and poor quality coverage of EU issues within the EU member states

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<sup>17</sup> Moussis, N., *Guide to European Policies*, *op. cit.*, p. 152.

and their national, regional and local media has a direct relation to a decrease and a low level of European identification and participation and produces negative implications for citizens' participation in European polity.

#### **IV. The European Public Sphere and Citizens' Participation**

Within democratic societies, communication plays a fundamental role: it improves citizens' knowledge about politics and hence allows for motivated and critical electoral participation,<sup>18</sup> it enables the participation of citizens in policy-making by giving and spreading information about important issues at stake (i.e. the relative policy options, the processes and procedures, and the actors involved); it promotes the accountability of elected representatives towards citizens; and finally it promotes the responsiveness of political actors because it helps improving their knowledge about citizens' preferences.<sup>19</sup>

The “*Plan-D*” proposed by the Commission, referring to the *White Paper on Communication and Information* states:

[...] these initiatives set out a long-term plan to reinvigorate European democracy and help the emergence of an EPS, where citizens are given the information and the tools to actively participate in the decision making process and gain ownership of the European project.

Without informed citizens and structures to enable public critical discussion, there cannot be an EPS.

Is it reasonable to ask of citizens the effort to inform themselves about EU issues? Probably not. Citizens expect to be rightly and timely informed about the EU, European affairs and decisions important and relevant to them, through their familiar, mainstream national, regional and local media. Languages and culture play also an important role here.

As of today, EU information coming from Brussels suffers from two main diseases. Firstly, it is (still) addressed to specialists and this in spite of the efforts done by the European Commission to vulgarise its language. Secondly, it mainly reflects the proposals of the Commission itself, rather than the policies and laws decided by the government of the member states (personified within the Council) and the Parliament (representing the Union citizens) or the institutional debates generated

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<sup>18</sup> Campus, D., *Comunicazione Politica. Le Nuove Frontiere*, Bari, Laterza, 2008.

<sup>19</sup> Valentini, C., *Promoting the European Union – Comparative Analysis of EU Communication Strategies in Finland and Italy*, Jyväskylä, Jyväskylä University Press, 2008; Valentini, C., Nesti, G., *Public Communication*, op. cit.

by the different topics. The result is indifference and dissatisfaction of EU citizens. Dissatisfaction not really directed towards the EU integration process, but towards its daily achievements, its daily dialogues that make a democracy alive, towards participating in a rather technical and complex reality. This mismatch between high expectations and false perception of the public is, probably, the most serious danger towards the path of a more important political union, active citizenship and citizen's participation.

It is clear that the information and communication policy of the EU, and its evolution over time, is strictly connected with the legitimacy issues or the democratic deficit reported about above. In this respect, the EU information and communication policy mingles with actions and policy directed towards the establishment of common cultural actions through an apparently separated instrument such as the Television without Frontiers Directive approved in 1989. It proposed for the first time the European media policy as an instrument to serve the political aim of supranational building.<sup>20</sup>

The EU information and communication policy is also interconnected with European cultural-identity building initiatives that started with the Adonnino Committee in the middle of the 1980s.<sup>21</sup> They aimed at using cultural actions to raise the visibility of the European integration project through projects as well as creating European symbols such as the European flag, anthem, logo, and, of course, passport. It is clear that the policies and actions directed towards information and communication cannot be separated but form a unique and complementary ensemble with policies and actions directed towards the establishment of cross-border culture, active citizenship, identity building and a stronger Union based on citizens' participation in and understanding of the EU integration project.

The issue of active citizenship is not an easy one to tackle, at social as well as at political level. As Wallace *et al.* clearly indicated, policy making in the EU is shaped by rules and procedures which are in a permanent state of evolution since the inception of the European integration project. They went through successive and incremental modifications and extensions. In the last twenty years, the policy-making procedures and processes have known a boost in relation not only to internal and external challenges, but also to a remarkable

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<sup>20</sup> Collins, R., "Unity in Diversity: the European Single Market in Broadcasting and the Audiovisual," in *Journal of Common Market Studies*, no. 32, 1994, pp. 89-102.

<sup>21</sup> Adonnino, P., "A People's Europe: Reports from the Ad Hoc Committee," in *Bulletin of the European Communities*, Supplement 7, 1985.

expansion of the EU constituencies (its member states).<sup>22</sup> In a situation in which there is not one clear and easy pattern of policy making, and in which EU policy making is a process of “mutual learning and accommodation”<sup>23</sup> amongst member states themselves and amongst civil servants working for national governments and European institutions, it is understandable that, also with the much needed backup of the political will to explain Europe to Europeans, this is not an easy task.

As was already said earlier in reference to the Eurobarometer and other surveys, more than asking for a direct participation in the EU decision-making process, EU citizens are asking for clear information concerning why and how decisions are taken, and in what sense and how they are important for their daily life.<sup>24</sup> Why not give citizens what they ask for and see if active European citizenship and dialogue will follow?

Wessler *et al.* believe that the public sphere at European level needs first of all to be more Europeanised. What is needed is:

More monitoring of EU governance in the news media, the convergence of nationally confined public discourses, the integration of media and speakers from various European countries into a common discourse, and the emergence of elements of European identity in public debates.<sup>25</sup>

The issues of the EPS cannot be separated from that of European identity building and active citizenship. Is this so far from what Article 6 of the TEU states that the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law?

It is clear that, in its latest proposals, from the “*Plan-D*” to the *White Paper on Information and Communication*, the European Commission could have been more determined, maybe provocative, and certainly more courageous. Instead of proposing an inter-institutional agreement it could have dared to suggest a programme for common civic European education for young Europeans; or, instead of having encouraged the nomination by each member state of a high level contact person as national communication director, it could have asked Ministers participating in Council sessions to comment the common press release

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<sup>22</sup> Wallace, H., Wallace, W., Pollack, M.A., *Policy-Making in the European Union*, Oxford, Oxford University Press, 2005, p. 483.

<sup>23</sup> *Ibidem*.

<sup>24</sup> Moussis, N., *Guide to European Policies*, *op. cit.*, p. 155.

<sup>25</sup> Wessler, H. *et al.*, *Transnationalization of Public Spheres*, New York, Palgrave MacMillan, 2008, p. XI.

or, eventually, to come up with common press releases as the main message to be sent to national press agencies.

Neither a loose cooperation nor a loose development of synergies can replace a specific communication policy. What the Commission failed to suggest is a sound and proper common information and communication strategy, common to all European institutions and involving the member states, and, of course, an infrastructure headed by a sort of impartial institution or international agency. Of course, the Commission cannot act alone and it is just an actor within the European Union settings. However, in some past occasions it has showed a proactive and more determined role, which is today most probably missing in relation to the creation of a fully-fledged EPS.

At the end, responsible for the information deficit are the institutions (which do not agree on a common information and communication policy), the governments of the member states (which prefer to present or not, the accomplishments of the EU as their own) and the media (which find more interesting and rewarding to comment upon the problems and the crises of the Union rather than to present its achievements and progresses).

Without a serious political commitment, the EPS will not shape itself and active European citizenship will only remain a topic for academic speculations. In a situation in which European citizens do not have similar political rights as those they enjoy in their home countries, and in which there is not a common transnational political will to support the formation of a truly EPS, active participation will probably never develop but will remain confined to a political vision.

Rightly, in 2001, Gerhards has stated that an EPS is very unlikely to emerge as long as citizens have no right, a substantial right, of political participation similar to that that they enjoy within national polities like the one of electing representatives with real executive powers.<sup>26</sup> He argues that, in spite of the stronger role that the European Parliament has been acquiring over time, citizens have and will keep on having little interest in seeking information related to EU matters because, at the end, this information is only secondary to their effective political participation. This interpretation also, metaphorically, reinforces the vicious circle discussed above as news media do not have direct interest in providing such information and collective actors do not need to address citizens via the news media because they do not depend directly

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<sup>26</sup> Gerhards, J., "Missing a European Public Sphere," in M. Kholi, M. Novak (eds.), *Will Europe Work? Integration, Employment and the Social Order*, London, Routledge, 2001.

from their support in the way that national governments do. The lack of interest from citizens, on the other side, does not motivate news media to discuss Europe on a large scale.

## **V. Conclusions: Suggestions for a Way forward towards a Fully-fledged European Public Sphere**

The debate about the EPS has already lasted for more than a decade and an half. Many arguments have been made and many positions put on the agenda but, as Wessler *et al.* state, no real consensus has emerged, neither, we would like to add, a common political shared commitment has been suggested and implemented. It really remains to be seen to what extent the communication behaviour of the EU institutions and its communicative structure and practices will actually change beyond a simple and sterile restyling (which creates for the user more problems than what it is supposed to solve) of the Server Europa.

The analysis presented so far tells us not only that the EPS needs information circulating within it, but also, and especially, that it still needs to be implemented. Playing with words, we might say that it needs formation before information. It lacks the proper political commitment; it lacks a proper structure in terms of pan-European media; it lacks EU-related content; and, finally, it lacks an Europeanisation of national, regional and local mainstream media. The existing situation is perceived as elitist and is mostly confined to a restricted technical and bureaucratic Brussels circle.

Therefore, it is necessary to work in parallel on all these levels to create an EPS able to nurture itself by the interest it generates in the public it addresses. It is reasonable to expect that, once it has the interest of the public, it will also gain space on the palimpsest of national mainstream media.

The first suggestion that the author puts forward is a very simple one. After some fifteen years of debates and research around the EPS and its importance for citizen participation in the European *res publica*, policy makers should in the first place listen to the citizens and provide easier to understand information (starting from news releases). They should offer civic education about the EU, grant more funding for pan-European media and stimulate national mainstream media to broadcast more and better about the EU. This implies a structuring of the press releases and a conferences mechanism in which not only the Commission point of view but also that of member states and other European institutions are presented. This would stimulate the debate at national, regional and local level on European politics and avoid the feeling of being marginalised by Eurocrats in Brussels. It would create a feeling that European policies are decided not only in Brussels but in

connection with national parliaments and governments. This might result in a commonality of problems and interests amongst regions and territories in Europe. The links amongst Europeans would then be evident to those participating in and listening to the debate.

Secondly, the EU institutions should come up with a sound communication strategy probably coordinated by, as suggested by Moussis,<sup>27</sup> a European Press Agency with the necessary means and resources. This idea is not new on the European stage. The creation of a sort of centralised Office of Communication is an idea circulating in Brussels since at least 1993 when the Committee of Experts' *Report on the EU's Information and Communication Policy* chaired by De Clercq suggested it.<sup>28</sup> The Office of Communication's mission was to ensure that the community spoke with one voice, and communicated the right message to the right audience. Such an approach would also require the obedience for the European institutions to a common set of guidelines, decisions, rules, measures and codes of conduct which should be adopted and endorsed by them and implemented by them firstly, and by the governments of the different member states consequently. The main task of the European Press Agency, conceived by Moussis as an inter-institutional body, would be that of coordinating information and communication services between all European institutions and European governments as well as regional and local authorities.

Thirdly, more substantial investments in pan-European and cross-border media should be made. It is surprising that, in an era in which new business models related to information and communication appear everyday, neither the media sector nor European institutions have been able to find the way to exploit cross-border and nomadic public and the use of mobile devices to inform about the EU. In the current era, a portal is the Middle Ages of communication, not the rocket future. Talking about the Server Europa, European citizens have witnessed already too many changes in its structure and appearance. It should be clear that this continuous changing, even if animated by the best intentions, only disorient the users and pushes them away from using it. This, again, reinforces, within the public opinion, the idea that the EU is communicated by experts to experts for their privileged use.

It is clear that the most important element needed here is the intention of member states, heads of state and governments to commit to a joint, European, information and communication policy.

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<sup>27</sup> Moussis, N., *Guide to European Policies*, op. cit.

<sup>28</sup> De Clercq, W., *Reflection on Information and Communication Policy of the European Community*, Brussels, Commission of the European Communities, 1993.



Fourthly, if the use of the traditional legal instruments to create an EPS would result to be too daring for the current status of EU development, the use of alternative methods of policy-making should be seriously considered to build a sound European information and communication policy. One is referring here to the Open Method of Coordination or to the exploitation of the possibility for those countries that wish to further integrate to proceed by themselves through enhanced co-operation. This method was introduced by the Amsterdam Treaty in 1997 and used for the first time in the EU in 2010. Maybe, at a first stage, a task force of communication and political experts should be put in place to see the practical feasibility of this instrument for the EU information and communication policy. The very history of the EU is built on the history of daring personalities and visionaries; the current political framework should not prevent us to look forward into the future of an even more integrated Europe.

Fifthly, if the policy-makers will show to be reluctant, then why not to start using a new instrument at the disposal of European citizens since the Lisbon Treaty? This is the European Citizens Initiative, which could be used to oblige the institutions to consider the implementation of a legal act to enforce the creation of a serious European information and communication policy. Such an attempt would let the citizens use a very new European political participation tool. Moreover it would favour a debate at European level, increase citizens' knowledge of the EU and their rights within, launch cross-border debates and oblige policy makers to act on a topic where they prefer to safeguard the *status quo*.

Finally, as in all processes involving the spread of ideas and the creation of debates, it is necessary to find multipliers and catalysts of European information and interests so to nurse the curiosity and interests of the youngest generations of Europeans to the European venture. Pop and rock-stars are already *port-parole* of many international agencies and campaigns: why not to use them to launch debates at European level? Or to support important EU campaigns and policies? Renowned journalists and reporters should not be neglected here as multipliers and catalysts of EU news. Again, partly, this solution was also suggested by the *De Clercq Report*, according to which newscasters and reporters had to become target of EU information and communication efforts so to become supporters of the cause and hence multipliers in the communication chain. This would probably create the feeling that European news is not managed in a top-down fashion and it would make it topic for everyday talk, and would not only democratise the European communication and information process but humanise it and make it more accessible to the average European.



## **SUBSECTION II**

### **SECTORAL APPROACHES**



# **The Committee of the Region's White Paper on Multi-level Governance: Perspectives for a Partnership-based European Union 2020-2030**

Hendrik THEUNISSEN and Luc VAN DEN BRANDE

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## **I. The Changing World**

### ***A. The European Union has to Demonstrate Leadership***

We can observe that in the economic world a lot of changes already have taken place over the last two decades. Multinationals became a reality and small and medium-sized enterprises (SMEs) internationalise. The market is definitely global today. Consequently, the ever more intensive contacts occur on the economic level, in social reality, it means we need to change the way politics is organised, too. The creation of the European Union's Single Market demonstrates that the European Union is at the forefront of giving a solution to challenges of globalisation. The EU has the biggest single market. Not even China has a full-fledged internal market. The EU's single market is of course highly political, it goes far beyond economics.

Today most of our member states have given up their currencies, too (element of national sovereignty), this is a new political unity. The EU is not a nation state, but it goes far beyond intergovernmental cooperation and has clear cut federal features. We can observe a certain paradox in the history of the EU's integration process. The EU has, on the one hand, certainly with ups and downs, achieved a continuous process of deepening its unity; on the other hand, it has also promoted diversity by

giving an impetus to regionalisation and decentralisation.<sup>1</sup> More than one third of the current EU budget (2007-2013) is allocated to the financial instruments of the EU's regional policy. In this globalised world, in the EU, where states have given up elements of sovereignty and where regions are increasingly more important, it's no use to compare well-defined national sovereignties and to put them into competition. Today, also the boundary between the traditional difference between public responsibilities and private activities is less clear. New services no longer have national boundaries, mobility of citizens is increasing. You have to work in partnership. Industries have understood that and have changed their hierarchy systems and cooperation methods.

The role of regions has clearly increased with the establishment of the European Economic and Monetary Union (EMU). This is especially though for the bigger and middle-sized member states. In the past, countries could depreciate their national currencies to boost competitiveness. Today this is no longer possible. So the answer is to build clusters and pools of knowledge centres to increase competitiveness between industries in different (trans-border) regions of the EU. This so-called "cluster policy" is mostly conducted under the direct responsibility of the regions. In addition, regional and local authorities have gained important responsibilities for economic development (cf. the management of structural funds).

There is a clear tendency towards decentralisation both in the EU and in the world. The regional level now has a real role to play in various competences ranging from culture, education, tourism, integration of newcomers to so-called "hard" policies as export, and attracting foreign investments, industry, innovation or research and development policy. In the European Union there are yet about 270 regional authorities and 90,000 local authorities. Since the 1980s, about 300 regions and bigger cities established an official representation in Brussels. This trend goes in line with the growing activities of the regions in the field of foreign policy. Some scholars observe a so-called "third wave" in sub-state diplomacy and argue that "the boundaries

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<sup>1</sup> Milestones as the reform of the structural funds (1988), the Maastricht Treaty (1992) allowing regional participation in the Council of Ministers, introducing the principle of subsidiarity, and establishing the Committee of the Regions (1994) created a context of high regional mobilisation, network creation, involvement in important EU debates (White Paper on EU Governance, The European Convention, IGCs, etc.) against an ideological background where notions like "Europe of the Regions" were used with political determination.

between diplomacy (generated by states) and sub-state diplomacy are visibly watering down.<sup>2</sup>

Two thirds of public investment is managed by regions and cities in the EU.<sup>3</sup> Hence, we simply can't reach the objectives of the Lisbon Strategy and its subsequent EU 2020 Strategy without them. This is why regional and local authorities need to be engaged in the political debates on the EU agenda. This is the only way forward to constitute also "European" politicians, close to the citizens. The idea is to have the architecture in place for more systematic cooperation between all those entities and actors who can contribute to the challenges and problems where citizens need a concrete answer to.

## ***B. New Governance Structures Arise to Provide Pragmatic Answers on the Ground***

### *1) The European Grouping for Territorial Cooperation (EGTC)*

Policies must be adapted to new developments at all levels of government. One example is territorial cooperation, where national borders lose their function in some areas. The EU Regulation on the "European Grouping for Territorial Cooperation"<sup>4</sup> (EGTC) makes it possible to establish an authority with its own budget and staff originating from different member states in it (e.g. a hospital serving two or more countries). Each EGTC constitutes an authority based on the nature of the problem and its geographic location, instead of sticking to logic of perceiving national borders as institutional boundaries. Fifteen EGTCs have been set up to date, with a further twenty in the pipeline.<sup>5</sup> These EGTCs represent a new governance model for partnership within the European Union, and provide their members with a long term sustainable legal framework for consolidating mainstream policies through a new model of cross-border governance. The challenges linked to globalisation are increasingly taking shape with little regard for national borders, around substantial functional spaces, hence the need

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<sup>2</sup> Melissen, J., Crieckemans, D., Duran, M., *Towards a "Third Wave" in Sub-state Diplomacy*, Antwerpen, University Press, 2009.

<sup>3</sup> Dexia, *EU Sub-national Governments: 2008 Key Figures*, Document prepared by the Research Unit of Dexia Crédit Local with the help of the Council of European Municipalities and Regions, 2009-2010.

<sup>4</sup> Regulation (EC) on a European Grouping of Territorial Cooperation (EGTC), 1082/2006, 5 July 2006.

<sup>5</sup> See for a substantive overview of existing EGTCs and EGTCs under preparation, at: <http://www.cor.europa.eu>.

for “place-based” policies. In this context, the EGTC has a great deal to offer:

1. It gives legal stability to cooperation and allows a variety of forms of multi-level institutional formatting;
2. It incorporates the genetics of “soft cooperation” and has the legal capacity to deliver structuring development projects;
3. For the first time, we have an instrument which is European in nature and has a strong territorial basis.

EU politicians at all levels of governance need to pool actions together in order to incorporate the specificities of the local dimension with economies of scale and scope in a cross-border and trans-national dimension. This is a time to bring “European territorial pacts” to life, based on new forms of “contractualisation,” the respect of the principle of subsidiarity, the smart integration of policies, territorial cooperation and territorial dialogue.

## *2) The Establishment of Macro-regions*

Also the establishment of the new “macro-regions” is a pragmatic answer to real problems on the ground that goes beyond mere cross-border cooperation. For example, the Baltic Sea is an area with a common history and a common identity. Since centuries there has always been commercial and cultural activities covering the entire region. Today, it’s possible for this region to build itself a new role in the EU, based on this common history. The problem is that public structures are mainly national. The EU’s new Baltic Sea Strategy therefore is a new architecture for pragmatic cooperation comprising various action programmes (e.g. tourism, education, etc.).<sup>6</sup> Moreover about eighty flagship projects are listed in the accompanying Action Plan.<sup>7</sup> In this framework, the member states have to address the regions and cities if they want to participate in this programme. Currently the new macro-region for the Danube is under discussion.<sup>8</sup> At least twelve other potential macro regions could be identified.

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<sup>6</sup> See Conclusions of the European Council of 29-30 October 2009, 15265/1/09.

<sup>7</sup> Commission staff working document accompanying the Communication of the Commission concerning the *European Union Strategy for the Baltic Sea Region*, SEC (2009) 712/2.

<sup>8</sup> For a general presentation, European Union Regional Policy, *The EU Strategy for the Danube. Cooperating for Sustainable Growth and Security*, 2010.



### 3) *The Euro-Mediterranean Regional and Local Assembly (ARLEM)*

Europe also needs to export this new partnership logic abroad, through its external policy. The establishment of the “*Union for the Mediterranean*,” for example, provides for yet another innovative governance structure through which regional and local politicians, from all states bordering the Mediterranean, can meet and engage in dialogue.<sup>9</sup> It will be in the Euro-Mediterranean Regional and Local Assembly (ARLEM) that representatives from the EU member states and non-member states alike will translate the Union’s objectives at local level to make joint actions happen.<sup>10</sup> We have to ensure that this partnership approach is enshrined in any future external policy of the EU with our partners in the North, in the South, and from the East to the West – be it via the “*Northern Dimension Initiative*,” the renewed Partnership Agreement with Russia or the EU’s Prospective “*Eastern Partnership*.” Only with the involvement of public authorities at all levels on the one hand, and civil society on the other, will the EU’s external policy be successful.

In general, this new governance paradigm is accepted by the heads of state and government. For the 50<sup>th</sup> anniversary of the Treaties of Rome, the EU institutions declared on 25 March 2007 in Berlin that: “There are many goals which we cannot achieve on our own, but only in concert. Tasks are shared between the European Union, the member states and their regions and local authorities.”<sup>11</sup> Furthermore, recent Eurobarometer research merely confirms that in many member states the national level has less credibility than the regional or EU levels. 59% of the respondents estimate that local and regional authorities are not sufficiently taken into account in the European decision-making process.<sup>12</sup>

In legal terms, the Lisbon Treaty offers also new opportunities for more participative governance structures. First, it explicitly recognises the competences of regions and local authorities as enshrined in the national structures.<sup>13</sup> The EU’s natural partner is therefore not anymore

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<sup>9</sup> See for a general presentation of the process, at: <http://eeas.europa.eu/euromed/>.

<sup>10</sup> See for a general presentation of the ARLEM, at: <http://www.cor.europa.eu>.

<sup>11</sup> Declaration of European Heads of State and Governments on the occasion of the 50<sup>th</sup> anniversary of the signing of the Treaties of Rome, Berlin, 25 March 2007.

<sup>12</sup> Survey (Eurobarometer) conducted by the European Commission among 27,000 European citizens in 27 member states in October and November 2008, published in February 2009.

<sup>13</sup> See Articles 4 and 5 TEU.

merely the national level. Second, it also enshrines the objective of territorial cohesion (in addition to social and economic cohesion).<sup>14</sup> Third, the definition of the principle of subsidiarity now explicitly mentions the local and regional level.<sup>15</sup> Furthermore, the regulatory and financial impact of proposed EU legislation on regional and local authorities is to be taken into account. Also regional parliaments will have to be consulted by the national parliament, following the amended Protocol on the Principles of Subsidiarity and Proportionality.<sup>16</sup> The new Citizen's Initiative might become yet another tool to strengthen participative democracy in the EU, whilst strengthening the synergies between existing platforms and contributing to the emergence of new thematic networks or e-fora.<sup>17</sup> Finally, it should be mentioned that the convention method is yet the ordinary method for Treaty change.<sup>18</sup> Hence the participation of legitimate actors as the European Parliament, the Committee of the Regions, the European Economic and Social Committee, members of the national parliaments to the future construction of the European Union will be assured.

### ***C. New Trends in Policy-making***

Not only do we need a different kind of cooperation between the institutions to tackle today and future challenges both efficiently and in time, we also have to invite the political associations and relevant actors to share in the debate. Therefore we need to cultivate a holistic approach and stimulate integrated (cross-sectoral) policy-making. In other words, we have to halt the silo mentality. The EU's maritime policy is a good example of this new logic and comprises next to security also environmental elements, whilst pursuing an enhanced cooperation between the EU, the member states, regional authorities and even the international level.

Just two years ago, the world was brutally shaken by a systemic crisis. Its shock waves are still being felt today. Indeed, the changes that are inevitably related to progress and their consequences are accelerated; the imbalances in the current economic and financial system are being highlighted, as is the vulnerability of many of our fellow-citizens. In order to tackle the consequences of this crisis and to foster socio-

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<sup>14</sup> Article 3 TEU.

<sup>15</sup> Article 5 TEU.

<sup>16</sup> Articles 5 and 6, Protocol II on the Application of the Principles of Subsidiarity and Proportionality.

<sup>17</sup> Articles 9-11 TEU.

<sup>18</sup> Article 48 TEU.

economic transformation on the ground, there is a need for a new form of governance that assures more synchronisation, coordination and cooperation.

Also climate change and energy needs are forcing the international community to conclude an “ecological new deal,” demographic changes and migratory pressures are key factors in developing a new concept of solidarity and international relations; the need to find new sources of growth is pushing us to search for a new world balance between traditional powers and emerging countries, to make changes and invest in a knowledge-based society and in technological progress.

Given all these challenges – all closely linked to globalisation – and given the current trend towards a stronger global government, a partnership approach is favoured from the local level to the global level and *vice versa*. Over the last decade, numerous new networks and platforms were established. Many of these functional (virtual) groupings go beyond the mere exchange of best practices and constitute a burning platform for renewed action, both politically and in concrete tangible operations on the ground. New *e*-techniques obviously contribute to the growing understanding that we live in a net(worked) world.<sup>19</sup> Knowledge is power. However, in the networked world *shared* knowledge is even more powerful. The European Union has to adapt itself to this reality in order to promote, preserve and protect its unique model. *Vice versa* the EU’s new model of governance might very well inspire other leading powers in the world.

## II. Shaping a European Union Working in Partnership

### A. *The Committee of the Region’s White Paper on Multi-level Governance*

In 2001, the European Commission paved the way for better European governance with its *White Paper on European Governance*, highlighting amongst others the role of consultation and systematic dialogue as good practices in governing.<sup>20</sup> Following our growing interdependence and the speedy pace of globalisation, decentralisation and internationalisation, today, a new stage is necessary. The Committee of the Regions wants to go beyond participation and consultation, and evolve towards more “shared” responsibility for regional and local

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<sup>19</sup> Slaughter, A.M., “America’s Edge-power in the Networked Century,” in *Foreign Affairs*, January-February 2009.

<sup>20</sup> White Paper on European Governance, COM (2001) 428 final.

authorities, which helps to increase joint ownership and implementation of the European project.<sup>21</sup>

It is the responsibility of all politicians at the European, national, regional or local levels to move the European integration process forward. The Committee of the Regions has tried to shoulder this responsibility fully within its own sphere of influence by publishing its *White Paper on Multi-level Governance*.<sup>22</sup> In this paper, it submits its idea for a Community method based on a system of governance which involves local authorities in the framing and implementation of community policies.

The Committee of the Regions has been defending the advances in European integration since 1994 and pleading for greater democratisation in public affairs.<sup>23</sup> It is therefore essential that in the decisive phases of the European Union's political process, Europe should be built in partnership. We need a European Union that is built *with* the regions, *with* the towns and cities and *with* the local authorities.

Hence, it is essential to abandon the hierarchical and pyramid-like approach which places Europe above the member states, the member states above the regions, the regions above the towns and local communities. Instead of this constraining system, we need a new partnership in order to respect the constitutional rules in force in the member states and community law – “a partnership for the future” – between these different levels of power and legitimate centres of democracy. Multi-level governance is not a utopia or just an ideal or a model. It is a method and a solution for:

- making the community method more inclusive and efficient;
- developing a genuine culture of inter-institutional cooperation;
- stimulating participation in the European process.

Multi-level governance was introduced in the EU lexicon as a form of “good governance” that improves the EU's legitimacy by sharing its making through real co-ownership, either in the pre-legislative “shaping” phase or later, during the decision making mechanisms, when

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<sup>21</sup> Note that the European Commission's *White Paper on European Governance* mainly deals with actions the Commission should undertake, although the White Paper also calls upon member states to step up the involvement of regional and local actors in EU policy-making or urges the Committee of the Regions to play a more proactive role in the policy cycle, COM (2001) 428 final, p. 14.

<sup>22</sup> White Paper of the Committee of the Regions on Multi-level Governance, CoR 89/2009 final.

<sup>23</sup> See for the CoR's *Mission Statement* (adopted on 21 April 2009 for the occasion of its 15<sup>th</sup> anniversary), at: <http://www.cor.europa.eu>.

the most appropriate.<sup>24</sup> Multi-level governance is indeed not a theory, which seeks to clarify complex decision-making processes; rather, it is an approach to make EU decisions better shared. It represents an instrument of analysis, whilst it does not address the sovereignty of states. In other words: multi-level governance removes the grey area between intergovernmentalism and supranationalism, leaving a descriptive structure in its place.<sup>25</sup>

The *vertical* dimension of multi-level governance covers all levels of policy-making: from the global to the local. It highlights the increasingly fading distinction between domestic and international politics. Furthermore, all levels cannot be neatly pigeonholed. This image is misleading: levels are essentially interlocking. Indeed, when implementing a strategy commonly agreed upon as the prospective “EU 2020 Strategy” or the EU’s Climate Change Strategy, all actors – public and private – should take the proper responsibility, assigned to them in a democratic society. In an EU context, especially the involvement of the regions and cities enhances legitimacy.

Multi-level governance should not be confused with “decentralisation.” This is the term we normally use to talk about the shift of power from the central state towards other kinds of governance. Multi-level governance, therefore, is not a threat but an opportunity for decentralised institutions, since they are being given access to the policy-making process in the EU at the conceptualisation phase, and not just at the moment of implementation. Consequently, the *principle of subsidiarity* is enhanced by a dynamic understanding of multi-level governance. This principle, enshrined in the treaties, means that decisions within the European Union should be taken at the closest practical level to the citizens. The European Union should not take on tasks which are better suited to national, regional or local level. On the flipside, the European Union must take action in case where it represents the best level for pursuing common objectives. Multi-level governance is about *sharing* competences, rather than *splitting* competences. The legitimacy of the EU lies in its *efficiency*, in its *openness*, its *participation*, *accountability*, *effectiveness*, *delivery*, and *coherence*. Multi-level governance strengthens all of these principles and guarantees their interconnectivity.

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<sup>24</sup> For a substantive overview on the definition, historical analysis, empirical analysis and concept of multi-level governance, see Piattoni, S., *The Theory of Multi-level Governance: Conceptual, Empirical and Normative Challenges*, Oxford, Oxford University Press, 2010.

<sup>25</sup> Delmartino, F., a contribution to the CoR Ateliers cycle on multi-level governance during 2008-2009, at: <http://www.cor.europa.eu/ateliers>.

Finally, multi-level governance in the European Union is essentially *multi-channelled* as well. Regions and cities must have the opportunity to choose freely through which gateways they voice their concerns, ideas and interests. This idea is intrinsically linked to *participative democracy* as society is becoming more pluralistic. People want to participate, decision making is scattered and top-down or unilateral decisions are simply no longer acceptable in our democracy. Multi-level governance offers a participatory answer in providing tools for participation to regions, cities, and ultimately the citizen. Moreover it favours cooperation and *democratisation* itself as it multiplies opportunities for citizens to influence government. The alternative to multi-level democracy is not simple democracy, but ineffective democracy. It is hence a highly valid way to strengthen the democratic debate within the Union.<sup>26</sup>

It is crucial to have regional and local politicians on board at the very beginning of the EU decision-making process. They have the task of implementing EU directives on the ground. They are the ones facing pollution, urban transport or waste management problems on a daily basis. They need to ensure that immigration and integration go hand in hand. They are the ones who have to make growth and jobs happen.

The Committee of the Regions has therefore set out in its *White Paper on Multi-level Governance* concrete proposals for strengthening the involvement of Europe's regions and cities in future EU decision-making.<sup>27</sup> Moreover, the Committee is ready to monitor on a regular basis the development of multi-level governance within the EU's governance model(s), eventually leading to the adoption of a "*European Charter on Multi-level Governance*," as a basis for inclusive governance principles and procedures in Europe. This commitment is perfectly logical as the Committee itself is the incarnation of this concept, and this since the very beginning of its existence – yet only sixteen years ago. In its white paper, the Committee put forward thirteen proposals and ten key examples in order to build the European Union in partnership. It has been conceived as a formal contribution of the Committee to the Reflection Group on the Future of Europe 2020-2030, chaired by the former Spanish Prime Minister Mr Felipe Gonzales. However, it is also

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<sup>26</sup> Hooghe, L., Marks, G., "Rise of Regions," in *Cahiers of the CoR*, no. 1, 2009, p. 20.

<sup>27</sup> CoR, White Paper of the Committee of the Regions on Multi-level Governance, 89/2009 final.

addressed to the member states, the EU institutions, regions, cities, socio-economic partners and other stakeholders.<sup>28</sup>

## ***B. Multi-level Governance Helps Bridging the “Delivery Gap”***

### *1) Tackling Climate Change Together*

Regarding the debate about delivering, and especially regarding climate change, we can cite the “*Covenant of Mayors*,”<sup>29</sup> signed by already more than 1,000 cities in Europe. These authorities signed a commitment to take actions that are under the responsibilities of local authorities in order to mitigate climate change. They will be able to deliver because they can invest in energy saving and the organisation of transports, or make it more difficult to use cars within their territory. You can measure their delivery as well because clear objectives and evaluation and monitoring mechanisms are in place as foreseen in the Covenant. In Copenhagen, the Committee of the Regions, together with the US Conference of Mayors,<sup>30</sup> very clearly demonstrated this new horizontal contract for local delivery in the field of climate change as a good practice. Following the 2009 COP-15 Copenhagen Summit, the cooperation between the Committee of the Regions and the US Conference of Mayors will be deepened. So this level of authority, if organised in a coordinated way, can deliver results. The Committee will analyse whether it will be possible to develop new covenants in other policy areas in the future – e.g. related to migration/integration or the pursuit of the EU 2020 Strategy objectives.

### *2) The territorial impact of the crisis*

Coming back to the current crisis, we should mention here that regional and local authorities stand for more than two thirds of public capital investments and represent 16% of the EU’s overall GDP.<sup>31</sup> This equals an economic weight corresponding to ten times the accumulated budgets for the European recovery plan decided on in December 2008 or fifteen times the current EU budget. Innovation and research clearly starts at the local level. The challenge will be for the EU to coordinate the political action in aid of recovery in order to suggest a more balanced alternative of sustainable development and contribute to the

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<sup>28</sup> See, for a general presentation of the Reflection Group and its proceedings, at: <http://www.reflectiongroup.eu>.

<sup>29</sup> See, for a general presentation, at: <http://www.eumayors.eu>.

<sup>30</sup> The US Conference of Mayors issued a similar Agreement to the Covenant, also signed by more than 1,000 US mayors, at: <http://www.usmayors.org>.

<sup>31</sup> Dexia, EU Sub-national Governments: 2008 Key Figures, *op. cit.*

objective of territorial cohesion through the cooperation of various actors, the direct involvement of local and regional authorities and recourse to the public-private partnership. Also the prospect of introducing a “European Semester”<sup>32</sup> as a constitutive part of the new economic governance model for the European Monetary Union will only fully come to an effect if also regional and local authorities are incited to synchronise their budget, too, and help pursuing overall strategic EU objectives as the EU 2020 Strategy’s headline goals. They should thus be sufficiently associated to the new economic governance system. Likewise, the participation of regional parliaments (with legislative powers) could be envisaged in case national parliaments will debate on an annual basis their prospective budget orientations with the European Parliament.<sup>33</sup> Finally, regions and cities could be better involved in the completion of the single market. Many regions with legislative powers have important responsibilities to (at least partially) transpose EU single market directives. Furthermore, regional and local authorities can help identifying remaining bottlenecks or facilitate (in) directly the exercise of the four freedoms within their territory. Professor Mario Monti therefore rightly proposed a new integrated and partnership-based strategy for the single market.<sup>34</sup> It should be highlighted that the new strategy helps above all achieving more territorial cohesion. Last but not least, regional and local representatives can also help to communicate this new strategy and the expected benefits thereof to the citizens (proximity argument).

### *3) The EU 2020 Strategy: a Chance for Multi-level Governance*

As outlined in the European Commission consultation document on the EU 2020 Strategy, the interdependence between member states, regional and local authorities and socio-economic partners at all levels, a “multi layer” approach needs to be favoured in the Lisbon Strategy’s successor.<sup>35</sup> This is a very positive starting point as the priority that will be given in the 2020 Strategy to policy actions in the fields of education,

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<sup>32</sup> Conclusions of the European Council, 17 June 2010. See also Reinforcing Economic Policy Coordination, COM (2010) 250 final; Enhancing Economic Policy Coordination for Stability, Growth and Jobs – Tools for Stronger EU Economic Governance, COM (2010) 367/2.

<sup>33</sup> See the proposals of the European Parliament’s Budget Committee (CoBu) on this point: Lamassoure, A., *Working Document on Financing the 2020 Agenda Despite the Budgetary Crisis*, 6 May 2010.

<sup>34</sup> Monti, M., *A New Strategy for the Single Market*, 9 May 2010.

<sup>35</sup> Commission Working Document *Consultation on Future EU 2020 Strategy*, COM (2009) 647/3, p. 9.



training, research, innovation, entrepreneurship, green and sustainable transformation of the society, socio-economic recovery and sound budgets at all levels, etc. highly interferes with competences that are often typically decentralised.

So, how could this “partnership” approach be concretely reflected in the Commission’s final proposal? The following lines of action could be developed:

First, the future strategy could clearly promote coordinated and integrated policy-making, *inter alia* through the use of so-called “multi-level governance agreements” between various levels of governance, including the Union level. In the past, there was some experimentation with so-called target-based “tripartite agreements,”<sup>36</sup> but the time has come to bring this instrument to another level by introducing clear incentives, and to bring in at least the possibility of “contractualisation” in the prospective strategy. The objective being that better results could be fostered on the ground, adapted to “place-based” problems and opportunities as argued by Fabrizio Barca in his report on the future cohesion policy.<sup>37</sup> This approach should result in the conclusion of flexible “territorial pacts” that would help delivering the EU 2020 Strategy, whilst taking regional specificities of a given territory into account. Since 2011, the Commission has been experimenting with this kind of innovative tools for translating overarching EU objectives into concrete territory-specific targets that should consequently be duly monitored, evaluated and updated.

Second, the role of regional and local authorities in pursuing the objectives of the 2020 Strategy should be explicitly recognised in the strategy. Regional and local authorities are to be recognised as genuine partners. The factual figures on their economic role in the European Union; their legally strengthened recognition – and that of the Committee of the Regions – in the Lisbon Treaty; the new EU objective of territorial cohesion, and the overall trend towards more decentralisation/devolution, all demonstrate this very well.

Third, the proposal could provide a toolbox of various multi-level governance-based instruments and toolboxes for increasing the ownership of both: the regional and local authorities, and the socio-economic partners. Indeed, also the leading socio-economic partners expressed “their concern that member states had not engaged

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<sup>36</sup> See, for example, the Tripartite Agreement between the European Commission, the Italian Government and the Region of Lombardy of 15 October 2004.

<sup>37</sup> See also Barca, F., *An Agenda for a Reformed Cohesion Policy. A Place-based Report to Meeting European Union Problems and Expectations*, April 2009.

sufficiently with the process, leading to a lack of involvement of stakeholders at grassroots level.”<sup>38</sup> Ten years after the first debates on the conception of the Lisbon Strategy – and five years after its Mid-Term Review – the time has come to conduct an in-depth debate with the member states on the matter in the relevant Council configurations.

Fourth, the CoR’s *White Paper on Multi-level Governance* does put forward some concrete proposals to bring more flesh around the MLG approach:

– Can one strengthen next to a “cross-cutting integrated approach,” the well known partnership principle in the governance of the 2020 Strategy? Indeed, round tables including all relevant stakeholders, and in particular all government levels, could be set up in each member state with a view to monitoring the implementation of the new strategy on the ground. Giving national and territorial stakeholders a say should be an ingredient of the new strategy.

– Can the Open Method of Coordination become more inclusive by introducing indicators on “participatory” governance, encouraging member states to report on “how” they include regional and local authorities in the conception, follow up, and implementation of their “national strategic reference frameworks?”

– Can member states also be requested to report on the pursuit of certain “territorial” indicators, following the introduction of the territorial cohesion objective in the Lisbon Treaty, and thus requiring member states to demonstrate “how” they better address the territorial differences within their country whilst pursuing sustainable socio-economic transformation on the ground?

– Can we bring in new additional “horizontal covenants” between regions or cities in order to achieve certain quantitative indicators of the strategy, as for example: the 3% GDP investment in R&D; the 75% employment rate target; or possible new indicators as fostering access to education and vocational training. The success of the Covenant of Mayors engaging already more than 1,000 mayors to go beyond the EU’s 20-20-20 climate targets demonstrate indeed the potential of the latter Covenant approach.

– Finally, can the EU further stimulate regions to draw up their own “*Regional 2020 Strategic Action Plans*?” And would the European Commission also be ready to comment on these regional strategic action plans that could be annexed to the “national strategic reference

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<sup>38</sup> “Euractiv,” 25 November 2009. See also EESC, *A Programme for Europe*, p. 10, at: <http://www.eesc.europa.eu>.

frameworks”?<sup>39</sup> Furthermore, would the Commission be ready to engage further in an annual exchange of views with regionally-appointed “2020 Contact Points” or “2020 Coordinators,” too?

The results of the “consultation on the CoR White Paper” learn that the vast majority of the respondents support the proposal to reform the governance model of the Lisbon Strategy to make the model of its successor more inclusive towards regional and local authorities, for example, by adding a territorial dimension.<sup>40</sup> In general, the respondents consider there is still a significant scope for applying the multi-level governance principles to the revised Lisbon Strategy, particularly in the elaboration and implementation of the National Reform Programmes, which they feel have to be primarily based on regional and local ones, with the inclusion of civil and socio-economic partners. The EU 2020 Strategy therefore needs to cultivate partnership, a cross-sectoral integrated approach, and a smarter mix of regulatory reform; whilst providing an overarching framework to lever better coordinated and targeted financial incentives on the ground.

### III. Conclusion

When we look towards 2020-2030 and the global challenges, “good governance” and “solidarity” are the two essential issues that stand out for the future of Europe. Both must be at the heart of our concerns, especially if we want to extend the dream of the founding fathers of this century and go beyond the Union of a whole continent and the building of a Single Market. The next step we should move towards should be delivering the ownership of the European project to citizens. The Committee of the Regions’ offer to “build Europe in partnership” answers this necessity.

It should be duly highlighted that also the Reflection Group on the Future of the EU 2030 explicitly calls for “a new compact” between all levels of governance.<sup>41</sup> This wake-up call further strengthens the Committee’s views that the time for a European Charter on Multi-level Governance is right. Such a Charter should further elaborate on basic principles as the principle of mutuality and the principle of institutional autonomy; participative mechanisms as coordination, consultation and

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<sup>39</sup> It should be noted that this is already the practise in Belgium.

<sup>40</sup> Consultation Report on the White Paper of the Committee of the Regions on Multi-level Governance, CoR 25/2010.

<sup>41</sup> Report of the Reflection Group on the *Future of the EU 2030, Project Europe 2020-2030, Challenges and Opportunities*, 8 May 2010, p. 6, at: <http://www.reflectiongroup.eu>.

concertation; and fundamental values such as partnership, openness, transparency, solidarity and proximity.

It is our conviction that the European Union, as a form of “intelligent organisation” should be firmly based on multi-level governance. It is the best way to co-govern globalisation in an increasingly interdependent and network-oriented world. Instead of favouring confrontation between various sovereign entities, multi-level governance encourages a more inclusive and flexible approach. This will enable the development of a new dynamic in EU policy making by allowing for a genuine partnership between all levels of government (vertical), including socio-economic partners (horizontal) that will increase the EU’s chances to deliver results on the ground and to improve citizens’ quality of life. The political European Union of tomorrow is therefore to be built on shared values, partnership, and multi-level governance.

# Diversity in the Cities

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## I. Introduction

The tension between cultural uniformity and a difference of identities can be well grasped by observing the evolution of socio-religious dynamics of cities. Most medium and large sized European cities are a sort of an open-air laboratory in which different religious and ethnic communities cope with social solidarity amid outsiders.<sup>1</sup> At the same time, European cities are, until now, places where interreligious relations can develop and where cultural policies can be managed by local authorities to encourage the dialogue among various religious actors so as to transform religious difference into civil religion.

Generally speaking, in a city, religion deals with the bolding capital, if using Putnam's concepts:<sup>2</sup> it creates cultural and social bonds (beyond faith) among citizens of a religious community. In politics, the challenge, of a multi-religious city, consists in mobilising such capital in order to develop a second one: the bridging capital. Local political authorities must therefore strive to overcome the boundaries that, as a rule, each religious community tends to trace and preserve (both in symbolic and territorial terms), to create the conditions and opportunities for leaders and followers of different religions to meet and work around a common civic project.

The project would serve to: ensure urban peace, promote the best practices in dialogue among citizens who belong to different religious faiths, but are interested in preserving the quality of their spiritual and

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<sup>1</sup> Habermas, J., *Solidarietà fra Estranei*, Milano, Guerini e Associati, 2002.

<sup>2</sup> Putnam, R., *Bowling Alone*, New York, Simon & Schuster, 2000; *id.*, *Making Democracy Work: Civic Tradition in Modern Italy*, Princeton, Princeton University Press, 1993.

cultural life in their area. A crucial example is: how to transform a building project of a mosque, that can sometimes become a source of symbolic and social conflict,<sup>3</sup> into an opportunity to mobilise the inhabitants of a particular area to share in the decision concerning this project.

The project of a religious community could serve as an idea for all inhabitants, becoming not only confined to an area but extending to the entire city. Managing religious differences means coping with a complex political agenda that includes several aspects of social life like: areas, schools, associations, public bodies and so forth. Religion is an important pillar, that among other things involves the collective consciousness and memory: a city becomes a sort of stage on which the transformation of the place we live in, and consequently the changes of social representation of ourselves are perceived. But memory changes and draws new sacred boundaries within a city. For those who care, the level of social integration in a city is something that cannot be ignored. Therefore, religions and dialogue among religions, play a relevant role in integration policies.<sup>4</sup>

The topic we intend to explore is migration and its broad framework, and diversity in European society. At least five dimensions of social process need to be included:

a) how new migration inflow changes the geography of the city;

b) to what extent do the political institutions of a city represent the various interests, taking the different levels of political regulation into account when making necessary decisions; how can a city's various actors – institutional, religious, civil, social movements and associations, volunteer groups, etc. – be involved in managing cultural and religious changes;

c) can relations between ethnic identity and religious faith add to the socio-religious complexity of the social environment (sometimes ethnic differences cross a particular religious confession, or *vice versa*, people coming from a same country can belong to different ethnic groups, churches or religious communities) and create political problems to underline place and time where to solve the possible inter-group ethno religious conflicts;

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<sup>3</sup> Fox, J., *Ethno-religious Conflict in the Late Twentieth Century*, Lanham, Lexington Books, 2002; Shadid, W.A.R., Van Koningsveld, P.S. (eds.), *Intercultural Relations and Religious Authorities: Muslim in the European Union*, Leuven, Peeters, 2002; id., *Religious Freedom and the Neutrality of the State: The Position of Islam in the European Union*, Leuven, Peeters, 2002.

<sup>4</sup> Pace, E., *Sociologia dell'Islam*, Roma, Carocci, 2004.

d) how can the diffusion of different diasporas in a city be managed from a political point of view, according to socio-economic activities and socio-religious attitudes: the new diasporas some immigrants tend to create in Europe seem to be interfaced locally and globally, because they are at the same time rooted in a particular space (the city) and also in the global world, embodying the current economic, social and religious changes that are taking place globally (see, for instance, the tensions between Global Islam vs. Cultural Islam or between Neo-Pentecostalism vs. traditional Protestantism);

e) a multicultural society is accepted by a city as an invention of new intercultural and inter-religious activities, and considerably affects the diversity of production processes of urban culture (as is the case with religious museums, inter-ethnic festivals, including art performances, and ethnic cooking).

The city becomes a ground for transnational and transcultural (and trans-religious) inventions in order to avoid possible conflict and promote an enrichment in sharing common goods (an inter-generational exchange, civic participation, mutual understanding of different cultures and religions in schools, districts, health structures and so forth) as well as inter-religious cooperation.

An example of this would be one of Italy's most Arab cities, Mazara del Vallo, in Sicily, where 5% of the population comes from Tunisia. In 2003, I analysed the way the town's inhabitants shifted from civic disregard to a recognition of cultural differences.<sup>5</sup> The analysis was conducted in three steps:

a) an association of Tunisians in Mazara, to overcome civic disregard, began cooperating with local political authorities to open an immigration office in the city hall in order to launch cultural activities and make Tunisians a visible presence;

b) the efforts of the immigrants in cooperating with Mazara's local cultural associations and with the Catholic church to organise street events, inter-religious meetings and other similar initiatives at schools, serve to show to the local population the similarities and differences between the Arab culture and the religious world;

c) the common strategy of local secondary school teachers, Tunisian representatives and local authorities to set up an integrated teaching project that serves to rediscover Sicily's Arab-Muslim heritage.

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<sup>5</sup> Pace, E., "Mazara del Vallo. The Most Arab City in Italy," in D. Turton, J. Gonzalez (eds.), *Ethnic Diversity in Europe: Challenges to the Nation State*, Bilbao, Humanitariannet, 2003, pp. 111-118.

The example illustrates that a project conducted from a mid-sized town can see people of different backgrounds (the locals and immigrants) interact: the former in order to discover and rediscover themselves through the recognition of the cultural differences, the latter becoming active citizens and re-writing the rules of society.

The last preliminary remark involved words like immigrant or ethnic minority. In sociological jargon these two words refer to a very sharp conceptual and ideological approach. The first (immigrant) refers to individuals, in terms of their foreign nationality or place of birth, with no distinction to their different origin. As is the case with France where the terms ethnic or religious minority are avoided. The second approach, on the other hand, is adopted in the Anglo-Saxon world. Consequently, in France, the establishment views the idea of second generation immigrants as a contradiction with regard to the citizenship status of the children of first-generation immigrants as formally set by the French Constitution. Hence, the social stratification of ethnic groups, and their settling in the various parts of the city have rarely been studied, yet both these phenomena could be at the origin of social and urban segregation, as well as discrimination (like demonstrated by the recent *banlieue* riots).<sup>6</sup>

Culturally and ethnically distinct communities throughout Europe have sprung as a result of post-Second World War migration, or refugee and asylum seekers. Though they may be spatially dispersed, they tend to be concentrated within specific inner-city areas, thus challenging the traditional notion of nation building through the increasing homogenisation of a culturally diverse population. For instance, in Germany the stratum of guest workers can no longer be realistically considered as migrants and yet, they do not enjoy full citizenship rights.<sup>7</sup> Immigrants to the UK, on the other hand, because of its former colonies, ended up settling in localised ethnic minority communities as the Pakistani community in Bradford or Birmingham, whose members, *de facto*, continue to occupy a socially and economically marginalised position in British society, even though, *de jure*, they are full British citizens.

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<sup>6</sup> Simon, P., "When De-Segregation Produces Stigmatisation: Ethnic Minorities and Urban Policies in France," in M. Martiniello, B. Piquard (eds.), *Diversity in the City*, Bilbao, Humanitariannet, 2002, pp. 61-94; Husband, C., "Diasporic Identities and Diasporic Economies: The Case of Minority Ethnic Media," *ibidem*, pp. 153-168.

<sup>7</sup> Bosswick, W., "Minorities, Policies and Strategies in Europe: Germany," in D. Turton, J. Gonzalez (eds.), *Ethnic Diversity in Europe, op. cit.*, pp. 51-56.



We prefer the Anglo-Saxon concept – of ethnic groups – because it makes classifying religious differences easier, at least when dealing with first-generation immigrants, which tend to recreate in a city the various religious cleavages that characterised their long-term religious civilisation.

## **II. Studying Interreligious Dialogue in a City**

In studying inter-religious dialogue in a city, approaching the cultural and social effects that pro-dialogue policies have on cultures and religions in EU countries, we suggest using a bottom-up methodology of comparison. The choice of method should be based on the following crucial aspects:

a) instead of evaluating the national integration model obtained by each European state, based on constitutional and historical specificity that shapes and biases the features of each pattern, we analysed the impact of the interreligious relations on national policies, moving from the bottom up. The city was considered as “an open-air” social laboratory that serves to analyse the practical effects of the policies implemented at the local level; and to study and compare the way the social, political, and religious representatives of a civil society have run and are running the experiment on the best practices for dialogue among cultures and religions;

b) because the city has been considered symbolic and real, at the same time, a place of differences (cultural and religious), we suggest selecting a sample of European cities where interreligious dialogue policies have been adopted, by trial and error, and measuring the relative distance between the national abstract pattern of integration and the local invention of the path to dialogue;

c) the “policy dialogue” formula not only stresses the role and function of politicians and decision-makers, but also highlights the construction process of a civic society that involves a number of social actors (including associations of immigrants and the representatives of various religious communities) that work together to devise an integrated programme of activities that mobilises school systems, public bodies, public opinion, the media, volunteer groups and peace/human rights associations, who focus on two or three fundamental points: the mutual acceptance of the various religious communities during religious events (according to the different religious calendars); new inter-religious programmes at school, conceived from the cooperation between religious leaders and university authorities; institutionalisation of a religious council at the local level which plays a pivotal role in the political decision-making process that not only promotes affirmative

action in inter-religious dialogue but also works to overcome conflicts over religious symbols or differences.

This third option aims to cope with two conceptual questions. The first notion is integration, an increasingly problematic issue. Sometimes the failure to integrate is attributed to religious differences and the gap between immigrants (and their descendants); on the contrary, it depends on the deterioration of public housing policies, on the economic decline of neighbouring sources of employment or on the rising number of dropouts among the children of immigrant families.

Socio-economic disparity is surveyed to stress the inequality of immigrant groups, who are viewed as collective victims since: they often experience discrimination due to their lower income, higher unemployment, lesser education, and their level of poverty. In a context of socio-economic deprivation some groups – often from former-immigrants, thus citizens coming from first-generation immigrants – who are identified by their religious and cultural diversity become special targets of a process of stigmatisation,<sup>8</sup> even scapegoats (as in the case of Muslim communities of many European countries or gypsies).

In Belgium, for instance, but the same can be said of the Netherlands, particularly due to the reinforcement and dynamic presence of the Liberty Party of Wilders, and in some cities (as Antwerp or Ghent) the impact of political discourse on public opinion is noteworthy: the party emphasises the idea that the Flemish people are a pure ethnic community who share common values (the first, of course, being the language that is different from the French-speaking Walloons) and daily life customs, therefore making all cultural and religious diversity (classified as such) a danger capable of corrupting the identity of the original community.

As long as religious distance between national identity and the outsider's identity is emphasised, religious difference becomes the most important reason to attribute to the failure of socio-economical integration of the descendants of the first generation of migrants who share with the younger generation of locals a similar condition in term of precarious jobs, a lower income, and a discrepancy in a high level of education and a low level of employment. The risk of sleeping-walking towards segregation involves a whole low-cost generation, that includes not only the second or third generation of immigrants, but even the natives.

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<sup>8</sup> Goffman, E., *Stigma*, Harmondsworth, Penguin, 1970.

The second conceptual question refers to the notion of diversity and, particularly religious diversity. We are living in a cycle in which people tend to emphasise, in an exaggerated way, the differences in religions, in spite of the recognition of the common values or shared symbols that exist in at least three monotheistic religions, the Jewish, Christian and Islamic, that could easily be considered a starting point for civic dialogue (not only a religious one) among them.

Often, one must pay attention to the unequal distribution of religious power in a society: who aims to represent national identity? And how do mainstream religions behave towards religious minorities? In this case, the notion of difference is more precise, for it places greater emphasis on the political dimension of power and inequality which leads to an evaluation of social relations (horizontal) among the various religious communities and institutions, and alternatively the relations between these different socio-religious groups and the power (national, regional and local). Sometimes the political power prefers to establish a special relation with a religious community instead of another one (Buddhist community instead of Muslim community), or to bypass the traditional function paid by a religious historical institution to create a new public sphere that encourages other entries that represent another point of view on the public agenda. In this second case, power promotes pluralism and dialogue becomes an important issue of the political agenda. In the first case, on the contrary, we cope with a discriminatory policy.

Last but not least, some final remarks on the process of the territorialisation of religious diversity. According to the classic Chicago School studies (the well-known Sociology Group of the Chicago University of the 1930s) migration follows a three-generation model:

- the first generation tends to ghettoise itself in a city;
- the second generation moves out towards the next urban ring, it mixes with other communities and is better educated;
- the third generation becomes suburban and blends with the general population.

This model does not work in the European landscape,<sup>9</sup> because in many European cities there are no real ghettos, only enclaves. If we can evoke the notion of ghetto when speaking about the Black, because often in a particular urban space there is a concentration of Black people only (or is almost all Black), ethnic enclaves are twice more dilute:

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<sup>9</sup> Peach, C., "London and New York: Contrasts in British and American Models of Segregation," in *International Journal of Population Geography*, no. 5, 1999, pp. 319-351.

minority ethnic and religious groups only rarely represent the majority of those that are identified with the area (the areas, for instance, of Moroccans or Muslims), and alternatively a majority of this minority does not like to be identified with a particular area (the so-called ghetto).<sup>10</sup>

According to Peach,<sup>11</sup> if we consider the concentration of minority ethnic groups in London, in the 1991 census, results on population evolution show that a situation similar to Chicago's Black ghetto, as described by the Sociology School of Chicago, is difficult to come by. Musterd<sup>12</sup> has systematically compared the process of segregation in six European cities: Amsterdam, Brussels, Frankfurt, Düsseldorf, London and Manchester. Segregation was measured using structural and cultural indicators (income, education, housing, stigma, etc.). Musterd's team has stressed the fact that North Africans in continental Europe, and South Asians in Britain, suffer the highest level of discrimination among the composite groups examined. Ranking second as a group – the Asians – in Britain the Bangladeshis are highly segregated (averaging 73% on the index of disequality, while Pakistanis scored 61%). In this case we come to the transformation of cultural and religious landscapes that some times in the first generation of migrants tends to coincide with an ethnic enclave. But this result is not obvious if the policies on inter-religious dialogue do not succeed to reduce the cultural and spatial divide that separates different religious communities.

The assumption that religious boundaries must clearly cross different religions is not necessary (as the Hindu enclaves, or the Sikh or Muslim ones), the British case shows that it is more important to be Pakistani and to live in a relative homogeneous Pakistani area or alternatively to be Bangladeshi and to live in another enclave where the majority of the ethnic group is concentrated than to belong to the same religion (Islam: perhaps to the two most important families, the Sunnite or Shiite).

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<sup>10</sup> Daley, P.O., "Black Africans in Great Britain: Spatial Concentration and Segregation," in *Urban Studies*, no. 35, 1998, pp. 1703-1724; Friedrichs, J., "Ethnic Segregation in Cologne, Germany, 1984-1994," *ibidem*, pp. 1745-1764; Kempen, R., Van Weesep, J., "Ethnic Residential Patterns in Dutch Cities: Backgrounds, Shifts and Consequences," *ibidem*, pp. 1813-1834; O'Loughlin, J., Glebe, G. (eds.), *Immigrants in Western European Cities*, Stuttgart, Steiner Verlag, 1987; Philpott, T.L., *The Slum and the Ghetto*, Oxford, Oxford University Press, 1978.

<sup>11</sup> Peach, C., "Ethnic Diversity and the City," in M. Martiniello, B. Piquard (eds.), *Diversity in the City*, *op. cit.*, pp. 21-42.

<sup>12</sup> Musterd, S., Ostendorf, W., Breebart, M., *Multi-ethnic Metropolis: Patterns and Policies*, Dordrecht, Kluwer Academic Publisher, 1998.

### **III. Comparing the Multi-religious Cities of Europe**

The idea is to compare a sample of European multi-religious cities, to collect case studies on policies of inter-religious dialogue that have been put into practice. The aim of the comparison being to select a set of indicators of the best practices adopted by cities, that have generated a new way for different religions to live together. This experience could be treated as a sort of pre-civic and pro-civic creation of a new social capital – a bridging capital – that encourage people to cross different symbolic boundaries to identify their different religious belonging. The list of the sample cities include:

- Bradford and Oxford in the United Kingdom;
- Berlin and Nürnberg in Germany;
- Granada and Cordoba in Spain;
- Barbès and Saint-Denis in France;
- Novellara and Colle Val d'Elsa in Italy.

The list could be extended to other case studies. And among the important cases we find: Tilburg – the Netherlands, Göteborg – Sweden, Louvain la Neuve – Belgium, and Turin – Italy. To choose a city we suggest applying the following criteria:

- to compare large and medium-sized cities of the same country and among countries;
- to compare cities of the countries that were shaped by different migration policies;
- to compare cities with high and low levels of multi-religiousness;
- to compare the policies of inter-religious dialogue in mono-religious societies to societies shaped by religious pluralism (multi-confessional vs. mono-confessional).

According to European Research Project, the role of intercultural dialogue for the development of a new plural democratic citizenship, the case studies on religious issues could serve to start charting the data of the cities, demonstrating the way various actors interact in a civic area to promote and create a public, religiously-oriented sphere. To give an idea of the empirical research to be conducted on this topic, each case will be summed up considering some of the elements that led to dialogue policies developed at the local level which could prove to be a useful universal paradigm in other situations. The cases, in fact, show the positive and negative effects of dialogue policies based on the methods the social actors have been experienced to solve step-by-step the conflicts that, as a rule, arise from a multi-religious city that tries to

reinvent and preserve a new urban space where new religions can live and interact with others that are historically rooted in the environment.

A case study could, for instance be: building a mosque or a Sikh *gurdwara*, that include customs and practices (funeral and marriage rituals, etc.) in public spaces. Negotiating the particular rules that each community must respect has always been a cause of tension and conflicts. The aim of comparative study is to observe the best practices that social, religious and political actors invented in order to avoid conflicts, the way growth of spirit and mutual understanding among religions has moved ahead, how diffusing knowledge about different creeds and practices came about, or the way the general population was involved in the building project of the new temple or in common activities shared by different religious communities under the protection of local political authorities (the city, of course).

Bradford (source: the District Metropolitan Council): 485,000 inhabitants; starting in 1960, a significant Pakistani population established itself there. Today they are over 10% of the city population and 50% of them are under eighteen. Concentrated in a number of inner-city areas in which two areas have over 50% of Pakistani population and one over 70%. The best practice founded was the “Teaching Religion in a Intercultural Perspective” project which resulted in the co-operation of the various actors (religious representatives, university, public bodies and the municipality) to conceive a new programme aimed at providing inter-religious upbringing from the primary to secondary schools.

Oxford (source: University, cooperating with the City Hall): the best practice was the project on the development and characteristics of the Muslim mosque, Hindu temples and Sikh *gurdwaras* in England, in order to study the style of new buildings, to harmonise and reduce the impact on the cultural landscape. Therefore having the various actors cooperate in order to decide which building materials suit the surrounding style, reduce conflicts and create a self-confident multi-religious society. In the UK, there are about one thousand new religious sites of which only 20% are purpose-built.

Berlin (source: City Hall and University): among the best practices worthy of notice is the gentrification of the Kreuzberg District following the fall of the Berlin Wall and the consequent development of new intercultural and inter-religious relations with the Turkish population, which since the 1970s concentrated in this district (with at least seventy mosques and Sufi orders) compared to Nürnberg where inter-religious dialogue policies focused on the city’s political agenda, combining religious dialogue and organic and integrated housing, and unemployment policies to invest social energy in the education system, actively

mobilising families, teachers, and volunteer groups to support the intercultural project.

In Paris, the area Barbès, on one hand, and Saint-Denis on the other, could be compared to see what happens when local authorities reduce part of the budget to support intercultural dialogue and inter-religious coexistence in the sensitive areas: in the former town the public infrastructure continues to preserve the coexistence policy (*mixité*) it developed in the 1970s, coordinating and financially supporting the network of the associations and the voluntary groups that act as social promoters of the manifold intercultural activities, that sometimes disguise inter-religious dialogue that is formally left out of the public sphere; the latter, on the contrary, in spite of the great effort made in the past to reinforce the bonds among different ethnic and religious groups, has had a lower budget alongside other structural factors (unemployment, low standards of the education system, urban segregation of some areas) which could serve to partially explain the recent riots.

In Spain, the cases of Granada and Cordoba are good examples of policies of memories as part of inter-religious dialogue policies: in both towns the convergence of various actors (politicians, intellectuals, professors of local universities, local authorities, Muslim associations cooperating with local Jewish communities) to carry out the simple idea of refreshing and restoring the Muslim and Jewish roots of Spanish identity. This has been particularly striking in Andalusia when I was working on memory: it implied many important social effects. Not only to the restoration of ancient synagogues or to building the mosque in Granada, in the Albacin area, but also to the museum project devoted to the Al-Andalus heritage and the spread of the spirit of dialogue among cultures in schools, universities and cultural festivities.

In Italy, a special mention goes to the little towns of Novellara (13,200 inhabitants, with 11.7% of foreigners) in Emilia Romagna, on one hand, and Colle Val d'Elsa (19,000 inhabitants, with 9% of foreigners) in Tuscany. They are small laboratories where political authorities are promoting dialogue, encouraging and coordinating the mobilisation of citizens, and facilitating meetings between “locals” and “migrants” before making any final political decisions. In the former, the presence of a mosque and a *gurdwara* (the first Sikh temple in Italy) has encouraged an invention of a repertoire of the best practices among the four religious communities of the city (Sikh, Sunni Muslim, Senegalese Muslim Brotherhood, and Catholic Church); in the latter, the project of building a mosque has been gradually discussed, involving both the local population and the Muslim migrants, and prepared by a cyclic public meeting on Islam.

## **IV. Conclusion**

Although many European societies have become increasingly secular over the past three hundred years, religion remains an important aspect of social and political life, and has re-emerged as beacon of fundamental social and personal values, since strongly related to human rights paradigm. High volume migration flows, that increase ethnic diversity, have also led to a growing religious minority trying to organise itself in visible and structured communities, sometimes competing among themselves, making the European cultural and religious landscape quite unusual and unfamiliar for the natives. In many European countries, this factor has increased the potential of social conflict, including with the respect to the demarcation between public and private spheres. New kinds of religious and ethnic discrimination and intolerance, combining and reinforcing economic inequality and social marginalisation are possible risks.

Therefore, inter-religious dialogue becomes an increasingly strategic issue on the political agenda. But instead of moving from the top, and studying the impact of dialogue on society as a whole, we suggest to start from the bottom, analysing what is happening at the *glocal* level, where the local meets the global (local: means the experience of coexistence among different believers in the everyday individual and social life; global: is the movement of immigrants that move religion around the world, disembedded and embedded in a new social environment): a city, for us, is the place *par excellence* to understand how to implement and improve inter-religious dialogue policies.



# **The Practice of Territorial Dialogue in Europe: The View of a Practitioner**

Paul BREYNE

*Governor of West Flanders, Belgium*

As governor of the province of West Flanders, located in the federated state of Flanders in the Kingdom of Belgium, I am very honoured to explain and illustrate a practitioner's view on territorial dialogue in Europe, rooted in the experience of my province. In a second part I would like to offer my own critical assessment of the first European Grouping of Territorial Cooperation (EGTC), the European metropolis of Lille-Kortrijk-Tournai, of which I am a privileged witness.

## **I. Institutional and Historical Context**

What is the basis of this practical experience? For those not familiar with the political structure of Belgium, it is required to explain a couple of things without resorting to a detailed description of our political structure, which is not always very clear even to Belgian nationals.

Article 1 of the Belgian Constitution stipulates that Belgium is a federal state, composed of communities and regions. Article 5 determines that the Flemish region is subdivided into five provinces, including the province of West Flanders. A province thus constitutes an administrative unit with its own governing bodies. These include the provincial council, the consultative body, and the provincial executive, which is an executive body. A province is headed by a governor, who has provincial duties as well as powers at the Flemish level and at the federal, or Belgian, level. This means it is a complex position at the crossroads between the powers of the central and local governments. The governor is nowadays appointed by the regional government, in this case the Flemish government, upon unanimous advice from the Federal Council of Ministers. He therefore needs to have the trust of both the federal government and the regional Flemish government, as he works for both. A good example of this is the powers of the governor of West

Flanders as to the powers of the Belgian and Flemish governments with regard to the North Sea.

The reform of our state has resulted in a very complicated division of powers. Within the context of international law, the federal government exercises the Belgian powers with regard to the North Sea, but not all powers. Fisheries, shipping assistance, pilotage and search and rescue operations are Flemish powers. This means that the powers are not only divided between the federal state and the Flemish state, but also that seventeen governments and ministries are involved in this division of powers. It was therefore deemed necessary to make arrangements between all these coast guard partners on the basis of a cooperation agreement so as to achieve a coherent policy. Within the scope of these arrangements, a major role was given to the governor of West Flanders, because he was acceptable to all partners as he has both federal and Flemish powers.

The province of West Flanders is located at the North Sea and borders the Netherlands to the extreme Northeast and France to the South-west. In this paper I would like to describe the territorial dialogue with France. This dialogue is conducted not purely at a theoretical level, although this is done as well, but mainly on the basis of practically daily contact between government structures on both sides of the border in many fields, including socio-economic, cultural, touristic and many other aspects of our society.

How has this cooperation developed?

This question can actually be reversed from a historical perspective. When did we grow apart? If we look at the history of the region currently called West Flanders (in Belgium) and Nord-Pas-de-Calais (in France), we find that in certain time periods cross-border cooperation was not required as we were simply one region at that time. I am convinced that there are numerous similar cases in Europe, where cross-border cooperation is actually restoring historical bonds that were severed because of military, diplomatic or constitutional reasons. The same applies to the border region we will be discussing.

These areas have a long common tradition. The border between the two regions was actually defined for the first time by the Treaty of Utrecht in 1713. Before the treaty, it changed constantly. The struggle for power between the kingdom of France on the one hand, and the county of Flanders and the later Spanish and Austrian Netherlands on the other hand, has resulted in the fact that we should talk about a border region rather than a border.

It was furthermore not only a national border. As a result of the settlement of the Franks in the North of the Gauls and the Saxons at the

coast, this region was also the place where the Roman and German civilisations met. In the early Middle Ages, a language barrier came about which did not correspond with any constitutional border. The area in France which is now part of the cross-border cooperation and which was annexed by France in the course of history, was home to both French- and Dutch-speaking people. The integration of the French-speaking part was not met with enthusiasm by the local population, but the integration of the Dutch-speaking part of the conquered area was even more difficult. In spite of government measures to ban Dutch from social life, the goal was never fully reached. Although Dutch has become a marginal language, it has not disappeared completely. The language problem is a permanent point of attention during cross-border contacts. The equivalence of both languages is a fundamental point of departure for the implementation of cross-border cooperation, but appears not to be easy to accomplish in practice.

The establishment of the national border in 1713 between France and the then Austrian Netherlands nevertheless has not prevented people from maintaining cross-border contacts over the centuries, especially in the cultural and economic fields. Administrative contacts, however, remained largely, if not exclusively, limited to bilateral agreements between the two central governments in question.

Driven by interior political developments in both France and Belgium and by the ongoing European unification, local and regional governments have only started trying to approach each other in the past few decades and have gradually given shape to the cross-border cooperation, starting from the bottom up.

It is not my intention to provide a global overview of the various steps taken to achieve this cross-border cooperation during this short contribution. I would like to summarise it as follows. The cross-border cooperation grew from European dynamism under the then chairman of the European Commission Jacques Delors. Borders were no longer limitations, but challenges. In the border region between France and Belgium, people were confronted with the border on a daily basis and the European unification gave them the opportunity to assume a new central position outside the national context. Regions located eccentrically were suddenly positioned centrally within the European context.

The circumstances were favourable to look beyond the border; the only thing that was missing was people to carry out the work. This is also constant in the entire cross-border story. Cross-border cooperation does not happen just like that. It is not imposed from above, but needs to grow organically from the bottom up. It is a growth process that

essentially comes down to the fact that there are people on both sides of the border who believe in the project and get along.

The provincial government of West Flanders did pioneering work in this field. This has resulted in numerous contacts and initiatives, for instance around the concept of a Franco-Belgian metropolis in Lille. A first dimension of the cross-border cooperation consisted in elimination of the negative effects of the border. And as we made progress in the field of this first dimension, room was created for a second dimension, namely taking a positive lead on the road towards a new region.

This is very explicitly the intention in the urbanised area around Lille with the creation of a Franco-Belgian metropolis. In this manner we evolve from concept to actual implementation. During the entire process, we have kept in mind the initial objectives, which were formulated as follows. The policy towards the North of France needs to: – contribute to the prosperity and welfare of West Flanders; – increase the quality of the living environment; – strengthen the position of West Flanders in Europe; and finally – look after the common interests of the border region to the largest possible extent.

These objectives were converted into seven strategic orientations: 1) further develop own strengths; 2) look for complementarity; 3) stimulate cooperation; 4) create involvement; 5) take advantage of the formation of the metropolis; 6) work on structures; and 7) address bottlenecks.

## **II. SWOT Assessment of Territorial Cooperation between Flanders and France**

The above-mentioned objectives as well as the strategic orientations have lost nothing of their relevance and are still valid today. After twenty years of experience in cross-border cooperation, the motivation for the cooperation remains the same and we are capable of indicating the strengths and weaknesses as well as the opportunities and threats for our region with regard to the cooperation with the North of France.

### ***A. Strengths***

The strength of the cross-border cooperation was in the first place the innovative concept that was the foundation of the cooperation. You could call it a Copernican revolution. When national borders fade away, these border regions get the opportunity to discover and create a new “centrality.” Instead of a remote area, a final point, they assume a central position in a new configuration. The image of Lille and the surrounding areas as Franco-Belgian metropolis located centrally between London, Paris, the Dutch Randstad (Amsterdam-Rotterdam) and the German Ruhr region illustrates this perfectly.

A second strength of the cross-border cooperation is that it has evolved from the bottom up. No matter how diverse the forms of cross-border cooperation in Europe are, there is one constant: the initiators are local governments in the border region, supported by the living forces of the region. It is the local policymakers, being confronted every day with the limitations and restrictions imposed by the border, who take the lead in establishing cross-border contacts. This implies there is no universal model for cross-border cooperation. The features, problems, challenges and opportunities differ from border to border, and there can even be differences within one border region. The heavily urbanised region around Lille requires different solutions than the rather rural border region of the Westhoek region and French Flanders.

### ***B. Weaknesses***

A possible weakness of the cross-border cooperation is the lack of a cross-border reflex. Although we have come a long way in the field of cross-border cooperation, we still do not have across-border reflex with regard to the daily operations of the different governments. Decisions are still largely prepared, taken and justified within a national context.

This can easily be explained in objective terms in view of the specific characteristics and limitations of the cross-border context: – the absence of a suitable legal framework; – the lack of cross-border financial instruments; – the weakness of cross-border political networks; – the degree of complexity of “interior” plan preparation or project; – the implementation of procedures, time schedules and negotiation and decision-making processes which are not conducive to cross-border cooperation; – the lack of knowledge of the “other side,” and – the differences between Flemish and French government systems (i.e. the actors, their backgrounds, their numbers, their powers, their mutual relations).

A second weakness is the fact that numerous initiatives are taken, but with a lack of structure. Jean Monnet is credited with the saying: “People come and people go, but structures remain.” He used this to advocate a strong supranational authority in the form of the High Authority, the predecessor of the European Commission. The same saying applies to cross-border cooperation. Numerous cross-border initiatives have been taken over the past years, which make it difficult to see the wood from the trees. The impression may be created that cross-border cooperation is strongly embedded, but in practice it depends on the work and efforts of a few people. There is a lot of goodwill, but we lack the supporting structures to turn it into a true success story.

A third weakness is the fact that it is difficult to mobilise the central governments. Growing from the bottom up is a strength, but also creates

a weakness, namely that the central governments fail to follow and do not engage in the cross-border cooperation. At the Flemish level, this is partly due to the relative newness of the Flemish administrative level and the resulting need of the Flemish government to first acquire legitimacy within the Belgian state. In addition, Flanders is structured differently than France. The territory is smaller and there is less decentralisation of public services.

The central authorities in Brussels consider cross-border cooperation as a rather marginal phenomenon. Fortunately this attitude has changed over the past few years. The Flemish government increasingly recognises the importance of cross-border cooperation with the North of France and also takes initiatives in this field. Symptomatic of this trend is the cross-border cooperation in the field of safety. Safety is an essential task of any state. Every state ensures that this essential task is in the best possible manner. Citizens have entrusted the government with the protection of their personal safety, and the government has thus acquired exclusive rights to violence. Any government has the right and the duty to ensure the safety of its citizens, if necessary by taking recourse to violence through its own police system.

Cross-border cooperation in the field of safety thus implies that the cooperating governments will have to make concessions as to their core competences, which may affect the core of their state structure. In addition, although France and Belgium have the same legal, judicial and administrative roots, the structures and cultures are quite different. The difference between, e.g. the cooperation between the judicial authorities and the police in both countries represents an obstacle to cross-border cooperation. It is not the will between the different partners that hinders cooperation, but rather the organisational structure within one country that prevents cooperation with the organisational structure within the other country and thus obstructs cross-border cooperation. Concrete practical cooperation in the field of security in the border regions therefore has been limited to overblown policy statements at the highest level. The virtual border that still exists between the different states limits cooperation between the security forces, something which does not affect criminals.

### ***C. Opportunities***

Cross-border cooperation also provides a number of opportunities. It enables West Flanders to link up with the metropolis of Lille. Metropolises are the vectors of development in the 21<sup>st</sup> century, not only in Europe, but throughout the world. This is illustrated by the evolution in Asia. High added value is concentrated in metropolises. They host the headquarters of worldwide companies, which have a major influence on

the economic decision-making process because of their financial importance, and boast a high concentration of business services at international level, such as accounting, international law and marketing. These metropolises are attractive both to their inhabitants and to entrepreneurs, researchers and creative artists.

The region where our cross-border cooperation with France takes place meets the criteria of a metropolis, but reality shows us that the ultimate goal, the formation of a metropolis, has not been achieved yet. Both France and Flanders need to concentrate their forces to accomplish this objective. Individually we are too weak and unable to compete with metropolises such as Brussels and Paris, but together we form a larger whole that is able to face this challenge. The main condition is that the cooperation takes place on the basis of a balanced and equal partnership with respect for our languages and cultures.

Our cross-border cooperation with France goes back a long time, which offers the opportunity to go a step further and to experiment with the establishment of specific cross-border structures within a European context. The actual implementation of projects requires all actors to be united in a legal construction that provides sufficient guarantees as to the implementation of these projects. The unity of action that needs to be achieved requires an original legal and political construction.

The Regulation on a European Grouping of Territorial Cooperation (EGTC) as published in the *Official Journal of the European Union* on 5 July 2006, which can be used in the member states of the European Union, offers the possibility to work out such a legal structure. Our region therefore took this opportunity and opted resolutely for the implementation of this legal structure. In the spirit of the elimination of the European internal borders it is furthermore logical that European funding mechanisms will support the establishment of cross-border structures. In West Flanders good use is made of this opportunity. On 22 January 2008, the European metropolis of Lille-Kortrijk-Tournai was established. And on 3 April 2009, the EGTC “West Flanders-Flanders-Dunkirk-Opal Coast” was officially installed.

#### ***D. Threats***

Last but not least, there are some threats we seriously need to take into account if we want to prevent the cross-border cooperation from failing. First of all, the absence of actual, tangible results is a heavy burden on future enthusiasm for cross-border cooperation. Results have certainly been achieved in the field in the area of cross-border cooperation. So the situation is certainly not entirely negative, far from it.

But we must dare admit that we have underestimated the difficulties. The national border in daily life has proven tougher than we had expected or hoped for when the physical border limitations at the European internal borders were lifted in 1993. What's more, the disappearance of these physical limitations has made the practical obstacles even clearer. Shopping across the border is an everyday reality, but a French hospital or employment office is practically inaccessible. We need to accept that progress in cross-border cooperation is made in small steps, through many consultative channels, exchange forums and meetings. This is the price we pay for the involvement of many different people and bodies and for the choice we made for peaceful consultations.

A second threat is the fact that the early pioneers are at the end of their careers. Their inspiration behind the cross-border cooperation is necessary to continue on the present road; knowledge can be passed on easily, but it is far more difficult to pass on inspiration. There are too few enthusiasts to hand over the torch of the cross-border cooperation.

The cross-border cooperation with the North of France has moved forward considerably over the past years. It was the first European Grouping of Territorial Cooperation (EGTC). It is the result of the political will of fourteen Belgian and French local, regional and national authorities to proceed to the establishment of an effective instrument of multi-level governance that is active in two states (one of which is a federal state) and three regions. Nearly two million people live in a mainly urbanised territory where the European metropolis needs to formulate, in an integrated manner, an answer to the major challenges linked to several of the strategic domains falling under the competence of the European Union, such as economic growth and employment, innovation and sustainable development. Importantly, the European metropolis was established on the basis of the activities of a Franco-Belgian Parliamentary Study Group, running from 2005 to 2007, that formulated its conclusions with regard to the instrument of multi-level governance that would allow overcoming the legal and institutional obstacles limiting the efficiency of the cross-border cooperation between the two states.

The importance of the step taken with the establishment of the European metropolis of Lille-Kortrijk-Tournai cannot be stressed enough. For the first time in history a structure is established in an attempt to go beyond the national level within the scope of the cross-border operation. We need to do our best to give this initiative every chance to succeed. I am convinced that it is at the borders of the different states of Europe that it is possible to develop a European attitude at the local level, where governments no longer hold on to their



own planning, participation, decision and financing procedures. The European metropolis needs to provide room for political debate, for the interpretation of the cross-border cohesion of the entire territory and for the implementation of concrete projects.

In short, I have tried to give a testimony with regard to the cross-border operation between France and Flanders, and West Flanders in particular. Cross-border cooperation is not an obvious thing. It is a story of trial and error. It is also not always a success story. In the field we must not shift to an idealistic view of cross-border cooperation, but need to take a pragmatic approach. We need to gradually demolish the virtual walls that have remained after the physical internal borders disappeared by means of specific projects.

### **III. European Grouping of Territorial Cooperation: Eurometropolis Lille-Kortrijk-Tournai**

#### ***A. Origins***

To conclude, I will briefly discuss in this last section the very first EGTC in the EU, namely the European metropolis of Lille-Kortrijk-Tournai, of which I am a privileged witness.

When the European metropolis of Lille-Kortrijk-Tournai was officially established at the Budascoop cinema complex in Kortrijk as the very first European Grouping of Territorial Cooperation (EGTC), the then mayor of Kortrijk, Stefaan De Clerck, stated in his opening speech that the future would show whether this was a historical day. The establishment of a new structure was not an objective in itself; the evaluation would depend on the actions taken by the new structure. Barely two hours later, had former French Prime Minister Pierre Mauroy clearly and explicitly called this day historical in his speech as first chairman of the brand-new European metropolis.

Is this an illustration of the difference between Latin enthusiasm and Flemish level-headedness? Or had it something to do with the fact that the establishment of the European metropolis was the pinnacle of Pierre Mauroy's long and successful political career, whereas Stefaan De Clerck realised that he would have his hands full with making the structure work for the coming years? Whatever the case, barely two years later it is impossible to make final statements. But we can draw a number of conclusions on the basis of the first experiences. And, as indicated above, we can also compare with the other EGTC that has in the meantime been established at the Franco-Belgian border, the EGTC West Flanders-Flanders-Dunkirk-Opal Coast.

## ***B. First Assessments***

A first conclusion is that the idea of a cross-border consultation and management structure for the largest cross-border agglomeration of Europe is still just as attractive. A look at the map of the region suffices to find the explanation: Kortrijk and Ypres are located at barely thirty kilometres from Lille, an agglomeration of over one million inhabitants. In a world where metropolises play an increasingly important role, mutual sympathy is only natural. It is therefore not surprising that cultural events, job fairs and even commercial initiatives use the term “Eurometropolis” in their communication or publicity.

A second conclusion is that the establishment of a separate, legal structure entails numerous administrative obligations, such as the convening of general meetings, the election of a board of directors, the approval and management of a budget, the recruitment of staff and the like. Especially in an early stage, these problems are not to be underestimated. Allow me to illustrate this with a simple example, the translation jobs. The province of West Flanders annually draws up a list of available translators and interpreters on the basis of a general invitation to tender. Our French partners work in the same manner. But a new legal structure that wants to issue translation jobs needs to organise such an invitation to tender on its own.

The administrative set-up of the new structure is to be underestimated even less, as you have to deal with two legal systems and need to experiment, not to say improvise to a certain extent. The European Regulation on European Groupings of Territorial Cooperation defines the basic rules, but for the matters not covered in the regulation you need to fall back on the legislation of one of the two member states. And choosing is always a bit losing, certainly for the “other” party, the country the subsidiary legislation of which is not selected. It is for example not easy to ensure in the EGTC Eurometropolis, which is based in Lille and consequently falls under the French legislation on local authorities, that people from Belgium can be recruited just as easily as people from France not only from a legal point of view, but also in practice. And, to be perfectly clear, this has nothing to do with supposed unwillingness of the French partners, but everything with our legal structures, which are still poorly or not at all adjusted to a cross-border reality.

A third conclusion is that the stage of establishment of a new structure is almost inevitably to a large extent dominated by discussions on articles of association, procedures and administrative concerns. People barely talk about the content. However, the latter is rather essential: what do we want to achieve with the new structure, why do we

establish it? But also: what can we achieve with this structure, given the absence of any transfer of powers, the limited budget and the modest complement of staff? There is a real danger that overly high expectations are raised which cannot be met. As indicated above, the name “Eurometropolis” sounds ambitious, but the cross-border staff team consists of only a few people.

Neither the Eurometropolis nor the EGTC West Flanders-Flanders-Dunkirk-Opal Coast, a structure for which a more attractive name still needs to be found, replaces the competent authorities on both sides of the border, and they can therefore only contribute to the solution of existing problems or the development of new opportunities with the cooperation of those competent authorities. Take the example of the plans for a new motorway in France through Lille, the A24, which also caused commotion in Belgium. The competent French, Walloon and Flemish authorities were not on the same line and the plans were abandoned. Could a structure like the Eurometropolis have solved this? Perhaps, but only provided the authorities in question had been prepared to look for a solution within the scope of the Eurometropolis. The Eurometropolis in itself didn't have the power, the means or the ambition to do that.

If we focus on the content, the tasks of the EGTCs, we notice that the EGTC instrument is actually especially suitable for the execution of technical tasks, such as managing a European subsidy programme. However, the two EGTCs at the Franco-Belgian border are in the first place political consultative bodies. This does not detract from their value; by embedding political dialogue in a separate structure you help ensure its continuity. However, it makes it difficult to immediately deliver concrete, tangible results with the new structure.

Even more so, because there is already a cross-border reality outside this cross-border legal structure. For example, 25,000 French residents of Nord-Pas-de-Calais cross the Belgian border every day to go to work, there are about a dozen conventions between French and Belgian hospitals at the border on the use of each other's range of care services, there is cooperation between universities and institutes of higher education, and there is a joint strategic committee in the field of police safety. This does not mean that everything works flawlessly all the time, far from it, but it does mean that the new structures need to take into account what already exists and do not start from scratch.

The fourth conclusion concerns the participation of higher authorities in the structure of the Eurometropolis and of the EGTC West Flanders-Flanders-Dunkirk-Opal Coast. This presence of higher authorities naturally has the advantage that all relevant authorities are represented and that it is possible to deal with almost any subject with

the right partners around the table. The other side of the coin is that this presence of higher authorities strongly limits the freedom to take up positions or to lobby. How can a structure advocate something with the higher authorities if the latter are themselves represented in the structure?

The establishment of a new cross-border structure is certainly not a miracle cure that will make all border-related problems disappear just like that. But it is a strong signal, a strong affirmation. The fact that all authorities involved have shown themselves prepared to participate illustrates that they are aware of a growing, cross-border reality. This reality is in the first place of a spatial nature; neighbours border each other physically. I have already referred to the A24 and mobility: if traffic in and around Lille gets stuck, this often affects the accessibility of the South of West Flanders as well. However, it is also about spatial planning and environmental policy. Watercourses and the wind do not stop at the border. It will therefore not be surprising that the first visible actions of the Eurometropolis are in the field of mobility, with a declaration of intent of the management of the two railroad companies involved to improve the cross-border rail connections where possible and a common study of the mobility in and around the Lille agglomeration.

Apart from this obvious spatial component, there is also what I would like to call the Eurometropolis of the citizen: working, studying, discovering culture or seeking medical care across the border. This surpasses good neighbourliness; it means, as it were, living together part of the time. This ambition is not self-evident, certainly not if there is a language difference on top of the institutional and cultural differences, but it is all the more challenging. In this context I can, for example, refer to research conducted under my guidance within the Eurometropolis study group “Service to the Population” with regard to the institutionalisation of French elderly citizens in Belgian rest homes or to the recent “Eurometropolis Innovation Meetings,” where experts in the field of innovation, research and knowledge distribution from the three regions involved (North of France, Flanders and Wallonia) were brought together to share experiences and establish contacts.

### ***C. Latest Developments***

Since its establishment in 2008, the Lille-Kortrijk-Tournai Eurometropolis has expanded and strengthened its institutional framework and its work programme and activities have increased steadily.

There are six Eurometropolis bodies: the Presidency, the Assembly, the Board, the cross-border Agency, the Thematic Working Groups and

the Conference of Mayors and Burgomasters. The Eurometropolis has adopted two fundamental operating principles. Firstly, each body respects the double parity between France and Belgium (equal number of French and Belgian individuals), and the Belgian delegation respects the double parity between French-speaking and Dutch-speaking individuals. Secondly, the application of bilingualism is guaranteed.

The Presidency is the Executive Management Committee and is presided by Rudy Demotte, Minister-President of the Walloon Region and the French Community. There are three vice-presidents. They make up the Presidency and are elected by the Assembly for one year. The Executive Management Committee respects the principle of double parity. The presidency alternates between a French and a Belgian representative, and the Belgian representative is alternately a Dutch-speaking individual and a French-speaking individual. The Executive Management Committee carries out the decisions taken by the Assembly and the Board.

The Assembly comprises eighty-four people. The Assembly is the Eurometropolis' deliberative body. The Assembly meets at least twice a year. The Board is composed of members of the Assembly. It approves modifications to the statute, the budget and the choice of themes for cooperation. Each of the fourteen member organisations of the Eurometropolis appoints its representatives.

Made up of thirty-two members, the Board is the Eurometropolis' executive body. Acting as a Board of Directors, it provides an arena for cooperation, exchanges and consultation on projects to be implemented. It is responsible for the direct management of the Eurometropolis. The Board is composed of members of the Assembly. Established in Kortrijk, Belgium, the Cross-Border Agency team (currently made up of a manager and ten employees) is responsible for ensuring that the fourteen member organisations of the Eurometropolis work together. It prepares and implements the decisions made by the Assembly following proposals by the Board. It coordinates the Thematic Working Groups and organises the Conference of Mayors and Burgomasters. The Agency is also responsible for the implementation of projects.

The Thematic Working Groups (TWGs) address the main directions of the Eurometropolis. The members of each group contribute to putting together territorial cooperation projects. They define strategic directions and propose concrete actions to the Board. When these proposals are chosen, specific working groups, called Project Groups, are set up to ensure their implementation. The TWGs bring together representatives from the three vectors of the Eurometropolis. Each working group nominates a President and two Vice-Presidents. A "trio" – made up of

the President of the TWG, a technical expert and a collaborator of the cross-border Agency – prepares and coordinates the meetings.

Last but not least, the Conference of Mayors and Burgomasters brings together the 147 Mayors and burgomasters from the Eurometropolis. At the annual meetings these elected representatives exchange ideas on the work and projects of the Eurometropolis.

The Eurometropolis' programme of work is organised around six cross-border issues. The intention is to provide a number of quality services within the Eurometropolis. The actions and projects developed also aim to strengthen the feeling of belonging to the same territory. Moreover, the Eurometropolis wishes to improve the accessibility of its territory as well as the mobility of citizens, workers and goods. It also supports entrepreneurial spirit and job creation. Finally, it provides for information exchange and consultation in various fields, including spatial planning and the environment, as well as the pursuit of efficient management of the Eurometropolis.

#### **IV. Conclusions**

I think that this last initiative very well illustrates the added value of political EGTCs such as the Eurometropolis and the EGTC West Flanders-Flanders-Dunkirk-Opal Coast: generating interest across the borders, bringing people together, facilitating contacts so that the “other side” gradually becomes an increasingly familiar region. Perhaps this does not sound very spectacular, but it is revolutionary, considering the European history of the past three centuries.

It is a privilege to be allowed to assist in this matter in my capacity as governor of West Flanders and Flemish coordinator of the cross-border cooperation with the North of France. I am convinced that we are making history here and that we contribute bit by bit to the development of a unified Europe in the spirit of Jean Monnet. Perhaps my contribution can also be useful for the interregional activities initiated by the Veneto Region, such as the establishment of an Adriatic Euroregion.

I would like to conclude with a reference to a statement by August Vermeylen, a Flemish author and politician, who already wrote in 1900: “We want to be Flemish in order to become Europeans.” I think this is still a valid thought. A united Europe with respect for own identity and culture is our goal.

## **SUBSECTION III**

### **CASE STUDIES**





# The Sub-national Authorities in a Multi-level Governance Setting – the Silesian Case Study

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## I. Relations between Sub-national Authorities and Multi-level Governance Structures<sup>1</sup>

### A. Context and content

The sub-national units of the European Union are an important element of the multi-level governance structures of the European polity. Their ambition goes beyond being merely subjects of political or administrative decision-making, they want to be present in Brussels and be an active player. On the other side, for the supranational level of the EU, the regions and localities seem to be natural alliances in balancing power of the central state authorities and advancing the project of the “Europe of Regions.” However, to challenge the traditional, hierarchical approaches of the Westphalian model, the innovative, inclusive

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<sup>1</sup> References for this chapter: Bache, I., “Europeanization and Britain: Towards Multi-level governance?,” Paper prepared for the EUSA 9<sup>th</sup> Biennial Conference in Austin, Texas, March 31 - 2 April 2005; Bache, I. and Flinders, M., “Themes and Issues in Multi-Level Governance,” in I. Bache and M. Flinders (eds.) *Multi-level Governance*, Oxford, Oxford University Press; 2004, pp. 1-11; Bache, I. and Flinders, M. (eds.), *Multi-Level Governance: Interdisciplinary Perspectives*, Oxford, Oxford University Press, 2003 (chapter two – draft); Heichlinger, A., *A Regional Representation in Brussels: The Right Idea for Influencing EU Policy Making?*, Maastricht, European Institute for Public Administration, 1999; Riedel, R., “European Union’s Cohesion after the Enlargement: a View from Central Europe,” in *Yearbook of Polish European Studies*, 2009 – in print; Torbergsen, M.H., “Executive Dominance in a Multi-level Polity. Europeanisation and Parliamentary Involvement in the Spanish Autonomous Communities,” in *ARENA Report*, no. 5, 2003.

governance<sup>2</sup> system needs to be implemented, it needs to have effective channels of communication with the sub-national units.

The top-down communication is easy to achieve, it comes naturally with the flow of decisions and money. The bottom-up direction is more problematic, especially in the case of the unitary states, in which the power is concentrated in the capital. First due to the fact that the local and regional authorities do not have tradition, know-how or simply capacity to effectively voice their preferences and interests in Brussels, secondly because sometimes the voices from the regions meet a blockade in the capital cities. Even in federal states, like Germany, the discussions about the competences of “foreign policy” being attached to Berlin, rather than to the Länder seem endless.

The answer seems to be the multi-level governance (MLG) concept allowing to see the European Union not as a union of states, where dividing line between the domestic vs. international politics is simple (simplistic) to capture. It understands the union as a system of continuous negotiation among nested governments at several territorial tiers (supranational, national, regional, and local) and as a result of the broad process of institutional creation and decisional reallocation that has pulled some previously centralised functions of the state up to the supranational level and some down to the local/regional level.<sup>3</sup> It is understood that such governance structures operate in several diverse territorial scales and they are task-specific.

The networks of governance arrangements are polycentric in nature, inclusive towards the heterogeneous preferences of citizens and interest groups. Consequently, this mode of governance is not only contrasted with more traditional forms of hierarchical, state-centric governance in general, but also provides a useful framework for understanding the

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<sup>2</sup> The term *governance* as a theoretical framework has been used in connection with several contemporary social sciences, especially economics, public administration and political science. On the ground of political science, it refers to the actions undertaken by conventional political actors, like executive authorities, legislature assemblies and judicial bodies, but at the same time it embraces other dimensions and problems, among them the most prominent are the questions of the minimal state, corporate governance, (new) public management, good governance, social systems and self-organised networks of citizens and interests. This term has also become fruitful and productive in researching the European integration. On the EU studies' ground, it evolved into the concept of multi-level governance (MLG), which became one of the most influential theoretical perspectives with major contributions by Liesbet Hooghe, Ian Bache, Matthew Flinders and Gary Marks.

<sup>3</sup> Marks, G., “Structural Policy and Multi-level Governance in the EC,” in A. Cafruny and G. Rosenthal (eds.) *The State of the European Community: the Maastricht Debate and Beyond*, Boulder 1993, pp. 391-411, p. 392.

developing role of both supra- and sub-national governance structures in the emerging European polity. It deliberately offers a useful lens in the analysis of changing political opportunity structures in the integrating Europe. Such a re-allocation of authority upwards, downwards and sideways from central states has drawn attention from a growing number of scholars in political science and related disciplines.<sup>4</sup>

MLG crosses one of the conventions of international relations on the division between the domestic politics and the foreign relations, understood as separate domains of intra-state and international politics. It rather highlights the growingly blurred distinction between these domains in the context of the European integration. Therefore it better characterises the changing relationships between agents situated at different territorial levels, both from the public and the private sectors. Consequently, the accompanying (to MLG concepts) notion of supranationalism captures perfectly the *beyond-state-ness* of the ongoing developments (the Latin word *supra* refers to both *above* as well *beyond*) – they are not always and necessary above the level of the state, they happen beyond. So MLG could capture the increasing frequency and complexity of interactions between governmental actors, and also the increasingly important dimension of non-state actors that are mobilised. As such, multi-level governance raised new and important questions about the role, power and authority of the Union and its constituting elements.

Challenging the nation-state from above is in parallel accompanied with the sub-national level developments (as a result of de-centralisation processes or supranational pressures, but also due to many other beyond-Europeanisation mechanisms) as the new situation creates the new opportunity structures both for regional as well as local agencies and actors. This embraces the vertical (linkages between higher and lower levels) as well as the horizontal (co-operation arrangements between regional or local agents) dimensions of the *multi-level-ness*.

With the focus on the sub-national units, it is the notion of the “Europe of the Regions” which strengthened the view that regions can be an effective level of governance. The “Europe of the Regions” thesis originally was referred to the powerful German, Belgian and later on also British and Spanish regions, in doing so it glossed over the fact that regions in other parts of the EU perform a far less important constitutional role. Nevertheless, the contemporary trends of

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<sup>4</sup> See further: Hooghe, L., Marks, G., “Unravelling the Central State, but How? Types of Multi-level Governance,” in *American Political Science Review*, vol. 97, no. 2, 2003, p. 233-43.

globalisation, Europeanisation and decentralisation influence the functioning of the sub-national actors. In the context of the particular analysis, the category of Europeanisation seems to be the most influential. In general terms, it defines a process and a phenomenon in which domestic policy areas become increasingly subject to European policy-making and repercussions which the transfer has on the domestic institutions of the member states. Europeanisation is conventionally understood as a phenomenon of domestic adaptation to European integration. In such a sense, the multi-level governance structures create the framework for Europeanisation to process.

However, the concept of Europeanisation is not seen here as a purely downloading process (top-down Europeanisation) but also as an uploading process (bottom-up Europeanisation). Additionally, Europeanisation involves cross-loading or policy transfer through lesson learning from one member state to another – or one member state agent (sub-unit) to another. The sub-national authorities are responsible for implementing many of the EU policies and the EU institutional system logically has an interest in exercising some form of bottom-up influence over the genesis of these policies.

Consequently, some of the effects of Europeanisation may act as decentralising forces within the multi-level governance system – through implementation of the partnership principle, the empowerment of the sub-national agents and political decentralisation (territorial restructuring). In principle, the sub-national administrative units have at their disposal a multiplication of channels for sub-national mobilisation, i.e. the Committee of the Regions, the Council of Ministers, sub-national offices and transnational networks. This analysis exclusively deals with the sub-national representation offices, their role in the EU and, partly, considers the capacity of supranational structures to incorporate sub-national institutions and interests.

Important to remember, the relationship between and across levels of governance can be characterised as mutual dependence. The nature of this dependence may vary depending on the structure of the state (federal *versus* unitary/other contextual variables), however, one overarching, stable element of all those different constellations is the supranational layer of governance. And for the community level, the regional policy (being one of the most important re-distributive instruments in its budget), is the natural link to the regions and local communities.

Sub-national level adequately concentrates a large proportion of public spending – on average of 30% of public spending in OECD countries takes place at sub-national level and in Europe almost 70% of public investment is made by sub-national governments. This creates a

natural situation in which these two layers of governance become allies. Sub-national governments are the best placed to identify opportunities for regional investment and development, they may lack, however, the capacity to design and implement “coherent” strategies, which may require higher (national or supranational) level intervention. What was most surprising in comparing the governance patterns proposed by the community cohesion policy in comparison to the previous national regional policies was that, for the first time, the regions – as administrative and political institutions – were placed at the heart of the policy in terms of both decision-making and implementation.

In the past, national regional policies were generally conceived. Consequently national level was no longer seen as the exclusive level where development policies should take place. This contextualises the cohesion policy analysis into the concept of multi-level governance (MLG) promoted by the Union. As a concept and as a practical requirement, MLG is based on the participation of a variety of institutional actors (e.g. supranational, national government and regional administrations, public and private parties) in the policy process. Linked to the concept of social (public-private) partnership, the multi-level approach has expanded to include organised socio-economic groups and voluntary organisations (e.g. environmental groups, women’s organisations and minorities) as part of the mobilisation of civil society in the development.

At the same time, within the EU Commission’s Directorate-General – Regional Policy one can observe a general consensus that regional disparities were increasing within the European Community as part of the process of market integration. The Commission had to prepare a system of “shock absorbers” to “ease the pain” of integration. The expectation that the less-developed regions would become the victims of market integration gave rise to a series of articles that argued that the Cohesion policy<sup>5</sup> constituted a “side payment” to less-developed member states in the EU periphery to “buy” their acceptance of the operationalisation of the single market and European Monetary Union (EMU) programmes.<sup>6</sup> To provide a broader definition of territorial cohesion that takes into account the new challenges faced by regional and local authorities (globalisation, climate change, energy security,

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<sup>5</sup> The cohesion principle expresses nothing but a concern for rebalancing the uncertain distributive effects of an internal market without borders and, in so doing, avoiding the pernicious risk of Europe disintegrating.

<sup>6</sup> Tewdwr-Jones, M., Morais, J.M., “Territorial Cohesion, Economic Growth and the Desire for European Balanced Competitiveness,” in *Town Planning Review*, 76(1), 2005.

immigration, etc.), the specific objectives for which European funding is given need to be defined in a more flexible way which allows for the fact that each region has very different characteristics and each has its own competitiveness and sustainability strategy.<sup>7</sup>

In the case of the core concern of the analysed problem, the multi-level governance model suggests that sub-national actors would mobilise independently and directly (if necessary by-passing the level of the central administration of the state) and use the European Union level to maximise their benefits beyond the nation state. In certain fragments of their policies they may bypass national-level activity in favour of supranational action. Such internationalisation helps to propel traditional local government towards local governance. By interacting with transnational economic and political organisations, local decision-makers become part of a world that is more complex, changeable and interdependent than national politics. There is a dialogue between the demands at the international level with those that operate in the locality: international ideas and prerequisites drive local politics; and local ideas move upwards to the international sphere (down-loading and up-loading Europeanisation).

## **II. A Case Study:**

### **Analysis of the Silesian Representation Offices**

#### ***A. Regional Representation Offices***

One of the methods of communication with Brussels goes through the local and regional authorities' representation offices based in the Belgian capital. At the present, more than three hundred representations of EU regional and local authorities are based in Brussels (starting with just one in 1984), which is a considerable number, taking into account that the emergence of regional and city offices in the capital of Europe is a relatively recent development.<sup>8</sup> The general aim of these offices is to represent regional interests in Brussels, but – as this study is going to

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<sup>7</sup> Committee of the Regions' *White paper on Multi-level Governance*, Rapporteurs: Luc Van den Brande (BE/EPP), Member of the Flemish Parliament, President of the Committee of the Region and Michel Delebarre (FR/PES), Mayor of Dunkirk, First Vice-President of the Committee of the Regions, 2009.

<sup>8</sup> The first regional office in Brussels was opened no earlier than 1984, which was followed by many (other) British local authorities and a great deal of the German *Länder*. Some of them (see, for example, the Bavarian or Baden-Württemberg representation) represent capacity comparable to or exceeding many of the states' embassies' resources.

show in its later parts – they perform a number of other different roles and functions.

With regard to the functions performed by those representation offices, one can identify, based on the study of their statutory documents and the secondary literature, the following: – representing the local and regional authorities as distinct political units (consolidating their autonomy); – channelling information (up-loading and down-loading); – monitoring legislative and decision making process in Brussels; – activities oriented on obtaining funding opportunities (under cohesion and regional community policy); – lobbying – gaining voice among other interest groups; – answer to Europeanisation processes – as a result of Europeanisation (response to top-down Europeanisation and manifestation of bottom-up Europeanisation as well as a platform for cross-loading Europeanisation); – networking opportunities seeking; – “*it is appropriate to have an office in Brussels;*” – logic of appropriateness; and finally – raise the international profile of the region.

The identified functions exemplify how the Europeanisation process (up-loading as well as down-loading) proceeds in the multi-level governance structures. It is also important to see the development of the above mentioned functions as a process. They are not static – one can observe that from the very beginning. The German Länder, for example, opened their offices with an objective to represent the German states (*Länder*) as distinct political entities, whereas the British ones were much more focussed on obtaining subsidies under the structural funds. This reflects, to some extent, also the attitude of particular integrating actors in treating the Communities/Union as a common market, community or others.<sup>9</sup> Additionally, one has to remember that for the German Länder, opening representation offices is a natural pattern of politics-making in a federal structure and all of them have their representation offices in Berlin.<sup>10</sup>

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<sup>9</sup> It also illustrates some specifics of political culture in particular member states. The very opening of representations from Great Britain, which is a country with a lobbying-oriented political culture, was part of a broader tendency among interest groups to be present in Brussels to develop links with the European Union. German regions, on the other hand, started to open representations in Brussels in response to the growing impact of European rules on their domestic powers.

<sup>10</sup> Moore, C., “Schloss Neuwahnstein? Why the Länder Continue to Strengthen their Representations in Brussels,” in *German Politics*, 2006, 15: 2, 192-205.

## ***B. Polish Regional Representation Offices***

In order to understand the performance of the Polish regions' representation offices, one needs to highlight the key characteristics of the unitary state – highly centralised authority system. Historically, it was 1989 as a turning point, when in Poland (similarly to all the rest of Central and Eastern Europe), one of the first acts of democratically elected governments was to abolish institutions of regional government, which were seen as tools of Communist Party influence – this was a part of *de-communisation* agenda at that time. As it is written by Connor O'Dwyer: “By the mid-1990s [...] there was a growing perception that the elimination of regional institutions had been ill conceived and that some intermediate level of governance between the central and local levels was necessary.”<sup>11</sup> However, the momentum for regional reform in Poland came no sooner until the enlargement *stimuli* arrived, together with the conditionality policy as a part of Europeanisation agenda.

After the reform (1<sup>st</sup> January, 1999), the administrative map contained sixteen regions with separate governmental and elected assemblies. Apart from the self-governmental authorities, in each voivodeship it is the Voivod, appointed by the Cabinet, that holds an office. He is the superior of the team governmental administration, the supervision body over the territorial self-government units as well as the senior body as *per* the regulations for administrative proceedings. The Voivod represents the treasury in the scope and upon the regulations stipulated in separate laws. Being the Cabinet's representative, he is responsible for exercising the government's policy within the voivodeship.<sup>12</sup>

## ***C. Empirical Evidence of Polish Regional Representations***

How do the Polish regional self-governments organise their missions in Brussels? The empirical material answering this question was gathered through a variety of methods. Firstly, the semi-structured interview, secondly a structured questionnaire and thirdly analysis of source data such as statutory documents, yearly reports as well as secondary data – internet sites, comments, opinions, articles. These methods seek the following information:

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<sup>11</sup> O'Dwyer, C., “Reforming Regional Governance in East Central Europe: Europeanization or Domestic Politics as Usual?,” in *East European Politics and Societies*, vol. 20, no. 2, p. 220,

<sup>12</sup> Marshal Office of the Silesian Voivodeship, 2010.



- Main functions performed by the representation office (in hierarchical order – from the most important to the least important ones);
- Time and resources devoted to performing the above mentioned functions (*per cent* – for example, function nr 1: 20%, function nr 6: 15%, all together summing up to 100%);
- The most usual ways of realising these functions;
- Contacts with the Community institutions;
- Partnership principle – evaluation of the cooperating partners (in the home country and Brussels);
- Planning (in what time horizon? what are the goals according to the contemporary strategy?);
- Priority fields (for example: economy, culture, education);
- Organisational structure – number of personnel, their profile, education, professional qualifications;
- Dependency – to whom does the office report to?;
- Budget framework for the disposal of the representation office – its distribution;
- Whether and how far are external resources used (for example: specialised lobbying agencies, PR companies, etc.) in realising the goals;
- Cross-regional co-operation;
- Simplified SWOT analysis – recognition of strengths, weaknesses, opportunities and threats attributed to the representation office.

Such information can act as a measure of performance of sub-national agents in supranational domain. The usage of the material helps to answer the questions stated and goals of this study on the empirical level. The general observation that can be deduced from the gathered material is that all of the regional offices put information management in the first place among main functions performed. However surprisingly, communication is certainly not their strongest point – this can be concluded from the experience of approaching the employers of the offices (unwillingness to talk, not answering e-mails, etc.).

Priority fields and ways of realising them – does not seem to be planned, structured and performed in a systematic way. As the first reaction, the personnel claimed all of the asked functions are performed. In the course of the discussion it became clear, however, that the resources do not allow to perform them efficiently and they pointed information management in the first place. Information management

seems to be a bureaucratic buzzword meaning at the same time everything and nothing. Important to say, that the only representation office that claimed and proved with exemplifications some concrete actions, revealing some tailor-made approach was the Lower Silesia office.<sup>13</sup>

From the yearly reports, one can learn that the information activities comprised mainly of sustaining a web page, mailing and promoting EU funds possibilities in the region. Day by day report of activities reveals quite shocking information – it shows that every three-four days the actions undertaken by the office comprised of (for example) forwarding to the region information about the new Commission’s initiative (available on-line) or forwarding invitation from the partner region in France. Additionally to this, other “information management” type undertakings are mentioned, like: participation in contact days, or participation in Open Doors Day at the Committee of the Regions building.<sup>14</sup>

As regards other – beyond “information management” – activities, the statutory documents and reports emphasise “cooperation with EU institutions and lobbying.” Practical undertakings delivered in this line comprised of activities of such a scale as: “providing the Polish Commissioner with information about the office and its performance.” There is a group of undertakings called study visits, in practical terms – meetings with representatives of other offices, foundations etc. – in order to exchange information about each other.<sup>15</sup>

Among more interesting initiatives, it is important to mention acting as an internship host of employers from the regions’ cities and communes. Offices also help with organising internships for the students or graduates at EU institutions. Apart of standard showing the regions stand and passive participation in conferences and seminars, one can point such activities as organising a group of international journalists based in Brussels a trip to Wrocław or organising common events with neighbouring regions (Liberec, Czech Republic).

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<sup>13</sup> For example: EXPO 2010 promoting campaign.

<sup>14</sup> Generally it is observed that collective events dominate (such as holding one stand at the Open doors or contact days), less individually organised events – then usually as a side effect of other actors’ undertaking (for example: opening new flight connection to the region by a low-budget flights operator).

<sup>15</sup> The scale of the ambitions is revealed in the mentioned examples of success: establishing and maintaining contacts with Polish Embassy, EU institutions, participating in tourist show, where presented spas from the region, organising the trip of local and regional authorities’ representatives to Brussels.

*Personnel* – no data made available as far as the profiles of the personnel are concerned, however, from the number of employers one can deduce that it is not human capital that is the main resource of the offices. From secondary data, it is possible to conclude that at least in some cases (Lower Silesia) the personnel establishing the office was competent, formally educated in the line of the posts, entrepreneurial, very often the persons who held the first positions at the representation offices were the ones who initiated them and organised them. For example, the beginnings of the office of Lower Silesia were set by an NGO, an association for Lower Silesia in Brussels. One can say that officially it was an act of civil society impulse, after the interview one can conclude that there was also a combination of local politics and personal ambitions that led to the creation of the office.<sup>16</sup> Throughout the time of their existence, the offices usually had one or two employees with some back-up in the region (financial department),<sup>17</sup> and only recently has this number been increased to three people in the case of the Silesian Voivodship.<sup>18</sup>

*Budget.* Usually, Polish regions spend between 200 – 500,000 PLN (50 – 120,000 euro), in rare cases up to 900,000 (up to 230,000 euro) *per* office annually. This sum is generally commented, by the employees and sometimes in reports, as too low and inadequate taken into account the potential of performance. This statement is true, even though one has to remember that the regions' budgets for internationalisation has increased significantly in the period of accession, however not efficiently to perform the declared functions. At the same time, a surprising observation needs to be made – parallel to the complaints on the constraints, there are declared intentions to act as representatives not only of the region and its authorities – but also of the industrial self-government. On the other side, the reports of meetings from the statutory principals of the offices (regional authorities) one can observe consternation regarding the question of the office can and should represent single cities or communities from the region. This, however, can be treated as a strategy for making the localities to participate in the budget. The regional offices are financed mainly by the Marshal office,

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<sup>16</sup> In its creation and formulation of its logic of functioning, the experience of West Midlands (fifteen personnel) was pointed and the intention to outsource knowledge.

<sup>17</sup> In the case of the Silesian Voivodship, until 2007, the structure of the personnel was one person permanent in Brussels, a tenth position in financial department, and a half position in the so-called *mirror-office* in the region. Lower Silesia – from 2008 – two persons, Opole Silesia – two persons.

<sup>18</sup> In 2008, there were already three posts, but rotation was too high to realise the budget and serious tasks.

however with some and growing participation of local governments (very often paid – task specific payment). At the same time, parallel to the above mentioned complains on the budget constrains, for example, in the case of the Silesian Voivodship, the budget was in 2007 set at the level of 658,596 PLN (app. 160,000 euro) and was realised in 62,9%.

### **III. Concluding Remarks**

A general conclusion from the gathered analytical data suggests that the investigated Polish regions do not use the opportunity structures delivered by the supranational level. The reason for this seems to be the administrative capacity and organisational culture as such.<sup>19</sup> However, these are consequences of a number of reasons, among which many are identified in the available literature. For example, the claim that the regions from federal states can operate more efficiently is a consequence that the quasi-federal structure of the EU is a natural eco-system for them. Whereas in Poland, where the regions' autonomy is superficial, equally superficial is the performance of the regions' administration and the Brussels office is just an extension of this problem. The functions performed by the regional representation offices, their importance and way of performing differ, depending on many determinants, among which it is important to identify the following: structure of the home state,<sup>20</sup> budget available, policy developments,<sup>21</sup> organisational culture.

Unfortunately, the investigated cases demonstrate that – despite generational change – the employees of representation offices reveal typical post-communist-type administration approach. The main strategy is to “survive at the minimal level of energy consumption.” This results in a passive or – at the best – reactive behaviour, *ad hoc* actions. Blurred targets support this approach. It is not possible to verify their effectiveness if the objectives are not clear and resources inadequate. At the same time, large part of actions undertaken is to satisfy the principals from the region – organise a study trip to Brussels, etc. No

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<sup>19</sup> For example, blurred goals, lack of communicative competences.

<sup>20</sup> Member states of the European Union differ greatly in terms of their territorial administration. Some regions are politically strong, they have far-reaching competencies; others are mere administrative regions, strictly controlled by the central state – which is the Polish case.

<sup>21</sup> The Single European Act represented an important step towards the development of a clear regional policy by expanding the role of the EU to cover regional issues. The EU took on a wide range of responsibilities including the environment, social policy, R&D and industry – many of these matters were already dealt with in the member states at a local or regional level.

clear vision of sending regions on the strategy level – nobody tackles the most important question: why the office is established.

It seems that establishing a regional representation office in Brussels has become standard practice for European sub-national units, including the ones coming from the new member states, with little reflection on their specific roles and functions. Most likely the next step will be closing some of the offices or pooling several offices in one common location. Such a trend towards a generalised representation of regional authorities of member states may, however, lead to a more limited representation of local and regional authorities. Moreover, also the Committee of the Regions is perceived by the regional offices to be of “little importance” as far as influencing policy is concerned.<sup>22</sup> The Treaty of Maastricht and the creation of the Committee of the Regions indeed led to a rapid increase of new regional offices opening in Brussels in the period of 1992-1994. This trend has continued, with a second peak of activity in 2002-2003, largely caused by the arrival of the ten new member states. Additionally to this, the conclusions from a research work conducted by Goldsmith and Klausen about sub-national attitudes towards EU integration, focussing in the institutional environment, administrative capacity and new organisational and institutional developments, suggest that in general the local and regional authorities have improved their involvement with the EU. Further on, they conclude that the largest part of local and regional authorities is passive and the second-largest is reactive, suggesting that the impact of Europeanisation is usually limited to a few dynamic local authorities.<sup>23</sup>

Undoubtedly, Brussels can be described as the world capital of lobbying for local and regional authorities, but the activities of their representations vary significantly. Usually they have difficulties with effective up-loading their voice up to the EU level, very rarely engage sufficient (material and intellectual) resources, especially in the case of representation offices coming from unitary member states. In short, the interdependent nature of the relations between the sub- and supranational levels reveals a lot of asymmetry. It is the EU institutional side that seems to dispose most of the advantages, including administrative potential, capacities, decision-making power, and financial resources.

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<sup>22</sup> Huyseune, M., Theo Jans, M., “Brussels as the capital of a Europe of the regions? Regional offices as European policy actors,” in *Brussels Studies*, Issue 16, 25 February 2008.

<sup>23</sup> Goldsmith, M., Klausen, K.K. (eds.), *European Integration and Local Government*, Cheltenham, Edward Elgar, 1997; Huyseune, M., Theo Jans, M., *op. cit.*

The European institutional framework needs, however, the sub-national actors for a number of reasons, among which the most important seem to be: building the legitimacy of the actions undertaken, the role of the regions in the implementation phase or simply acquiring an ally in the construction of “Europe of regions.” For the regions, and other sub-national units, the supranational level is important in the first place as an architect of a pan-European regional policy. With the state-level regional policy very often being minimalised, it is Brussels that provides resources for infrastructural and other investments. Bringing balance to the interdependent relations needs a strengthened position of the European regions going beyond the consultative bodies, but inviting them to table where the decisions are taken.

# Interregional Parliamentary Assemblies: a New Layer in the Multi-level Global Governance System

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## I. Introduction<sup>1</sup>

The literature on regionalism, after providing a substantial knowledge of regional organizations' genesis and evolution, efficiency and legitimacy, as well as their impact on states' behaviours, has recently started to explore their external relations, too.<sup>2</sup> It was recognised, indeed, that:

the proliferation of regional actors created a need for intermediaries linking global and regional institutions and – at the lower end of the international

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<sup>1</sup> References for this chapter: Kraft-Kasack, C., "Transnational Parliamentary Assemblies: A Remedy for the Democratic Deficit of International Governance?," in *West European Politics*, vol. 31, no. 3, 2008, pp. 534-557; Malamud, A. and Stavridis, S., "Parliaments and Parliamentarians as International Actors," in B. Reinalda (ed.), *The Ashgate Research Companion to Non-State Actors*, England and USA, Ashgate, 2011; Song, W., "Regionalisation, Inter-regional cooperation and Global Governance," in *Asia Europe Journal*, vol. 5, no. 1, 2007, pp. 67-82.

<sup>2</sup> See, for instance: Cremona, M., "The European Union as an International Actor. The Issues of Flexibility and Linkage," in *European Foreign Affairs Review*, vol. 3, no. 1, 1998, pp. 67-94; Ginsberg, R.H., "Conceptualizing the European Union as an International Actor: Narrowing the Theoretical Capability – Expectations Gap," in *Journal of Common Market Studies*, vol. 37, no. 3, 1999, pp. 429-454; Rüländ, J., "The Future of the ASEM Process: Who, How, Why and What," in W. Stokhof and P. van der Velde (eds.), *ASEM. The Asia-Europe Meeting. a Window of Opportunity*, London and New York, Kegan Paul International, 1999, pp. 126-151.

system – regional and national policy-making levels. As a result interregional fora and subregional transborder institutions emerged.<sup>3</sup>

While the European Union (EU) is in the forefront of these developments, other regional organisations such as the African Union (AU), the Association of Southeast Asian Nations (ASEAN), Mercosur, the Andean Community, are committed to develop their own interregional networks.

The purpose of this paper, however, does not deal with interregionalism as such, but it is focussed on the role played by a specific group of actors in promoting these networks, i.e. regional parliamentary institutions. Nowadays, relations among these actors represent a global phenomenon and are more frequent and coordinated than ever before; in some cases, they have even given birth to fully-fledged interregional parliamentary institutions. The European Parliament itself has been described as a “labyrinth of inter-parliamentary relations between parliaments of different levels.”<sup>4</sup>

With few exceptions,<sup>5</sup> the role of these interregional parliamentary institutions has been largely neglected by scholars dealing with regionalism, mainly because they are considered almost irrelevant or, in the worst cases, nothing more than “political tourism” and expensive “talking shops.”

On the contrary, the aim of this chapter is to explore the possible contribution of interregional parliamentary institutions to the multi-level global governance system. For this purpose, I firstly propose an analysis aiming at gradually collocating these institutions within the broad theoretical framework provided by the literature on regionalism. In particular, I try to show how different “generations” of regionalism are

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<sup>3</sup> Rüland, J., *ASEAN and the European Union: a Bumpy Interregional Relationship*, Discussion Paper C 95, Bonn, Centre for European Integration Studies, 2001, p. 5.

<sup>4</sup> Herranz, A., “The Inter-parliamentary Delegations of the European Parliament: National and European Priorities at Work,” in E. Barbé and A. Herranz (eds.), *The role of Parliaments in European Foreign Policy*, Barcelona, Office of the European Parliament, 2005, chapter 5, p. 1.

<sup>5</sup> See, for instance: Kölling, M. *et al.* (eds.), *The international relations of the regions: subnational actors, para-diplomacy and multi-level governance*, Conference Proceedings, Zaragoza, Servicio de Publicaciones de la Universidad de Zaragoza, 2007; Decaro, C and Lupo, N. (eds.), *Il “Dialogo” tra Parlamentari: Obiettivi e Risultati*, Roma, Luiss University Press, 2009; Stavridis, S. and Ajenjo, N., *EU-Latin American Parliamentary Relations: some Preliminary Comments on the EUROLAT*, Jean Monnet/Robert Schuman Paper Series, vol. 10, no. 3, 2010; Fiott, D., *On the Value of Parliamentary Diplomacy*, Madariaga Paper, vol. 4, no. 7, Madariaga – College of Europe Foundation, 2011.



coupled by different functional and institutional characteristics of regional parliaments. In the second part, I present an empirical overview of interregional parliamentary institutions, focussing on five case studies where the European Parliament (the more dynamic actor in this domain) is involved. This brief overview is necessary both to propose a first categorisation of these institutions, as well as to assess their possible contribution to global governance, that is clarified in the third and final section.

## II. Setting the Analytical Framework: three “Generations” of Regionalism from a Parliamentary Perspective

One of the aims of the academic literature dealing with regionalism has been to build a coherent classification of this complex phenomenon. In doing this, a combination of two dimensions – the *chronological* and the *qualitative* one – has generally been taken into account. As a result, assuming as a point of departure the end of the Second World War, many scholars<sup>6</sup> identify two different “waves” or “generations” of regional agreements.

The first generation (or “old regionalism”) may be conceptualised as a top-down and government-driven economic integration process. Mattli defines economic integration as “the voluntary linking in the economic domain of two or more formerly independent states to the extent that authority over key areas of domestic regulation and policy is shifted to the supranational level.”<sup>7</sup> In this sense, some authors envisage a sort of linear evolution of economic integration: Balassa, for instance, identifies a five-stage process that begins with a free trade area, moves through successive stages of integration (customs union, common market and economic union) and ends with a total economic integration.<sup>8</sup> The

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<sup>6</sup> See, for instance: Hettne, B. and Inotai, A. (eds.), *The New Regionalism: Implications for Global Development and International Security*, Helsinki, UNU/WIDER, 1994; Hettne, B. et al. (eds.), *Globalism and the New Regionalism*, London, Macmillan, 1999; Schultz, M. et al. (eds.), *Regionalization in a Globalizing World*, London, Zed Books, 2001; Söderbaum, F., *The Political Economy of Regionalism in Southern Africa*, PhD Dissertation, Department of Peace and Development Research (Padrigu), Göteborg, Göteborg University, 2002.

<sup>7</sup> Mattli, W., *The Logic of Regional Integration. Europe and Beyond*, Cambridge, Cambridge University Press, 1999, p. 41.

<sup>8</sup> Balassa, B., *The Theory of Economic Integration*, Homewood, Illinois, Richard Irwin, 1961. Conceptual limitations in Balassa’s approach are discussed in De Lombaerde, P. et al., “Composite Indexes and Systems of Indicators of Regional Integration,” in P. De Lombaerde et al. (eds.), *The Regional Integration Manual. Quantitative and Qualitative Methods*, Routledge, 2011, pp. 329-330.

creation of the European Economic Community is usually referred to as a classical example of this linear process,<sup>9</sup> but there are many other cases worldwide of first generation regional agreements under the forms of regional trade agreements (RTAs) and common markets that exist and function still today.<sup>10</sup>

Given these characteristics, it is not surprising that international parliamentary institutions do not play a prominent role in old regionalism. First of all, it is not so usual for first generation agreements to have a parliamentary dimension at all (see, for instance, the North American Free Trade Agreement – NAFTA or the Common Market for Eastern and Southern Africa – COMESA): as long as integration processes are relegated to the economic sphere, they tend to remain within the inter-governmental domain. And when a parliamentary branch is established, it essentially represents a forum for discussion, deliberation and cooperation among national parliaments, with consultative powers within the organisation (see, for instance, the EFTA Parliamentary Committee or the Commonwealth of Independent States Inter-Parliamentary Assembly).

The second generation of regional integration (or “new regionalism”) has been defined by Hettne as a:

Multidimensional form of integration which includes economic, political, social and cultural aspects and thus goes far beyond the goal of creating region-based free trade regimes or security alliances. Rather, the political ambition of establishing regional coherence and identity seems to be of primary importance.<sup>11</sup>

In other words, what is “new” in this second generation is the relevance of the political dimension in its broader sense (including justice, culture, social affairs, identity). Van Langenhove and Costea point out additional important characteristics: involvement of non-state actors at national and regional level; multi-level governance; strong international legal framework; cooperation along many dimensions, including certain “world values” as security, human rights,

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<sup>9</sup> This example, however, reveals that, although a purely economic process, the original intentions behind first generation regional agreements can be political. See Van Langenhove, L. and Costea, A.C., *Inter-regionalism and the Future of Multilateralism*, UNU-CRIS Occasional Papers 13, Bruges, United Nations University – Comparative Regional Integration Studies, 2005, p. 12.

<sup>10</sup> As of 15 November 2011, 313 RTAs actively in force have been notified to the GATT/WTO: see [www.wto.org/](http://www.wto.org/) (last access: 10 December 2011).

<sup>11</sup> Hettne, B. *et al.* (eds.), *Globalism and the New Regionalism*, *op. cit.*, p. xvi.

development, ecological sustainability.<sup>12</sup> From a historical point of view, this second generation began to develop in the last decade of the twentieth century. Telò identifies the main systemic causes that led to this resurgence of regionalism in the complex impact of financial, technological and market globalisation on the traditional territorial state power. “New regionalism can be seen as an attempt by states to react by strengthening regional control when traditional centralised national sovereignty no longer functions and to bargain collectively with extra-regional partners.”<sup>13</sup> Beyond the European Union, that is considered as the most developed case of second generation integration, new regionalism has spread worldwide through the creation of new organisations or the upgrading of previously existing ones: examples are African Union, Association of South Eastern Asian Nations, Common Market of the South (MERCOSUR).<sup>14</sup>

The creation of (sometimes supranational) *political* institutions, therefore, appears as a logic consequence of this multidimensional form of integration. Indeed, new regionalism initiatives have been accompanied by a parallel wave of regional parliamentarisation efforts, whose agenda contains many elements of the new approach to regionalism. Examples are the European Parliament, the East African Legislative Assembly, the Pan-African Parliament, the Parlasur, the Parlacen and others. First of all, the functioning of these regional parliamentary institutions is highly institutionalised, based on rules of procedures, governing and administrative bodies, standing committees (that assure a certain continuity to their work). Their functions are not limited to forms of consultation and cooperation among parliaments, but may arrive to include (at least formally) some of the core powers exercised by national legislatures at the domestic level, such as the legislative, oversight and budgetary ones. Moreover, their political agenda often include references to “world values,” such as security, human rights and development, the involvement of civil society, the promotion and consolidation of democracy and human rights at the

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<sup>12</sup> Van Langenhove, L. and Costea, A.C., *Inter-regionalism and the Future of Multilateralism*, *op. cit.*

<sup>13</sup> Telò, M. (ed.), *European Union and New Regionalism*, Ashgate, Aldershot, 2001, p. 7.

<sup>14</sup> It is important to point out, here, that the two generations of integration should not be seen neither as chronologically distinct phenomena, nor as an evolutionary process from the first to second generation, but rather as two coexisting and sometimes overlapping phenomena, since states may belong to different types of agreement at the same time.

national level (especially through election, observation and fact finding missions).

Finally, Van Langenhove and Costea, recognising that next to economic and internal political integration there is also an integration in *external* policy possible, propose a third generation regional integration, characterised by world-regions playing a role on the world stage.<sup>15</sup> This implies regions acting (1) within global international regimes and organisations, (2) towards other regional integration schemes and (3) towards nations outside their own geographic area. In order to distinguish it from the previous generations, the authors emphasise three peculiar characteristics: first, the institutional environment for dealing with “out of area” consequences of regional policies is more present; second, regions become more proactive engaging in inter-regional arrangements and agreements which can affect more relations at global level; third, regions become more actively engaged at the UN. A good example in point is the EU’s attitude to promote inter-regional agreements and partnerships, for instance with its Mediterranean neighbours, ACP countries, Asian countries, etc. More recently, the Treaty of Lisbon gives the European Union a full legal personality separate from its member states, so that it can act as a supranational organisation in the international community of states (including the UN), sign treaties in all areas of its powers, have its own president, foreign minister (High Representative), diplomatic service, etc. Beyond the EU, other regions are promoting their own networks: examples are the East Asia Latin America Forum (EALAF) and the Asia Pacific Economic Cooperation (APEC).

In this domain, too, international parliamentary institutions are picking up the ball and running with it. Their role, however, is not limited only to periodic forms of dialogue and consultation; in some cases, indeed, real joint parliamentary institutions have been established, thus adding an inter-regional parliamentary level to multi-level global governance. The institutional shape and functions of these “third generation” parliamentary bodies will be explored in the next section through five case studies where the European Union (and particularly the European Parliament) is involved.

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<sup>15</sup> Van Langenhove, L. and Costea, A.C., *Inter-regionalism and the Future of Multilateralism*, *op. cit.*

### III. Interregional Parliamentary Institutions: an Empirical Overview

International parliamentary institutions have traditionally established a network of contacts among themselves, mainly through meetings among delegations, speakers, committees, as well as through cooperation agreements. Thus, for instance, the EP is represented on the Nordic Council, the Baltic Sea Parliamentary Conference and the Conference of Parliamentarians of the Arctic Region; the East African Legislative Assembly organizes the Inter-Parliamentary Relations Seminars, attended by speakers from the SADC Parliamentary Forum, the ECOWAS Parliament and the Pan-African Parliament. Examples of cooperation accords are the Agreement between the Latin American Parliament and the Council of Europe Parliamentary Assembly, and the Agreement between the Arab Inter-parliamentary Union and the African Parliamentary Union.

Although it is a global phenomenon, these contacts do not represent a significant innovation for global governance, but they may be considered as part of the classical function of “parliamentary diplomacy” (carried out at the regional level, though). Two additional elements are needed to include these contacts within the realm of interregionalism: 1) parliamentary cooperation should not remain regional parliaments’ autonomous initiatives, but it should take place within a broader framework of cooperation between different regional blocs; 2) it should be gradually institutionalised.

In particular, the “institutionalisation level” has already been assumed by the literature on regional integration as a proper independent variable to distinguish between different forms of interregionalism. Hettne, for instance, distinguishes three levels of “inter-regionness,” two of which are actual, while the highest level (i. e. “multi-regionalism”) represents rather a speculative idea:

*Transregionalism*, refers in a general way to relations between regions, and these relations may differ in terms of comprehensiveness. By the concept of transregionalism I also, however, refer to less institutionalised forms of relations between regions, or countries within different regions. As formal macro-regions assuming a stronger political role emerge, there will necessarily also arise a need for more organised contacts between the regions as subjective actors. *Interregionalism* is thus a more institutionalised and formal relationship, already possible to identify in the empirical world in a few cases. This is the most significant arrangement as it may have long-term consequences for the structure of the world order. *Multiregionalism*, is still a rather speculative idea, a form of regionalised

world-order, which may or may not become real. It is the end-point of the process [...], a form of global governance [...].<sup>16</sup>

Consequently, on the basis of the institutionalisation criterion and the classification proposed by Hettne, two different forms of interregional parliamentary institutions may be identified: *transregional parliamentary forums* (low level of institutionalisation) and *interregional parliamentary assemblies* (high level of institutionalisation).

### **A. Transregional Parliamentary Forums**

Examples of transregional parliamentary forums are the Asia-Europe Parliamentary Partnership (ASEP) and the EU-Africa parliamentary dialogue under the Joint Africa-EU Strategy.

The ASEP is part of the overall Asia-Europe partnership process, launched in 1996. It is composed of delegations sent by the European Parliaments and all national parliaments of the participating states (twenty-seven EU countries and fifteen Asian countries).<sup>17</sup> According to its rules of procedure, it has two main aims: 1) to serve as a forum for interparliamentary contacts, exchanges and diplomacy among parliaments, and to promote mutual understanding among the peoples and countries of Asia and Europe; 2) to provide a link between parliaments of Asia and Europe and ASEM, and thereby to make an active parliamentary contribution to the ASEM process and in particular to summit meetings. In spite of the importance of these goals, ASEP meets only on a bi-annual basis (for a two-day session, alternately in Asia and in Europe before the ASEM summit) and has not a formal structure to assure the continuity of its work (i.e. a permanent secretariat, a bureau, standing committees). Few important topics are discussed during each ASEP meeting: for instance, the two key themes of the most recent meeting (ASEP VI, held in Brussels in September 2010) dealt with the “Effective financial and economic world governance structures” and “Sustainable development in its social, economic and environmental aspects.” At the end of the session, the ASEP adopts (by consensus) a final declaration reflecting the main thrust of the debates, the meeting’s decisions as well as its recommendations to the upcoming ASEM Summit.<sup>18</sup>

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<sup>16</sup> Hettne, B., *Regionalism, Interregionalism and World Order: The European Challenge to Pax Americana*, American University Council on Comparative Studies, Working Paper Series no. 3, 2003, pp. 7-8.

<sup>17</sup> Brunei, Cambodia, China, India, Indonesia, Japan, Laos, Malaysia, Mongolia, Pakistan, Philippines, Republic of Korea, Singapore, Thailand, Vietnam.

<sup>18</sup> However, a proper follow-up of these recommendations is lacking.

The Joint Africa-EU Strategy was adopted at the EU-Africa Lisbon Summit between the European Union and the African Union in 2007. Paragraphs 116 and 117 of the Joint Strategy lay down the specific role of the European and African Parliament. On an annual basis, they have to coordinate the preparation of a joint report on the progress made in the implementation of the Strategy and its action plans, using clear indicators and concrete benchmarks and timetables to ensure that implementation is on track. These reports are presented to the Africa-EU ministerial troika meetings and every third year to the summit of heads of state and government, for their consideration. The two institutions have established specific inter-parliamentary delegations (the Pan-African Parliament's ad-hoc committee for relations with the European Parliament and the European Parliament's ad-hoc delegation for relations with the Pan-African Parliament) that hold informal meetings and "exchanges of views" to carry out this monitoring task. Also in these cases, however, these meetings are neither regular nor supported by a joint formal structure.

### ***B. Interregional Parliamentary Assemblies***

Interregional parliamentary assemblies are composed of parliamentarians from different regional parliaments and/or national legislative bodies, meeting on a regular basis and having an organised institutional structure (a secretariat, a presidency (and vice-presidency), a bureau, standing committees). Examples are the ACP-EU Joint Parliamentary Assembly (ACP-EU JPA), the Euro-Latin American Parliamentary Assembly (EuroLat) and the EuroNest Parliamentary Assembly (EuroNest PA).

The ACP-EU JPA was established under the 2000 Cotonou Agreement between the African, Caribbean and Pacific states and the EU. It brings together 156 participants, 78 from the European Parliament and 78 from the parliaments of ACP countries. It meets twice a year, once in an EU and once in an ACP country. However, the continuity of its work is assured by a bureau (composed of a co-president and twelve vice-presidents from each side) and, since 2003, by three standing committees, namely on political affairs; economic development, finance and trade; social affairs and the environment. These committees may adopt resolutions on the basis of drafts proposed by co-rapporteurs, that are subsequently forwarded to the plenary for consideration and adoption. The JPA's current priorities include: support for democratisation and human rights, conflict prevention, regional cooperation, rural development, the local processing of and trade in commodities, better coordination of the Union's development

policies, and the need to promote training in and technology transfer to the developing countries.<sup>19</sup>

Beyond this deliberative function, the JPA is also endowed with some oversight powers. First of all, there is the possibility of a question-time period with the ACP-EU Council of Ministers and the Commissioner for Development. Moreover, since 2003, it scrutinises the spending under the European Development Fund, as well as the ACP-EU Economic Partnership Agreements (mainly through the work of the Committee on Economic Development, Finance and Trade). Finally, the Assembly regularly conducts election observation and fact-finding missions to assess human rights and humanitarian situations on the ground: these missions generally lead to the adoption of a report and a resolution urging states to adopt the necessary measures to address the most serious concerns.<sup>20</sup>

EuroLat was established in 2006 as the parliamentary branch of the Bi-regional Strategic Association, launched in June 1999 in the context of the European Union-Latin American and Caribbean Summits (EU-LAC). It is composed of 150 members, 75 from the European Parliament and 75 from the Latin American component, namely Latin American Parliament (Parlatino), Andean Parliament (Parlandino), Central American Parliament (Parlacen), Mercosur Parliament (Parlasur, as of April 2009), as well as the Mexican and Chilean congresses, in view of the existence of the joint parliamentary committees EU/Mexico and EU/Chile. Its institutional structure includes an annual plenary session; a Secretariat; an Executive Bureau, composed of the two co-presidents and 14 vice presidents (7 from each side) elected by the Assembly; three standing committees (on political affairs, security and human rights; economic, financial and commercial affairs; social affairs, human exchanges, environment, education and culture).

The EuroLat's mandate consists in adopting and submitting resolutions and recommendations to the various institutions and ministerial groups responsible for the development of the Bi-regional Strategic Association. Its current priorities reflect the work of the standing committees, and include: democratic governance, peace and security, human rights, poverty and social exclusion, migrations, water

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<sup>19</sup> Corbett, R. *et al.* (eds.), *The European Parliament*, 8<sup>th</sup> Ed., London, John Harper Publishing, 2011, p. 184.

<sup>20</sup> However, the Assembly, in some cases, has failed to adopt a unified stance due to sharp divisions between the EP and ACP delegations: this happened, for instance, for Nigeria, Togo and the Democratic Republic of Congo in 1997, Sudan in 1999, Zimbabwe 2002, etc.



issues, challenges and opportunities resulting from globalisation, sustainable development, energy policies, EU-LAC trade issues. Its consultative function includes also the possibility to draw up opinions and proposals for the adoption of specific measures related to the various spheres of activity of the strategic partnership, at the request of the EU-LAC summit, the ministerial conferences, the European Commission or other bi-regional integration institutions. Finally, it has an oversight function, too: members of the Assembly may put questions for written answer and held question time to the ministerial bodies of the Latin American regional integration processes, the Presidency-in-Office of the summit, the Council of Ministers of the European Union and the European Commission.

Finally, the EuroNest PA is the parliamentary branch of the recently established (2009) Eastern Partnership of the EU, involving Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine. It held its inaugural session in September 2011. It consists of two components: the European Parliament delegation (60 members) and the Eastern European partners' delegations (10 members each, whereas Belarus is not taking part, for the time being, in the Assembly's activities).

The EuroNest PA shares many commonalities with the previously described interregional parliamentary assemblies, in terms of both institutional structure and functions. Indeed, it includes a plenary that meets, in principle, once a year, alternately in an Eastern European partner country and on the premises of the European Parliament; a Secretariat; a Bureau consisting of two co-presidents (one belonging to each of the two components of the EuroNest PA) and a number of vice-presidents; four standing committees (on political affairs, human rights and democracy; economic integration, legal approximation and convergence with EU policies; energy security; social affairs, education, culture and civil society). It has consultative (it may adopt resolutions and recommendations addressed to the Eastern Partnership Summit and the institutions, bodies and ministerial groups and conferences devoted to the development of the partnership) and oversight functions (including a question time period and the possibility of written questions).

#### **IV. Interregional Parliamentary Assemblies' Contribution to Global Governance**

The reason why the institutionalisation level has been used as the main criterion to distinguish between the two categories of interregional parliaments is because it has a crucial impact on their capacity to perform the assigned tasks. It is not by chance, indeed, that at a certain

point of their existence, transregional parliamentary forums may aspire to acquire a more organised structure and be transformed in proper interregional parliamentary assemblies, in order to strengthen their role within the interregional partnership. This has been the case of both the EU-ACP JPA (that is the culmination of almost forty years of cooperation between EU and ACP parliamentarians in a previous “Joint Assembly,” originally established in 1963 by the Yaoundè Convention) and the EuroLat (emerging from the EU-Latin American parliamentary summits launched in 1974). Another example is represented by Euromed Parliamentary Assembly: it was originally established as the Euro-Mediterranean Parliamentary Forum under the 1995 Barcelona Declaration and then transformed into a parliamentary assembly (2004). Since 2008, it has become the parliamentary branch of the organisation called Union for the Mediterranean.<sup>21</sup>

Thus, regular meetings and the presence of a formal structure assuring the continuity of the work and the necessary “institutional memory” put the interregional parliamentary assemblies in a better position than parliamentary forums to contribute to the promotion of global governance. But what does this contribution consist of? At a first sight, their powers may appear rather weak, since they are not endowed with many of the core functions a parliament (even at the regional level) is expected to exercise. Indeed, they have no legislative and budgetary functions, and can not exert a binding control over decision-making and executive bodies (i.e. they can neither elect the members of these bodies, nor express motions of censure or non-confidence votes). However, as the case studies revealed, they are trying to overcome these shortcomings through supplementary functions. In the following three areas, their contribution is particularly relevant.

### ***A. Parliamentary Socialisation***

Regular, systematic and institutionalised exchanges between parliamentarians from different regional blocs lead them to “learn about the assembly’s formal and informal rules, realise which are the most efficient procedures and patterns of behaviour, discover how to work with colleagues from different nationalities, acquire new professional skills and understanding of politics.”<sup>22</sup> Within interregional parliamentary assemblies, where delegates may come from countries

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<sup>21</sup> The circumstance that nowadays it is a “regional” parliamentary assembly represents the reason why it has not been included among the above-mentioned case studies.

<sup>22</sup> Dri, C., “At What Point does a Legislature Become Institutionalized? The Mercosur Parliament’s path,” in *Brazilian Political Science Review*, vol. 3, no. 2, 2009, p. 81.

that are at very different stages in the development of parliamentary democracy, in the long term this practice may have a positive impact in terms of parliamentary empowerment and democratisation processes at national level. In some cases, indeed, taking part in interregional assemblies is often the only opportunity for certain delegates to acquire skills and information that enable them to exercise their control function at national level and to promote a more active involvement of parliaments in foreign affairs issues. The benefits of parliamentary interactions in these assemblies are being increasingly recognised by parliamentarians from the developing countries themselves, who “wish to see their own national parliaments develop from ‘rubber stamp’ institutions into full-fledged legislative assemblies.”<sup>23</sup> For instance, MP Anne S. Makinda, Deputy Speaker of the Parliament of Tanzania, declared during a UN conference that:

it is important that parliaments and not only governments and international agencies be seen increasingly as actors in building South-South as well as North-South cooperation. [...] We need to help parliaments to learn from one another, compare experiences, and exchange information on best legislative practices and policies. Parliaments should also be seen increasingly as forums that can assist in peace-building and conflict resolution in those LDC countries that are either at risk of or are emerging from conflict.<sup>24</sup>

However, one of the key problems is the degree to which the delegates to these interregional assemblies have really been democratically elected. In this sense, the European Parliament is more and more requiring some forms of legitimation to their counterparts to be accepted as members of these assemblies. Thus, for instance, Belarus delegates are not taking part, for the time being, in the EuroNest PA’s activities; similarly, the ACP-EU JPA session scheduled for 25-28 November 2002 was cancelled because two of the persons appointed by the Zimbabwean authorities to form part of their delegation were covered by Council restrictive measures on the issuing of visas on

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<sup>23</sup> Stavridis, S. and Pace, R., “*Parliamentarizing*” (*New*) (*Inter-*)*regionalisms: Assessing the Impact of the EMPA*, paper presented at the Annual GARNET Conference, Bordeaux, 17-19 September 2008, p. 20.

<sup>24</sup> Statement by the Honourable Anne S. Makinda, Deputy Speaker of the Parliament of Tanzania on behalf of the Inter-Parliamentary Union, High-level Meeting of the General Assembly on the mid-term review of the implementation of the Programme of Action for the Least Developed Countries for the Decade 2001-2010, United Nations, New York, quoted in S. Stavridis and R. Pace, *ibidem*.

grounds of serious violations of human rights and freedom of opinion, association and peaceful assembly.<sup>25</sup>

### ***B. Policy-oriented Intercultural Dialogue***

Interregional parliamentary assemblies may function as a permanent and institutional setting to carry on a long-term policy- and action-oriented intercultural dialogue on issues such as human rights, democracy and global public goods. The number of resolutions and declarations unanimously adopted testifies their capacity to reach consensual agreements on these issues among parliamentarians from different regional (and cultural) contexts, that may promote the harmonisation of national legislations to international standards. However, this dialogue has not only been fruitful in the deliberative domain, but it has also produced joint strategies and concrete action plans to face the most serious challenges in the above mentioned areas. Examples are the ACP-EU JPA's strategy to combat the child labour (2008), on achieving the MDGs (2010), on the inclusion of persons with disabilities in developing countries (2011); as to EuroLat PA, it is worth mentioning the coordinated strategy in the framework of the UNFCCC negotiations (2010) and the strategy on employment protection, especially for women and young people (2011).

### ***C. Joint Oversight of Interregional Partnerships***

Interregional parliamentary assemblies exert also a monitoring role in relation to partnerships' aims. Reports and recommendations, as well as written and oral questions to decision-making and executive bodies, represent the common tools they are endowed with to implement this task. In addition, the ACP-EU JPA can also scrutinise the spending under the European Development Fund (over which democratic control is otherwise weak)<sup>26</sup> as well as the ACP-EU Economic Partnership Agreements, and may conduct fact-finding missions on the ground. Of course, these parliamentary assemblies would benefit from institutional reforms providing them with a more binding power in this domain.

To summarise and conclude, hereinafter I report a synoptic table of the key characteristics of the three generations of regional integration proposed by Van Langenhove and Costea. I added an additional row, to show how institutional and functional attributes of international

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<sup>25</sup> European Parliament, Report on the work of the ACP-EU Joint Parliamentary Assembly in 2003, A5-0013/2004, pp. 11-12.

<sup>26</sup> Corbett, R. *et al.* (eds.), *The European Parliament*, *op. cit.*, p. 184.

parliamentary institutions change according to the characteristics of each generation of regionalism.

**Table 1 – Key Characteristics of the three Generations of Regional Integration**

First Generation Regional Integration	Second Generation Regional Integration	Third Generation Regional Integration
Economic	Economic + internal political integration	Economic + internal + external political integration
Inside area + competition with other areas	Inside area + competition with other areas	Inside area + out of area competition and cooperation
Subject to WTO rules	Creation of political institutions	Changing/challenging multilateral institutions
Government/ Elites led process from national level	Governance/ Non-state actors involved at national and regional level	Global Governance/ Rise of transregional and interregional actors
U.N. Security Council dominated by states	U.N. Security Council co-operating with regional organisations in security matters	U.N. Security Council institutionalising participation of regions to global security governance
Introverted/Protectionist	Extroverted, but still focus on internal integration	Extroverted and focus on external projection of the region and inter-regionalism
Creates large unified economic and monetary zones	Creates a new structure of regional governance	Creates a new world order
Optimalisation of economical processes	Optimalisation of internal political processes	Optimalisation of global processes
Few regional parliamentary assemblies with merely consultative functions	Regional parliaments with consultative, legislative and oversight functions	Interregional parliamentary assemblies Threefold mandate on political, economic and socio-cultural affairs Functions: deliberative, consultative, control; parliamentary socialization; policy-oriented intercultural dialogue

Source: personal elaboration on Van Langenhove, L. and Costea, A.C., *Inter-regionalism and the Future of Multilateralism*, UNU-CRIS Occasional Papers 13, Bruges, United Nations University – Comparative Regional Integration Studies, 2005.

#### IV. Conclusions

Interregionalism is emerging as an additional level in the multi-level global governance system, and parliaments existing at the regional level are actively participating in building this new level of governance.

Interregional parliamentary assemblies' contribution, in particular, mainly consists in promoting parliamentary socialisation, in order to enhance parliamentary empowerment and democratisation processes at national level; providing with a permanent and institutional setting to carry out a long-term policy- and action-oriented intercultural dialogue on human rights, democracy and global public goods; exerting parliamentary control in relation to the implementation of partnerships' aims.

Among the involved actors, the European Parliament is playing a crucial role in shaping inter-parliamentary relations. Indeed, it is clearly promoting a functional and institutional "model" of interregional parliamentary assembly, whose main characteristics are: a threefold mandate over political, economic and social affairs (the "three baskets," to use an OSCE's expression); three standing committees corresponding to each of the three baskets; a permanent structure composed of a secretariat and a bureau, to guarantee the continuity of the work between the annual or bi-annual plenary sessions; the possibility to exert consultative, deliberative and oversight functions.

The aim of this contribution consisted in analysing interregional parliamentary institutions' role within the broader theoretical framework of the academic literature on regionalism, as well as carrying out a first categorization and an empirical analysis of their institutional features and main functions. Many issues have been regrettably neglected. This is the case, for instance, of the main challenges and criticisms they have to face, in terms of both input and output legitimacy (such as accountability, representativeness, transparency etc.),<sup>27</sup> or the involvement of civil society in their activities. Another aspect that has not been tackled, but that may represent an interesting stimulus for further research, especially in a multi-level perspective, is the possible interaction between representative institutions at different levels (sub-national, national, regional and interregional). Only after conducting these researches will it be possible to try to assess the interregional parliamentary institutions' contribution in terms of *democratisation* of the multi-level global governance system. Here, the research work has just been set off.

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<sup>27</sup> In this sense, see Herranz, A., "The Inter-parliamentary Delegations of the European Parliament: National and European Priorities at Work," in E. Barbé and A. Herranz (eds.), *The role of Parliaments in European Foreign Policy*, *op. cit.*

# **The European Court of Human Rights: a New Actor of Multi-level Governance?**

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## **I. Conceptual Setting**

A discourse about the new forms of democratic governance and the challenges facing the traditional ones in the pan-European space, should not neglect the role of a non-political (and non-democratic) actor such as the European Court of Human Rights. In the last decade, the case law of the Strasbourg Court has increasingly dealt with disputes of constitutional relevance for the concerned countries impinging upon the democratic functioning of the state institutions.

By submitting an application to the Strasbourg Court, individuals and groups throughout Europe have tried in fact to bypass the ordinary national democratic procedures, which on some sensitive issues have consistently proved to be ineffective or intractable, with the aim of obtaining from the Human Rights Court a ruling likely to be imposed “from above” to reluctant or politically blocked domestic institutions (governments, parliaments, public agencies, etc.). A strategy seems to take shape of using the Strasbourg procedure to unlock the political debate in some European Countries on “hot issues” such as LGBT (lesbian, gay, bisexual and transgender) rights, political rights of detainees, secularism and education, minority rights, media freedom, immigration policies, bio-law issues, etc.

This tendency is a witness of a kind of inability on the part of the democratic institutions to take charge meaningfully and timely of a variety of demands put forward by an increasingly fragmented and multicultural constituency. The “subsidiarity” of the European Court should therefore be revised in order to keep in consideration not only its role as a judicial body in close dialogue with its national and international counterparts in the judiciary, but also as an institution with a potential impact on the political agenda of states.

The formula of “multi-level governance,” in Europe as well as worldwide, has known a remarkable success in recent times. In a nutshell, and for the limited purpose of the present paper, it may be understood as designating an approach to socio-political analysis that underlines the interaction of a multiplicity of state and non-state actors cooperating and competing at many layers of territorial aggregation: supranational, national, and sub-national (assuming the nation-state dimension as the conventional political yardstick).<sup>1</sup> The concept namely implies that the traditional analytical divide between domestic affairs and international relations has largely faded and that functional subsidiarity is the most suitable problem-solving tool for decision-making in a variety of situations.

A further assumption is that common values and shared legal principles underlie all layers of governance, providing the consistency required for a meaningful interaction between the actors.<sup>2</sup> The idea of a political and regulatory system based on networks and nodes, as opposed to a top-down, hierarchical regime, is also a key feature. Reference to territorial actors finally takes into account the flexible and transboundary nature of global economic, cultural, environmental, etc. interactions and trends, that have tendency to shape a variable geometry of landscape.

The word “governance” captures the idea of a decision- and policy-making processes carried out both without the (state or state-like entities’) government, and beyond the (state) government. The involvement of local communities, civil society organisations, corporate and business entities, international and transnational organisations, and so forth, in planning, implementing and managing public policies, regulations and services, far from being the result of a state’s political choice, is rather commanded by the very nature of the issues at stake.<sup>3</sup> The recovering from global financial collapses, the fight against poverty, the policies to counter the adverse consequences of climate changes, CO<sub>2</sub> reduction measures, global initiatives aimed at human

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<sup>1</sup> European Commission, *White Paper on European Governance*, doc. COM(2001) 428 final, Brussels, July 2001; Marks, G., Hooghe, L., “Contrasting Visions of Multi-level Governance,” in I. Bache, M. Flinders (eds.), *Multi-level Governance*, Oxford, Oxford University Press, 2004, pp. 15-30; Committee of the Regions, *White Paper on Multi-level Governance*, doc. CoR 89/2009, Brussels, June 2009.

<sup>2</sup> Weber, R.H., “Multilayered Governance in International Financial Regulation and Supervision,” in *Journal of International Economic Law*, no. 3, 2010, pp. 683-704.

<sup>3</sup> Treib, O., Bahr, H., Jalkner, G., “Modes of Governance: A Note Towards Conceptual Clarification,” in *European Governance Papers* (EUROGOV), n. N-05-02, 2005, available at: [http://www.mzes.uni-mannheim.de/fs\\_projekte\\_d.html](http://www.mzes.uni-mannheim.de/fs_projekte_d.html).



rights protection, disarmament and military spending reduction, etc.: all major areas of political concern require a multi-tasking, multi-level combined efforts of a variety of social actors – states taken alone are simply inadequate.<sup>4</sup>

## II. Contribution of the Judiciary to Multi-level Governance

The contribution of the *judiciary* to multi-level governance can hardly be overestimated, especially if one considers the European Union (EU) construction and the broader European continental dimension. The interplay, the dialogue, and sometimes the conflict between the EU member states' national courts and the European Court of Justice (ECJ) have greatly contributed to the development of the EU's institutional framework as a *sui generis* type of international organisation and of EU legislation as it stands today.

If the EU can be looked at as a paradigmatic example of multi-level governance (with positive and negative implications, of course), then the role of courts in multi-level governance is also well founded. In particular, the preliminary reference procedure, a veritable cornerstone of the system of judicial cooperation within the EU, has introduced an innovative way of allocating the power of judicial ruling.<sup>5</sup> The relationship that the EU treaties establish between the ECJ and national jurisdictions is not hierarchical, although the ECJ rulings interpreting EU law are indeed binding and the supremacy of EU law is a dogma, but rather cooperative and based on a reasoned approach seeking effective and practical solutions, instead of imposing authority from above.

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<sup>4</sup> On the contribution of transnational organisations – especially NGOs – to policy-making worldwide see, among others, Tallberg, J., “Explaining Transnational Access to International Institutions,” Paper presented at the annual meeting of the ISA's 49<sup>th</sup> Annual convention, San Francisco, March 26, 2008; Reimann, K., “Up to No Good? Recent Critics and Critiques of NGOs,” in H. Carey and O. Richmond (eds.), *Subcontracting Peace: The Challenges of NGO Peacebuilding*, Aldershot, Ashgate, 2005, pp. 37-51; Reimann, K., “A View from the Top: International Politics, Norms, and the Worldwide Growth of NGOs,” in *International Studies Quarterly*, no. 1, 2006, pp. 45-67; Risse, T., “Transnational Actors and World Politics,” in W. Carlsnaes, T. Risse and B.A. Simmons (eds.), *Handbook of International Relations*, London, Sage, 2002, pp. 255-274.

<sup>5</sup> Treaty on the functioning of the European Union (TFEU), art. 267 (Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union Charter of Fundamental Rights of the European Union, OJ C 83, 30.3.2010). The discipline of the preliminary reference procedure was set up by the ECJ in Case 314/85, *Foto-Frost*, [1987] ECR 4199.

Courts are therefore legitimate actors of the multi-level governance. They greatly contribute to the institution-building and consolidation of the pluralistic constituency of a governance without and beyond state government, but their role in settling disputes and resolving conflicts among individuals and corporate bodies as well as between citizens and the state, is also fundamental in implementing and orienting public policies, that is the output of a governance process.

The rule of law principle requires the judiciary to be independent from the political power – independence is indeed the *raison d'être* of courts; from this perspective, the judiciary is the most obvious candidate to the role of agency of a governance without and beyond government – although in the name of the law.<sup>6</sup> International courts are even more an interesting phenomenon from the adopted perspective, as it highlights the porosity of state boundaries and the process of normative spillover that is changing the paradigm of both domestic and international law disciplines.

Access to the ECJ is relatively narrow, as it is generally limited to institutional actors (national courts, states, EU institutions, and so on): ordinary citizens are supposed to seek a remedy to an infringement to EU law at the level of national courts. The impact in term of multi-level governance of the EU judicial institutions only indirectly affects non-institutional and non-state actors. In other words, the democratic impact of the international judicial component of multi-level governance in Europe, associated to the EU judicial system (i.e. the ECJ), is relatively feeble. The ECJ, like any other court in a sound democratic system, is certainly not “less” or “more democratic” than the European Parliament, the Commission or the Council – indeed all these institutions are essential to EU democracy. However, the ECJ mainly features as a “technical” body, operating within a closed institutional system, with a limited access to broader society.

The European space, however, offers another judicial body eligible to become the subject of an analysis of the impact of the judiciary on

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<sup>6</sup> This echoes the classical McIlwain's dichotomy between *gubernaculum* and *iurisdictio*. “If *iurisdictio* is essential to liberty, and *iurisdictio* is a thing of the law, it is the law that must be maintained against arbitrary will. And the one institution above all others essential to the preservation of the law has always been and still is an honest, able, learned, independent judiciary. [...] The proper remedy for the abuse of ‘reason of state’ [...] consists of a *iurisdictio* under the protection of an independent court,” McIlwain, C., *Constitutionalism: Ancient and Modern*, Ithaca, Cornell University Press, 1940, pp. 144 and 147.

multi-level transnational governance.<sup>7</sup> The European Court of Human Rights (ECtHR) has a wide subject-matter jurisdiction and a territorial competence that can extend also to non-party states' space, based on the 1950 European Convention on Human Rights and its Protocols; a huge case-law dating back to the 1960s, and, most importantly, direct accessibility of individuals to its complaint procedure, according to a form of subsidiarity that allows individuals to seize the Strasbourg Court once exhausted internal legal remedies. Judgements of the ECtHR are binding only as to the single case, but the practice of issuing "pilot judgments" (decisions that set a rule applicable to an indefinite number of "clone cases")<sup>8</sup> and the new mechanism of non-compliance introduced by Protocol XIV have enhanced the Court's indirect impact on domestic legislation and administrative procedures. The ECtHR has established a practice of evolutive and/or dynamic interpretation of the Convention's provisions that in many aspects has impinged on state and societal law and prerogatives.<sup>9</sup> Protocol XIV has given the power to the Committee of Ministers of the Council of Europe to ask the Court to interpret its own judgement if any controversy arises that hinders its execution.<sup>10</sup>

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<sup>7</sup> Outside the European space, a promising candidate for such an analysis would be the International Criminal Court. In particular the Office of the Prosecutor is a tremendous catalyst for a full range of legal and political demands.

<sup>8</sup> *Broniowski v. Poland* (Application no. 31443/96) Judgment (Friendly Settlement), Strasbourg 28/09/2005.

<sup>9</sup> On the ECtHR, see, *inter alia*, Christoffersen, J., Madsen, M., (eds.), *The European Court of Human Rights Between Law and Politics*, Oxford, Oxford University Press, 2011; Greer, S., *The European Convention on Human Rights: Achievements, Problems and Prospects*, Cambridge, Cambridge University Press, 2006; Berger, V., *Jurisprudence de la Cour Européenne des Droits de l'Homme*, Paris, Sirey, 2011; Sudre, F. et al., *Les Grands Arrêts de la Cour Européenne des Droits de l'Homme*, Paris, PUF, 2007; Sudre, F., *La Convention Européenne des Droits de l'Homme*, Paris, PUF, 2010; Bartole, S., Conforti, B., Raimondi, G., *Commentario alla Convenzione Europea per la Tutela dei Diritti dell'Uomo e Delle Libertà Fondamentali*, Cedam, 2001; De Salvia, M., *La Convenzione Europea dei Diritti dell'Uomo: Procedure e Contenuti*, Napoli, Ed. Scientifica, 1999; Reid, K., *A Practitioner's Guide to the European Convention on Human Rights*, Sweet and Maxwell, London, 2008; van Dijk, P. et al. (eds.), *Theory and Practice of the European Convention on Human Rights*, Intersentia, Anversa, 2006; Pettiti, L.-E. et al., *La Convention Européenne des Droits de l'Homme: Commentaire Article par Article*, Economica, Paris, 1995; Harris, D.J. et al., *Law of the European Convention on Human Rights*, Oxford University Press, Oxford, 2009.

<sup>10</sup> The mentioned Protocol XIV provisions have been integrated in the main Convention's art. 46, and are in force since June 1, 2010.

### **III. Role of the ECtHR in Multi-level Governance: Hypothesis**

This paper argues that the ECtHR has provided individuals and transnational organisations with an opportunity to overcome and bypass the ordinary procedures of decision- and policy-making and bring to the attention of legal and political actors, both domestic and international, issues that national and international institutions have not addressed, or have carefully avoided to address or have resolved in a non suitable way. In so doing, the ECtHR has exercised a distinctive function of multi-level governance, that can be characterised in three points: a) although issued by a non-political body, the Court's decisions have *de facto* influenced the political discourse at the national (state) level; b) the case brought to the attention of the general public an issue that at national level had received only limited treatment by state institutions; c) the case has highlighted a problem of human rights respect or fulfilment that domestic institutional and civil society actors have failed to address.

In all these situations, it is submitted that the ECtHR can be regarded as a non negligible component of the overall system of multi-level governance in Europe – in the wide Europe, that encompasses besides the 27 EU states also Russia, Turkey, Ukraine, all the Nordic states and the Balkans and Caucasus republics (Belarus being the only European country still outside the Council of Europe). In the next paragraph some examples are briefly exposed of the role played by the ECtHR in a multi-level governance context.

### **IV. Role of the ECtHR in Multi-level Governance: Examples**

The ECtHR has often been seized by individuals and groups that at the national stage are confronted with major forms of stigmatisation and political ostracism that make their claims almost intractable. Applications submitted to the Strasbourg Court have provided the victims of some egregious human rights violations a way to have their case effectively heard and dealt with, while any attempts to receive justice at the domestic level had been frustrated or utterly failed.

The most striking example of this highly “political” role of the ECtHR is the case-law on Turkish and Chechen cases. Dozens of cases involving killings, enforced disappearances, torture, arbitrary detentions and arrests, lack of effective access to the courts and unfair trials have been heard by the Strasbourg judges since the mid-1990s concerning the violent repression of riots in the Kurdish territories of Turkey and short to war actions conducted against the PKK. The issue of state accountability for widespread police/military operations involving

alleged terrorists, presumed supporters of the Kurdish cause and innocent civilians who found themselves trapped in the fighting, has been repeatedly raised at the ECtHR, despite attempts by the national authorities to cover most of the facts.<sup>11</sup>

The Turkish cases are especially interesting not only because they exemplify the effective political reach of the ECtHR activity (in fact, the minority rights issue has been one of the major obstacles to the full integration of Turkey in the European system, along with the Northern Cyprus occupation and the ensuing dispute with Nicosia, also largely present in the case-law of the ECtHR), but also because they could be filed and argued before the Strasbourg judges thanks to a transnational mobilisation of human rights defenders and activists, based in Turkey and abroad, NGOs and civil society groups (among which the London-based Kurdish Human Rights Project).<sup>12</sup>

In the Chechen cases, involving Russia, the Court went as far as to make a clear (although implicit) qualification of the conflict that occurred in 1999-2000 as an internal armed conflict, and not a counter-terrorism operation as the Russian government maintains; a statement politically sensitive that in fact very rarely has been made. In *Esmukhambetov and Others v. Russia* (March 2011), the ECtHR held that it:

[C]annot but agree with the applicants that their home village did in fact come under indiscriminate bombing by the federal air forces [...]. It furthermore does not appear that the authorities had considered at all comprehensively the limits and constraints on the use of indiscriminate weapons within a populated area [...]. There is also no evidence that at any stage of the operation any measures were taken in order to avoid, or at least to minimise, the risk to the lives of the residents of Kogi (Runnoye). In particular, it does not appear that the authorities took any steps with a view to informing the villagers of the attack beforehand and to securing their evacuation. In these circumstances, the Court cannot but conclude that the

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<sup>11</sup> Among the most relevant cases: ECtHR, *Aksoy v. Turkey* – Rep. 1996-VI, fasc. 26 (18.12.96); ECtHR, *Aydın v. Turkey* – Rep. 1997-VI, fasc. 50 (25.9.97); ECtHR, *Elci and Others v. Turkey*, nos. 23145/93 and 25091/94 (Sect. 4) (Eng) – (13.11.03); ECtHR, *Ergi v. Turkey* – Rep. 1998-IV, fasc. 81 (28.7.98); ECtHR, *Öcalan v. Turkey*, no. 46221/99 (Sect. 1), (Eng) – (12.3.03); etc.

<sup>12</sup> Cichowski, R., “Civil society and the European Court of Human Rights,” in J. Christoffersen, M. Madsen (eds.), *The European Court of Human Rights*, op. cit., pp. 77-97.

authorities failed to exercise appropriate care in the organisation and control of the operation of 12 September 1999.<sup>13</sup>

Proportionality, indiscriminate weapons and targeting, lack of precautionary measures: all standards used by the ECtHR to assess the Russian preparation and execution of the field operation against the human rights standards set in the European Convention in fact replicate humanitarian law standards applicable to armed conflicts. A wide and effective network of activists, lawyers, NGOs, both in Russia and in Western European countries have succeeded, by mid-2000, to bring to Strasbourg a significant number of cases that have resuscitate the international community's attention on the brutal military attack of Russian troops and aviation in Chechnya.

In both the Turkish and the Chechen cases, the political implications of the ECtHR adjudications were obvious, although the judges have been mindful not to depart from the strictly legal approach they have to follow. Local human rights activists have sought support in international NGOs, lawyers and the diaspora to suit their own governments circumventing the legal, procedural and social obstacles that had prevented them from obtaining justice and relief in their own country. The ECtHR has been functional to such a strategy. This strategy, in its turn, is not a just "human rights first aid:" it is part of a broader effort to enhance accountability, implement the principle of democracy and the rule of law, establish national and subnational human rights institutions. Key elements of a human rights-oriented multi-level governance are not detached from the judicial work done in Strasbourg.

Considerations similar to those developed for the Turkish and Chechen cases could be made for the cases in which individuals and groups have challenged European governments on issues of particular political impact; involving, for instance, decisions of deploying military force abroad.<sup>14</sup> It seems, however, that on one hand, the ECtHR has been reluctant to push too far the conflict between principled law and the reason of the state; on the other hand, alternative policies had not

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<sup>13</sup> ECtHR, *Esmukhambetov and Others v. Russia*, no. 23445/03 (Sect. 1) (Eng) – (29.3.11), para. 148-9. Other cases include ECtHR, *Isayeva and Others v. Russia*, nos. 57947/00, 57948/00 and 57949/00 (Sect. 1) (Eng) – (24.2.05); ECtHR, *Isayeva v. Russia*, no. 57950/00 (Sect. 1) (Eng) – (24.2.05); ECtHR, *Chitayev v. Russia*, no. 59334/00 (Sect. 1) (Eng) – (18.1.07); etc.

<sup>14</sup> Reference can be made to ECtHR, *Markovic and Others v. Italy* [GC], no. 1398/03, ECHR 2006-XIV – (14.12.06); ECtHR, *Al-Skeini and Others v. the United Kingdom* [GC], no. 55721/07 – (7.7.11); ECtHR, *Al-Jedda v. the United Kingdom* [GC], no. 27021/08 – (7.7.11); ECtHR, *Banković and Others v. Belgium and Others* (dec.) [GC], no. 52207/99, ECHR 2001-XII – (12.12.01); etc.

been elaborated that could support a wide-range strategy to which a Court's ruling might have been conducive.

Some further examples of the positive role of the ECtHR in multi-level governance schemes come from the Court's case-law on subjects that are controversial and sensitive not because governments have an interest in preventing any debate and barring any reform (as is the case when human rights are concealed, neglected or positively violated by state policies), but because both the government and the larger society have yet failed to develop a suitable approach, although the relevance of the problem is generally acknowledged.

States, of course, benefit of a wide margin of discretion in implementing the European Convention on Human Rights. Some authors point out that, unlike the EU law model, the legal regime stemming from the European Convention on Human Rights is not a single system implemented within the 47 states of the Council of Europe, but one international treaty and 47 versions of the same treaty; the same holds for the case-law based on the European Convention.<sup>15</sup> The possibility is, however, always open to the citizens to test before the ECtHR the soundness of any well established custom, law or practice; to measure them against the standard of the "European" human rights.

The ECtHR has played a "progressive" role in many aspects of civil, criminal, administrative law since the 1970s in stimulating the states (governments, parliaments, courts) and the political actors to address some issues. One may mention the evolutive interpretation of art. 8 provisions on protection of private and family life, that has opened the door to the recognition, among others, of the right to enjoy a family life with their children also to unmarried fathers,<sup>16</sup> and to the homosexuals' right to express their sexuality in private life without any kind of

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<sup>15</sup> "There is not such a thing as one 'ECHR law'. Rather, there exists the Strasbourg case law, on the one hand, and no less than 47 national versions of its appropriation, on the other hand. Additionally, each of these bodies of ECHR law leads to a plurality of theorizations. On these premises, while it is acknowledged that there is indeed a genuinely transnational hermeneutic universe within which specific conceptualizations of the ECHR are put forth, it is also insisted that the pragmatic effects of the ECHR only deploy at the national levels and therefore that the very nature and status of the ECHR are not a matter of ECHR (transnational) law but of national law." Henette-Vauchez, S., "Constitutional vs International? When Unified Reformatory Rationales Mismatch the Plural Paths of Legitimacy of ECHR Law," in J. Christoffersen, M. Madsen (eds.), *The European Court of Human Rights, op. cit.*, pp. 144-163. It seems that this conceptualisation of ECHR law and ECtHR case-law very well suits the fuzzy nature of multi-level governance and its pragmatic connotation.

<sup>16</sup> ECtHR, *Keegan v. Ireland* – 290 (26.5.94).

discrimination *vis-à-vis* heterosexual individuals.<sup>17</sup> The evolutive interpretation of the Court has accompanied legislative reforms in many European countries encouraging a positive and concrete dialogue among parliaments, judges and lawyers, state officers at many levels, as well as non-state actors and human rights activists, with the aim of refining human rights standards and strengthening democratic institutions. Each state has proceeded at its own pace, though, with more or less satisfactory output.

Patterns of evolutive interpretation have involved art. 2 (right to life)<sup>18</sup> and art. 3 (torture and inhuman treatments). As concerns inhuman treatments, a very important step could be taken by the Court on an application submitted in 2010 by a group of Italian inmates who claim that having at their disposal, because of the prison's overcrowding, a space of less than three square metres per person as an average, amounts to violation of art. 3.<sup>19</sup> A decision by the ECtHR would hopefully stimulate the government to tackle with long-term measures the shameful conditions of prisons in Italy, crushing the resistance to reform that has paralysed the national parliament. Also the field of the *bio-law* can be seen as an area where different proposals and experiences tend to converge in the European sphere. The ECtHR has a prominent role in endorsing such developments and testing the practicability of the proposed solutions.<sup>20</sup>

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<sup>17</sup> ECtHR, *Dudgeon v. the United Kingdom* – 45 (22.10.81); see also, more recently, ECtHR, *J. M. v. the United Kingdom*, no. 37060/06 (Sect. 4) (Eng) – (28.9.10), where the ECtHR found a discrimination against a mother who, after divorcing, matured a relationship with a same sex partner, as regards the calculation of her contribution to the cost for the upbringing of her children: the child support scheme did not consider as relevant to this purpose the family life of the applicant.

<sup>18</sup> For example, the Court has started to conceive of the state's positive obligation to investigate in case of death as a separate and autonomous duty, irrespective of whether or not the death can be attributed to a conduct of a state agent falling under the jurisdiction of the Court.

<sup>19</sup> ECtHR, *Torreggiani v. Italy*, application no. 43517/09.

<sup>20</sup> The case ECtHR, *S.H. and Others v. Austria* (no. 57813/00 (Sect. 1) (Eng) – (1.4.10), and ECtHR, *S. H. and Others v. Austria* [GC], no. 57813/00 – (3.11.11)), on medically assisted procreation techniques is a good example of a decision (whereby the Grand Chamber reversed the judgement of the Chamber, upholding the state's legislation that regulates medically assisted procreation techniques of homologous type, while rejecting most of the heterologous ones) that carefully weighs the different approaches adopted by European states and eventually grants the respondent state a rather broad margin of discretion. A more principled (liberal) interpretation followed by the chamber was censured for failing to take into due consideration the traditions and cultural orientation of a large part of the state's population.



## V. Challenges to the Role of ECtHR in Multi-level Governance

A major problem arises, as to the evolutive interpretation and the progressive role that the ECtHR can play in a multi-level governance context, when the Strasbourg Court is required by individuals and small active groups to address human rights-related issues that are clearly unpopular at the national levels, or are conversely all too popular in the state, although flying in the face of the human rights orthodoxy. One example of the first stance is the decisions that the ECtHR have adopted on issues like euthanasia and assisted suicide.<sup>21</sup> On the other hand, the case of the ban on minarets introduced by a referendum into Switzerland's Federal Constitution,<sup>22</sup> although not dealt with by the Court so far,<sup>23</sup> begs a careful consideration.

A state can indeed enact laws that, while clearly at odds with some human rights standards, do enjoy a broad support in the society. Is the ECtHR decision eventually concluding that a state implementing such a law is infringing the Convention, interfering with the domestic jurisdiction of the state? Or, to put it more in line with the multi-level governance discourse: is that decision creating a conflict between the (international) law on one hand, and democracy on the other? Opponents of a law supported by the majority in parliament and in the society could achieve through an international Court what they could not achieve through democratic procedure in their own country?<sup>24</sup>

In the United Kingdom, the case *Hirst*<sup>25</sup> (on the right to vote of detainees) is dividing the society and political parties,<sup>26</sup> in Italy, where a

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<sup>21</sup> See, for instance, ECtHR, *Pretty v. the United Kingdom*, no. 2346/02 (Sect. 4), ECHR 2002-III – (29.4.02); ECtHR, *Haas v. Switzerland*, no. 31322/07 (Sect. 1) (fr) – (20.1.11).

<sup>22</sup> Grandjean, Y., *Les Initiatives Populaires et le Droit International. Droit Actuel et Droit Désirable*, Lausanne, Institut des Hautes Etudes en Administration Publique (IDHEAP), 2010, unpublished; available at [www.andreasladner.ch](http://www.andreasladner.ch).

<sup>23</sup> Two applications against Switzerland (*L'Association Ligue des Musulmans de Suisse and Others v. Switzerland*, Application no. 66274/09, and *Ouardiri v. Switzerland*, Application no. 65840/09) have been declared inadmissible on 8/7/2011.

<sup>24</sup> European Court of Human Rights, *What are the limits to evolutive interpretation of the Convention?*, Dialogue between judges, Strasbourg, 2011, p. 17 (Rt. Hon. Hale of Richmond, quoting Lord Bingham)

<sup>25</sup> ECtHR, *Hirst v. the United Kingdom* (no. 2), no. 74025/01 (Sect. 4) (Eng) – (30.3.04); and ECtHR, *Hirst v. the United Kingdom* (no. 2) [GC], no. 74025/01, ECHR 2005-IX – (6.10.05).

similar problem has been raised,<sup>27</sup> reactions are rather nuanced. After the ECtHR has found the state in violation of the Convention because of its blanket exclusion of inmates from political rights, compromise solutions have been rejected by the Commons. Some political leaders affirm that only a democratically elected body – and not a bunch of state-appointed lawyers in Strasbourg – can determine who will vote in the state political elections. Democracy has good points; however, the purpose of establishing a human rights court is exactly to protect values notwithstanding the opinion of the so-called majority, and to protect unpopular figures, not to celebrate beloved celebrities.

#### **IV. Conclusion**

In this paper it is argued that multi-level governance has a judicial dimension and that, in the European landscape, the most interesting judicial institution that could be analysed in this perspective is probably the ECtHR. The Strasbourg Court has already been “used” in the context of multi-level governance trends or strategies, run in “dialectic cooperation” (but sometimes in patent conflict) by state and non-state actors.

Governments have an obvious interest in ECtHR rulings: its judgements may have indirect consequences in the political sphere, in the legal context, and also (increasingly) in the media. ECtHR judges are indeed influenced by their home governments,<sup>28</sup> but also non-state actors (*amici curiae*, NGOs, human rights defenders, transnational activists, etc.) have a strong influence on them.

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<sup>26</sup> Following the judgment of the European Court of Human Rights on 6 October 2005, that the UK’s current ban on all serving prisoners from voting contravenes Article 3 Protocol no. 1 of the European Convention, a process to change the existing legislation started, but nothing was achieved in time for the 2010 general elections. In June 2010, the Council of Europe’s Committee of Ministers expressed “profound regret” for the situation of non-conformity. On 1 March 2011, the government referred the latest ECHR ruling on the issue, the *Greens and MT v. UK*, to the Grand Chamber. On 6 September 2011, the government announced that it had requested an extension to this deadline to take account of the referral of *Scoppola v. Italy* (no. 3). In its Chamber judgment of 18.01.2011, the Court found a violation of Article 3 of Protocol no. 1 on account of the automatic nature of the ban on voting and its indiscriminate application. The case was referred to the Grand Chamber on 20.06.2011 at the Italian government’s request. The hearing took place on November 2, 2011.

<sup>27</sup> ECtHR, *Scoppola v. Italy* (no. 3), no. 126/05 (Sect. 2) (fr) – (18.1.11).

<sup>28</sup> INTERIGHTS, *Judicial independence: Law and Practice of Appointments to the European Court of Human Rights*, London, International Centre for the Legal Protection of Human Rights, 2003.

Of course, the ECtHR must remain a judicial institution and its activity must not grow politicised. The broader impact of its decisions, however, cannot be underestimated. The entry into force of the Lisbon Treaty and the EU commitments it contains to access to the European Convention on Human Rights are further elements that will enhance the profile of the Strasbourg Court. To avoid manipulations, loss of credibility and of legitimacy, increase its effectiveness (now threatened by a gigantic backload of cases), the ECtHR should learn how to interact with the various actors of the multi-level governance and find its place in such a dynamic context.



# **The International Criminal Court in a Multi-level Governance System of International Criminal Justice**

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## **I. Introduction**

In the past years, the subjects involved in the enforcement of international criminal law have considerably increased. Several entities, or more precisely in this context, a number of adjudicating bodies allocated at different level of authority, are now concurrently empowered to put an end to impunity for the most serious international crimes. Interacting and trying to reciprocally influence each other, this variety of actors gives shape to a system of multi-level governance in the judicial enforcement of international criminal law. The International Criminal Court (ICC), established in 1998, is the newest and probably the most interesting mechanism of this emerging system. The principle of complementarity in particular, which regulates and influences the distribution of authority between the ICC and national jurisdictions, appears to be a key mechanism in the global administration of international criminal justice.

Yet, it will be shown that, despite being endowed with great capacity to positively impact the overall effectiveness of the global system for the fight against impunity, the International Criminal Court has not expressed its full potential in the first decade of its activity. If the ICC is to maintain its role and credibility within the overall system of international criminal justice, a more effective and sound prosecutorial strategy on “positive complementarity” will be strongly needed.

## **II. International Criminal Law Enforcement and Multi-level Governance**

Framing the issue of international criminal law enforcement in terms of multi-level governance seems particularly pertinent and adherent to the current developments taking place in the field of international law in general and in international criminal law in particular. The reasons for this assertion rest mainly in several interrelated and reciprocally interdependent factors. The first is that international criminal law, as the body of law designated to proscribe serious offenses against internationally protected values and to make the responsible individuals criminally accountable, has become a universally recognised crucial issue. Since the Second World War and especially after the terrible events ravaging the former Yugoslavia and Rwanda, the fight against impunity for the most heinous international crimes has turned into a matter of global concern for the entire world community.

The second reason, inextricably linked to the previous one, is that the authority to enforce international criminal law, as well as international law in general, is increasingly shared by many actors belonging to different territorial layers. In the past decades indeed, there has been a noteworthy expansion of mechanisms and fora concurrently empowered to enforce international criminal law. Besides national courts, on which rest the primary duty to prosecute international criminals, it is now possible to find states exercising universal jurisdiction such as Spain in the case of the former Chilean president Pinochet; mixed or semi-internationalised courts such as those created in Lebanon, Cambodia, East Timor or Sierra Leone; *ad hoc* international tribunals as the International Criminal Tribunals for Yugoslavia and Rwanda established by the United Nations Security Council during the 1990s and lastly, the International Criminal Court, the first permanent international tribunal.

The broadening of subjects engaged in the implementation of international criminal law is particularly interesting as it not only involves a domain states have always been reluctant to renounce to. It also relates to a field of international law whose enforcement at the national level – for a number of practical and political reasons such as the proximity to all the relevant circumstances and the protection of local ownership – shows a much greater potential than enforcement at the international level. Yet, despite the axis of international criminal law enforcement should be largely based on national courts, the possibility of states failing to abide by their legal obligations had to be recognised.

The need to envisage alternative forms of accountability for international crimes substituting unable or unwilling jurisdictions has thus led to the creation of what some scholars call a “community of

courts”:<sup>1</sup> a number of adjudicating bodies, allocated at different levels of authority, all committed to the common goal of ending impunity and all engaged in a number of interactions and reciprocal set of influences. All together they create a sort of a decentralised system of enforcement for international criminal law whose structure is mainly based on and defined by the jurisdictional relationship between international and national courts.

Depending on the institutional design of each tribunal, the model of interaction and the capacity to impact on domestic courts will vary.<sup>2</sup> The multi-level governance approach seems particularly useful in this regard as, apart from recognising the non-hierarchical and multipolar distribution of power in a given area of interest, it also suggests that international and national actors involved in accountability efforts are engaged in a continuous set of interdependent relationships through which each level of authority tries to cross-influence and impact the activities at the other level. Indeed, from the empirical study of many international or semi-internationalised courts, it is impressive to see the strong potential international tribunals have to influence domestic jurisdictions in a variety of ways and *vice versa*.<sup>3</sup>

The very existence of an international tribunal and the related threat of an international prosecution could, in fact, motivate or discourage actions at national level as well as create an incentive to implement national legislation in conformity with international criminal law provisions. At the other side of the spectrum, national jurisdictions can take advantage of the existence of an international judicial forum to shift the burden of particularly sensitive prosecutions to the international community, thus avoiding their responsibility and manipulating the system of international enforcement.

While concerns over the functioning of such a system may be legitimately raised, in particular in term of its effectiveness and

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<sup>1</sup> Burke-White, W.W. “A Community of Courts: Toward a System of International Criminal Law Enforcement,” *Michigan Journal of International Law*, no. 24, 2002.

<sup>2</sup> *Id.*, “The Domestic Influence of International Criminal Tribunals: the International Criminal Tribunal for the Former Yugoslavia and the Creation of the State Court of Bosnia and Herzegovina,” in *Scholarship at Penn Law*, Paper 185, 2007, pp. 1-52; *id.*, “Complementarity in Practice: the International Criminal Court as Part of a System of Multi-level Global Governance in the Democratic Republic of Congo,” in *Leiden Journal of International Law*, vol. 18, 2005, p. 558, pp. 557-590.

<sup>3</sup> For a comprehensive account on international courts’ political effects on domestic courts, see *id.*, “Double Edged Tribunals: the Political Effects of International Criminal Tribunals,” *Guest Lecture Series of the Office of the Prosecutor*, The Hague, 2006.

uniformity, the following section will try to examine it through the analysis of the principle of complementarity of the International Criminal Court. It is then asserted that the ICC and the principle of complementarity governing the complex dialectics with national jurisdictions became one of the key elements in the system of international criminal law enforcement.

### **III. The ICC and the Principle of Complementarity**

The International Criminal Court is an independent, permanent court empowered to adjudicate individuals accused of the most serious crimes of concern to the international community, namely genocide, crimes against humanity, war crimes and the crime of aggression. Established by a treaty – adopted in 1998 and entered into force in 2002, the International Criminal Court does not belong to the United Nations system.

One of the defining features of the ICC architecture, articulated and reflected in the Preamble and Article 1 of the Rome Statute, is its complementary nature.<sup>4</sup> While the definition of complementarity is not provided within the Rome Statute, the plain text of the ICC founding document compels the conclusion that national and international criminal justice mechanisms shall function in a subsidiary manner in order to attain the goal of international justice. From the drafting history of the Rome Statute, it can be easily inferred that the concept of complementarity expresses a number of compromises necessary to preserve, on one side, the classical principle of state sovereignty in criminal law matters and, on the other side, the guarantee of a functioning and sound universal mechanism for the enforcement of international criminal law.

As for the first aspect, the Rome Statute strongly reaffirmed that “it is the duty of every State to exercise its criminal jurisdiction over those

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<sup>4</sup> In the past years, the principle of complementarity has attracted much attention in the legal academia. For the most relevant works, see: Benzing, M., “The Complementarity Regime of the International Criminal Court: International Criminal Justice Between State Sovereignty and the Fight against Impunity,” in *Max Planck Yearbook of United Nations Law*, vol. 7, 2003, pp. 591-632; Burke-White, W.W., “Proactive Complementarity: The International Criminal Court and National Courts in the Rome System of International Justice,” in *Harvard International Law Journal*, vol. 49, no. 1, 2008, pp. 53-108; El Zeidy, M., *The Principle of Complementarity in International Criminal Law: Origin, Development and Practice*, Martinus Nijhoff, 2008.



responsible for international crimes.”<sup>5</sup> As a consequence, a case is admissible before the Court only if the state concerned remains in a situation of inactivity or fails to demonstrate its willingness and ability to carry out genuine investigation or prosecution at the national level. The primary responsibility of states is thus not unlimited as it is subject to the Court’s scrutiny. The criteria stemming from Article 17 and the notions of “unwillingness” and “inability” therein described, define the contours of adequate and acceptable forms of national efforts in dealing with international crimes. In conclusion, as long as states implement and equip themselves with an adequate and credible system for the enforcement of international criminal law and prove not to be reluctant in using it, their sovereignty will remain unfettered and the Court will not take action.

As for the second aspect, the one related to the effective functioning of a global system of international criminal law enforcement, the rationale behind the principle of complementarity encompasses more pragmatic aspects. With the words of the Prosecutor, the complementarity nature of the Court is “based on consideration of efficiency and effectiveness since States will generally have the best access to evidences and witnesses.”<sup>6</sup> This acknowledgment goes hand-in-hand with the realistic expectation that due to its limited resources, the Court could deal with a very limited number of cases per year. It also entails that functioning and active national systems are not only welcomed but necessary in order to succeed in the global fight against impunity.

While the conceptual understanding of the principle of complementarity is quite uncontroversial, the same cannot be said about the policy approach related to its practical application. As it will be shown below, stemming from divergent conceptions of the role of the International Criminal Court itself, the principle of complementarity has been subject to different interpretations and models of application. In 2003, only a year after the entry into force of the Rome Statute, the Prosecutor commissioned an expert study on “Complementarity in practice.”<sup>7</sup> The most relevant outcome of the drafted report was the idea of “positive complementarity,” a concept entailing a Court’s more active

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<sup>5</sup> Preamble of the Rome Statute establishing the International Criminal Court, paragraph 6.

<sup>6</sup> International Criminal Court, Policy Paper on some policy issues before the Office of the Prosecutor, 2003, p. 2.

<sup>7</sup> International Criminal Court, Informal Expert Paper: the Principle of Complementarity in Practice, 2003.

attitude in encouraging and motivating national jurisdictions to assume their obligations. Such an approach was drastically different from the classical understanding of complementarity as envisioned in 1998, which is known as “classic complementarity.” At the time of the drafting indeed, it was formulated as implying an antagonist relationship between the ICC and national jurisdictions based on a carrot-and-stick mechanism. As the intervention of an international tribunal was seen as a threat to national sovereignty, states would have to act in order to prevent ICC intervention. Actions by the prosecutor would have certified the state’s failure to comply with its primary duty to prosecute international crimes and governments would have thus tried to avoid it. Accordingly to this conception, the International Criminal Court, simply seen as a substitution mechanism, had to behave as a court of last resort and would only step in when national courts fail to prosecute.

In contrast, according to the policy of positive complementarity adopted by the Office of the Prosecutor (OTP), instead of being a passive actor awaiting for state’s failure, the Court could cooperate and try to influence states to undertake their own investigations and prosecutions. Rather than concurring with national systems for jurisdiction over an international crime, the ICC is supposed to build a benign and constructive relationship wherever possible. The model of positive complementarity thus recognises that the complementarity provisions do not merely define the contours of the Court jurisdiction. Rather, under this approach, they regulate the allocation of authority between the Court and states, establishing a sort of dialogue across jurisdictions for the management and the timing of investigation and prosecutions, as well as over the most appropriate venue for justice.

Furthermore, the systemic perspective endorsed by the policy of positive complementarity acknowledges the fact that the Court disposes of an array of political and legal tools to be used as levers of influence towards national jurisdictions with the aim of creating the most effective global system of international criminal law enforcement. In this regard, three main levers of influence can be said to characterise the relationship between the Court and national jurisdiction: a) the catalyst effect; b) the monitoring role; c) the benchmark of judicial effectiveness.

### ***A. Catalyst Effect***

The most powerful point of leverage of the International Criminal Court is the threat to open investigation as such. An outside intervention would most likely represent a high sovereignty cost on the state concerned. The ICC threatening to intervene in a country can stimulate and encourage states to investigate and prosecute international crimes. Indeed, a potential ICC intervention can create a set of positive

incentives to national jurisdiction and push an unwilling state to initiate national prosecutions.

The catalyst function can produce effect when the Court is able to alter the internal incentives and costs faced by the national government, in particular those relating to the sovereignty sphere. In case of the internationalisation of a prosecution in fact, not only will the state lose the prosecutorial freedom over the determination of specific suspects and charges, but it could also become subject of blame from the international community and be negatively affected by public scrutiny. In order to avoid international intervention, states will be more inclined to accept the financial and political burden imposed by an internal prosecution.

The Court and in particular the OTP shall play a strategic role in trying to maximise the catalyst effect while avoiding the risk of being manipulated by states. As each state has a different situation and is sensitive to different incentives, an individualised analysis would be needed. In this regard, the efficacy of the Court strategy will by far depend on the permeability of the state to external influences. There will be, of course, states that cannot be easily persuaded or cajoled to domestically pursue those who have allegedly committed international crimes. In this situation, the Court can deem more effective to activate its jurisdiction. The same can happen if the state which has undertaken domestic prosecution does so in a less-than-genuine manner and the Court, in accordance with Article 17, finds it necessary to intervene.

Moreover, through a strategic use of publicity and outreach activities, the Court can increase pressure on those states failing to act domestically, seeking for example public condemnation from the United Nation Security Council or from local and international non-governmental organisations.

## ***B. Monitoring Role***

The complementarity regime gives the Court a permanent monitoring function over the activities carried out at the national level. Indeed, the complementarity provisions of the Rome Statute not only establish an ongoing process for the determination of the admissibility of a case, but they also create a system of dialogical interactions and communications between the Court and the state that may be used as a mechanism to stimulate genuine national investigations and as a forum of managerial discussion over the proper venue for delivering justice.

As for the first aspect, the admissibility of a case, it is possible to observe that its determination is subject to a number of potential adjudications throughout all stages of the ICC proceedings. At each

stage, be it at the “situation” or at the “case” stage, both the Prosecutor and the Court, although with different modalities, shall carefully consider national actions that might bar admissibility. The first situation in which this dialogue arises is when the Prosecutor decides whether to open an investigation. Pursuant to Article 53(1)(b), he shall consider whether “the case is or would be admissible under Article 17.” The same shall do the Pre-Trial Chamber in accordance to Article 15 when deciding whether to authorise the opening of a *proprio motu* investigation by the Prosecutor or when deciding upon the issuing of arrest warrants (Article 58).

Depending from the stage of the proceedings, the test for determining the admissibility changes: in a context of a “situation,” the examination is in relation to one or more “potential” cases and the Court shall verify whether the groups of persons and the groups of crimes that are likely to be the object of the investigation by the ICC are being prosecuted before national courts; in the context of a “case,” where one or more suspects have already been indentified and specific charges have already been selected, the test is more rigorous, requiring for the national investigation to cover the same individual and substantially the same conducts as alleged in the proceedings before the Court.

It thus appears evident that the closer the proceedings is to the case stage, the lesser the principle of complementarity allows for flexibility. Indeed, as the proceedings before the Court gets closer to the “case” context, the leeway enjoyed by states in the exercise of prosecutorial discretion progressively reduces and the conditions under which the state can try to bar the admissibility become quite stringent. This mechanism is particularly interesting as it shows that the principle of complementarity aims at striking a fair balance between safeguarding the primacy of domestic proceedings *vis-à-vis* the work of the Court.

If an OTP’s investigation has progressed till the point to allow the Pre-Trial Chamber to issue a warrant of arrest or to commence a trial against an individual for a number of specific charges, it means that in no circumstances the concerned state had demonstrated its genuine will to act. Then, if that state wishes to challenge the admissibility of that case, it shall provide the Court with evidence of a sufficient degree of specificity that demonstrates that it is indeed investigating those very suspects for those very conducts. If that were not the case, the work of the Court on a very specific situation could be displaced by a generic investigation or prosecution carried out at the national level.

As for the ongoing dialogue between the Court and national jurisdictions provided for the provisions of the Rome Statute, it can be worth mentioning the most significant ones. Article 15 envisages the possibility for the Prosecutor to seek information from states in respect

to communication he receives. Article 18 states that, under certain circumstances, the Prosecutor shall notify all states that would normally exercise jurisdiction over the crimes concerned of his determination to open an investigation. Within one month of the receipt of the notification, a state may challenge the admissibility of a situation on the basis of its current or past investigations and prosecutions. The deferral of a situation to a national jurisdiction is subject to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances, based on the state's unwillingness or inability genuinely to carry out the investigation. Furthermore, once the situation is deferred to a national jurisdiction, the Prosecutor is allowed to request that the state concerned periodically inform his office about the progress of the national investigations.

The ongoing dialogue between the Court and national jurisdictions can be said to positively impact on the willingness and ability of a state to carry out national proceedings. The permanent interest of the Court, representing a sort of supervisory function, and the continuous need for the state to brief the Court on the progress of the national investigations and prosecutions may constitute a powerful leverage for the Court to encourage states to act domestically. It represents a useful tool for the determination of the proper venue of justice as the Prosecutor and national authorities have a continuous and always up-to-date dialogue so that a prospective ICC intervention can be planned in the most appropriate moment.

### ***C. Benchmark of Judicial Enforcement***

While the strategic management of the catalyst and monitoring functions of the principle of complementarity would normally fall under the authority of the Prosecutor, which can be said to be the executive branch of the International Criminal Court, the judicial bodies of the international tribunal can play another, yet as important, role in defining benchmarks for domestic judicial enforcement.<sup>8</sup> Through the case-law related to admissibility challenges, the chambers of the Court can provide minimum standards for domestic mechanisms of accountability as well as determine the compatibility of alternative forms of justice such as truth and reconciliation commissions, traditional forms of justice, reparation programmes, with the idea of judicial accountability enshrined in the Rome Statute.

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<sup>8</sup> Kleffner, K.J., "The Impact of Complementarity on National Implementation of Substantive International Criminal Law," *Journal of International Criminal Justice*, vol. 1, 2003, pp. 86-113.

As states will look at the Court jurisprudence in order to verify the compatibility of their national system of enforcement with the complementarity requirements of the Rome Statute, the Court, when determining the standards under which a national proceedings is considered less-than-genuine, has a great power to influence the features of that national criminal system. Depending on how the Court interprets the statutory requirements of the complementarity principle and in particular those set forth in Article 17, national implementing legislations will be greatly conditioned. Whether the Court will opt for a uniformed application of the legal parameters of complementarity or for a flexible and dynamic interpretation on the basis of different legal cultures, will be of much interest for the development of global standards of international criminal justice.

#### **IV. Legal and Political Shortcomings of the ICC Practice over the Last Decade**

The Prosecutor of the ICC stressed that, having the state parties expressed the will “to create an institution that is global in scope while recognising the primary responsibility of States to exercise criminal jurisdiction,” the policy to be followed by his office “will be to undertake investigations only where there is a clear case of failure to act by the State or States concerned.”<sup>9</sup> Despite this statement and the policy approach toward a positive complementarity adopted by the OTP in early 2003, the prosecutorial policy so far seems to have focussed more on the direct prosecution of international crimes rather than on the encouragement of national jurisdictions. Moreover, nine years after the entry into force of the Rome Statute, the Court’s experience has exposed some discrepancies in the practical implementation of the complementarity principle when compared with the original spirit of the Court itself.<sup>10</sup>

In the following sections, the “inaction scenario” and the practice of “self-referral” will be briefly considered as examples of possible discrepancies that, while defensible under the language of the Rome Statute, may produce outcomes not perfectly consistent with the principle of complementarity and the overall goal of an effective and efficient system of international criminal law enforcement.

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<sup>9</sup> Paper on Some Policy Issues, *op. cit.*, p. 2.

<sup>10</sup> Schabas, W., “Complementarity in Practice: Some Uncomplimentary Thoughts,” in *Criminal Law Forum*, no. 19, 2009, pp. 5-33.

### A. The Inaction Scenario

The language of Article 17 of the Rome Statute provides that a case shall be considered inadmissible before the Court if: a) it is investigated or prosecuted by a state which has jurisdiction over it, unless the state is unwilling or unable genuinely to carry out the investigation or the prosecution or, b) it has been investigated by a state which has jurisdiction over it and the state has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the state genuinely to prosecute.

While many scholars focussed their attention entirely on the “unwillingness” or “inability” test, the case-law of the ICC over the last nine years underscored that Article 17 primarily concerns the very existence or absence of national proceedings. Several chambers of the Court, instead of considering Article 17 as a one-step test requiring a showing of unwillingness or inability to carry out investigation, interpreted it as a two-step test: the first one for the determination of the existence of an investigation, the second one, subsequent to the other, for the assessment of the credibility of *existing* investigation and prosecution. The Appeals Chamber, in its judgement of 25 September 2009 on the Katanga case, stated that “[t]o do otherwise would be to put the cart before the horse. It follows that in case of inaction, the question of unwillingness or inability do not arise; inaction on the part of a State having jurisdiction [...] renders a case admissible before the Court [...]”<sup>11</sup>

The same approach was indeed upheld by the OTP which, in a number of situations, rather than stimulating national systems to take action, has encouraged states to defer the situation to the ICC expressing the position that “there may be cases where inaction by States is the appropriate course of action.”<sup>12</sup> If this may be true in very limited circumstances, it is the opinion of several scholars that the selection strategy of the Prosecutor should be more focussed on cases with no prospects of national adjudication rather than on cases of so-called “uncontested jurisdiction.”<sup>13</sup>

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<sup>11</sup> ICC Appeals Chamber, “Judgement on the Appeal of Mr. *Germain Katanga against the Oral Decision of Trial Chamber II* of 12 June 2009 in the Admissibility of the Case,” ICC-01/04-01/07-1497, para. 78.

<sup>12</sup> Paper on Some Policy Issues, *op. cit.*, pp. 1-9.

<sup>13</sup> Jurdi, N.N., “Some Lessons on Complementarity for the International Criminal Court Review Conference,” in *South African Yearbook of International Law*, 2009, pp. 28-56.

Lessons from the situation of Uganda and the Democratic Republic of Congo, both self-referring their situation to the Court, showed that those states have used and took advantage of the ICC presence for internal political reasons only partially related to the question of capacity or willingness to shielding individuals. The most striking example in this regard is probably the case of Germaine Katanga, alleged commander of the *Force de Résistance Patriotique* of the Ituri Region (DRC) and allegedly involved in the commission of several international crimes.

Katanga had been arrested by the authorities of the DRC in 2005 and had since then been detained in that country, charged of crimes against humanity. In 2007, he became the subject of an ICC investigation. After a few months, a warrant of arrest was granted by the Pre-Trial Chamber and Katanga was shortly after surrendered and transferred to the Hague by the DRC. When Katanga challenged the admissibility of his case on the ground that the competent state, the DRC, was not only investigating the matter but also had the willingness and the capacity to provide accountability, the Congolese authorities, preferring not to deal with the case internally, informed the Court they were not investigating Katanga any more. The national proceeding against him had indeed been suspended shortly before the Court's hearing. The Appeals Chamber, founding that at the time of the challenge the DRC was not investigating or prosecuting Katanga, could not but declare the case admissible.

It is evident that, while not in contradiction with the language of the Rome Statute and with the plain language of Article 17, the preliminary requirement of existing proceedings at the national level can lead to outcomes inconsistent with the main goal of the International Criminal Court, that is an effective system of judicial enforcement in which states take the lead in fighting impunity for international crimes. In particular, one of the dangers of the inactivity scenario is the risk that states, for a number of reasons, be they political or financial, shrink their duty to investigate and "offload" uncomfortable cases onto the Court.

As the process for determining the existence of national proceedings is not linked to issues of "willingness" or "ability" and do not take into account the reasons behind the state's decision to act or to abstain, the Court is somehow "blind" in assessing the need for its complementary functioning. This not only can lead to situations in which the Court is involved in case perfectly "manageable" at the national level, diverting resources from cases with no prospect of adjudication in domestic courts, but also does not seem consonant with one of the core objectives of the Statute, i. e. encouraging national prosecutions and investigations.

If no legal test of the principle of complementarity can address the risk of the Court be manipulated by states, it is up to the judicial branch



of the Court and, more importantly, to the Office of the Prosecutor to avoid such an occurring and to adopt a policy clearly oriented to encourage national jurisdiction rather than offering them an easy solution to refrain from exercising their primary duty to prosecute international crimes. Moreover, an effective selection strategy of the OTP could help avoiding the Court's direct involvement in situations where there is a high risk of a state "dumping" cases.

### **B. Self-referral**

Article 14 of the Rome Statute states that "[a] State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed." The Prosecutor then, under Article 53 may decide whether to open an investigation. "Self-referral," a terminology not present in the language of the Rome Statute, is the expression now commonly used when a state refers to the Prosecutor a situation concerning its own territory. The first three situations which came to the Hague, out of the seven currently before the Court, have been self-referrals: Uganda in 2003, the Democratic Republic of Congo (DRC) in 2004 and the Central African Republic in 2005.

The prominent critique concerning the practice of self-referral rests on the potential political manipulation of the Court and the risk of States selectively "externalising" prosecutions.<sup>14</sup> As a matter of fact, it has been pertinently underlined that, with respect to Uganda and the DRC, the issue arising was not actually inability but more likely the mere unwillingness to deal with the prosecutions domestically. Both states, despite being provided with a relatively good criminal justice system, for some internal political calculations simply preferred handing the cases over to the Court. The Prosecutor, far from opposing such opportunistic behaviour and in apparent contrast with the fundamentals of the positive complementarity approach, i.e. the importance of active and functioning national jurisdictions, in 2006 said that his office would have adopted a "policy of inviting and welcoming voluntary referral by territorial states as a first step in triggering the jurisdiction of the Court."<sup>15</sup>

According to the OTP, self-referrals guarantee smooth investigations as the Court can enjoy the full cooperation of the territorial state and are guarantees of the uncontested jurisdiction. Again, lessons from Uganda

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<sup>14</sup> Schabas, W.A. "Complementarity in Practice," *op. cit.*

<sup>15</sup> Office of the Prosecutor, Report on the Activities Performed During the First Three Years (June 2003-June 2006), 12 September 2006, p. 7.

showed that cooperation is provided as long as the Court investigation does focus solely on opposing groups of the referring state. Once the Prosecutor expressed the willingness to charge pro-governmental forces, cooperation from the side of Uganda was drastically frozen. More problematical is the fact that there is the concrete risk of the Court being involved in complex internal disputes or peace settlements such as those arising in a country during a post-conflict transition. Instead of contributing to fight impunity, the International Criminal Court can become an instrument in the hands of states.

While the concerns about the risk of manipulation are compelling and there is an apparent inconsistency with the goal of encouraging domestic prosecution, “self-referrals” *per se* are not completely alien to the idea of positive complementarity. Indeed, they enshrined the idea of a benign relationship between the ICC and national jurisdiction as well as implicitly suggest the possibility of a cooperative burden-sharing between national and international levels. As a matter of fact, if properly managed by the Prosecutor, “self-referral” can become a positive and useful instrument in the fight against impunity for international crimes. This, however, would require not only clever political calculation and diplomatic behaviour from the part of the Prosecutor, but also the acknowledgment of the strategic role the International Criminal Court has to play in the global system of international criminal law enforcement. Unfortunately, it is something the ICC has not yet fully expressed.

## **V. Conclusions**

The recognition of a shared competence in ending impunity for international crimes and the broadening of the subjects empowered to adjudicate perpetrators are the two founding elements of a system of global governance to administer international criminal justice. The International Criminal Court is the newest and probably the most relevant development of this system. Through the principle of complementarity regulating its jurisdictional design, the ICC can influence national jurisdiction in a variety of ways: catalysing domestic action; monitoring and supervising the progress of domestic proceedings; shaping the contours of acceptable forms of justice.

Yet, these levers of influence may soon dissipate if the Court does not prove to be a credible and astute political player in the global system of governance. Only concentrating its limited human and financial resources on cases with no chance to be dealt domestically and, as much as possible, shifting the burden of delivering justice back to national systems, the Court has the power to effectively impact the global fight against impunity.

While the shortcomings of the Court in its first decade are quite understandable for a newly established and still fragile institution, the following years will be critical if the Court wants to be trusted as a credible and reliable actor in the global arena. In order to direct the institution's forces to the situations and cases for which it was truly envisaged, the International Criminal Court should implement a sound and wise policy of positive complementarity without being scared of engaging in harsh diplomacy and strategic behaviour with states.

In conclusion, focussing on the analysis on the role of the International Criminal Court in the emerging global governance system of international justice, the present paper offered an overview of the possibilities, challenges and difficulties of the multi-level governance approach in the international legal system.



## **PART III**

### **EDUCATION TO INTERCULTURAL DIALOGUE**



# Introduction

Léonce BEKEMANS

Part III deals with education to intercultural dialogue. The papers presented in this third part concern the analysis and assessments of educational spaces and learning practices of intercultural dialogue in an interdependent world. The intercultural dialogue is set within a dialogues' framework, in which education to intercultural dialogue, being integral part of civic education and set in a lifelong learning perspective, is said to be of utmost importance. Various aspects and levels of learning are analysed, i.e. the crucial role of education, the importance of stakeholders at various levels active in intercultural dialogue and, finally, the learning tools to intercultural dialogue. Subsections deal with general perspectives and challenges, institutional approaches and case studies of educational and intercultural practices in Europe, including the Euro-Mediterranean area.

In Subsection I dealing with perspectives and challenges of education to intercultural dialogue, three contributions are presented. Enrique Banús, president of ECSA-World, introduces from a rather unusual but innovating perspective the theme of "*Education to Intercultural Dialogue*." Following the recommendations by the Scientific Committee of the Symposium "Intercultural Dialogue" organised by the European Commission in 2002, Banús argues that true intercultural dialogue includes education for daily life, implying a change of paradigm in education to intercultural dialogue. He also puts high importance to educational and pedagogical practices to transmit knowledge of the European common cultural heritage, in particular by story-telling.

The next contribution reasons along the same lines. Gabriel Fragnière, former rector of the College of Europe, analyses in his paper "*Multiculturalism vs. Interculturalism in Educational Practices*" the two approaches to define the way cultures relate to each other in the present world. At a general level, he distinguishes four functions of one's own culture in social life: communication, socialisation, identification and self-expression. The European integration is said to have an impact on these functions that might drastically change the cultural paradigm. In

this perspective, education and educational practices play a very specific role. In answering the question how education can help to face these challenges, the author refers to four main revolutions that radically have transformed the position of education in society: writing, creation of schools, printing and new information technologies.

The policy reflections by Luc Van den Brande “*Intercultural Dialogue in Territorial Cooperation: an Education Perspective*” focus on how a European education policy can benefit from a networked and interdependent world, starting from the EU competences in education and the future outlooks for EU education and training. An integrated vision for education policy is presented by linking it to the EU 2020 Strategy, in particular to the objectives of innovation and creativity. The author favours multidimensional partnerships and multi-level governance in education, also at regional and local levels. The paper concludes with some policy proposals for the EU 2020 strategy, in particular in relation to education, governance and cohesion issues as well as to the role of the Committee of the Regions.

Subsection II contains two sectoral approaches, presenting the vision and activities of the Committee of the Regions and the European Training Foundation to multi-level governance in education and intercultural practices. The point of departure of the short paper “*The Regional Dimension of Educational and Intercultural Practices: a Forward-looking Multi-level Governance view of the CoR*” by Béatrice Taulègne, Head of the Forward Studies Unit of the CoR, is the need for the development of a culture of dialogue and its educational consequences. The author identifies three paradoxes of intercultural dialogue and consequently, explains three main concerns from the CoR’s perspective in setting the priority objectives of regional and local authorities and presents some policy opportunities for the future.

The Director of the European Training Foundation, Madlen Serban presents in her policy reflections the experience of the ETF on “*Improving Intercultural Dialogue through Lifelong Learning and Multi-level Governance*” in the partner countries of the EU. She argues that more attention should be given to pedagogy and curriculum innovation beyond compulsory education and illustrates her arguments with ETF examples on the promotion of social cohesion and intercultural dialogue at local, national and cross-national levels.

Subsection III presents two very different but interesting case studies of educational and intercultural practices. Fadi Daou and Nayla Tabbara from the Adyan Foundation in Lebanon present in their paper “*Roadmap for a Euro-Mediterranean Cross-cultural Education*” the very relevant two year integrative and multidimensional experience of the Adyan Foundation on the development of a Euro-Mediterranean



cross-cultural education as to rationale and context. The privileged spaces for intercultural education and communication refer to youth education, new media and the creation of spaces of encounter. The paper is a plea for an integrative approach for social constructiveness and responsibility in cross-cultural understanding at the Mediterranean level, including its religious dimension.

The short paper “*Education and Citizenship*” by Lucia Saccon and Amelia Goffi, teachers at the Interdepartmental Centre on Human Rights of the University of Padua, describes and briefly assesses the practices of citizenship education and human rights from the perspective of the Region of Veneto, Italy. The authors present an overview and pointed evaluation of the teacher training activities, promoted by the Region of Veneto over the last ten years in the field of human rights education. The paper concludes with a detailed case study analysis of the context, content and prospects of advanced courses on “Civic education, human rights, citizenship, constitution” for teachers of primary and secondary schools.



## **SUBSECTION I**

### **PERSPECTIVES AND CHALLENGES**



# Education to Intercultural Dialogue

Enrique BANÚS

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“The policy of an intercultural dialogue by the European Union should focus on youth, education and communication. The education of young people in the spirit of tolerance, comprehension and respect of the other is a priority field of action” – this is a quote from the Declaration written by the Scientific Committee at the end of the Symposium Intercultural Dialogue organised by the European Commission in March 2002.<sup>1</sup> This paper follows the recommendation and tries to deepen in the topic of the education to intercultural dialogue.<sup>2</sup> Two questions arise: 1) Why education to intercultural dialogue? and 2) How to educate to intercultural dialogue?

## I. Why Education to Intercultural Dialogue?

Literature can give a first approach to this topic; so, I want to introduce a relevant character of the European literature: Asterix.<sup>3</sup> In his village, which is surrounded by the Roman conquerors, they are regularly quarrelling about the freshness – or even not – of the fish sold by the fishmonger Unhygienix. The quarrels end when someone announces that the Romans are coming. In that moment, all the

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<sup>1</sup> Kaelble, H. *et al.*, *Declaration*, Symposium Intercultural Dialogue, European Commission, Directorate General Education and Culture, 20-21 March 2002.

<sup>2</sup> In certain points, the paper presupposes the ideas on education expressed in Banús, E. “Educate European Identity?,” in C. Naval, C. Ugarte (eds.), *Europe as an Educational Framework: Cultures, Values and Dialogues*, *Journal of Social Science Education*, vol. 6-1 (2007), pp. 57-67.

<sup>3</sup> Created by the French authors René Goscinny and Albert Uderzo. The first volume was published in 1959. It has been interpreted as expression of the French mentality under De Gaulle (see, for example, Stoll, A. *Asterix, das Trivialepos Frankreichs: die Bild- und Sprachartistik eines Bestseller-Comics*, Köln, M. DuMont Schauberg, 1974).

inhabitants have a common goal: to fight against the Romans. So, the “Asterix phenomenon” could symbolise how the arrival of the Romans agglutinates and sets up a goal for a whole population that, otherwise, is constantly fighting among themselves. The “Asterix phenomenon” shows how a people’s unity that may be immersed in internal squabbles can achieve cohesion by rallying against the common enemy.

Intercultural dialogue means a change of paradigm in relation to the common way of approaching “the other,” as it has been realised – and transmitted – in modern Europe. “Otherness” has often been felt as a threat. In fact: the creation of the modern state<sup>4</sup> has been accompanied by homogenisation tendencies, as if diversity would be a problem for the new political body; only in recent times efforts are being made for harmonising unity and diversity. In the internal dimension “the other” was considered as a complication; in the external dimension, “the other” was seen often as the common enemy whose evocation can be used for creating internal cohesion.

Europe’s history is plenty of examples on how “otherness” is seen as a problem. Maximilian Kolbe, for example, died for someone who would have to die because he was one of “the others.” But not only for the state “otherness” can be seen as something dangerous; St John of the Cross was imprisoned by the Carmelites<sup>5</sup> although being he himself a Carmelite; but the idea he has to reform the Order coming back to the original strength was seen as a danger for the identity of the Carmelites who have adapted themselves to a more suitable way of life.

The change of paradigm included in intercultural dialogue has to be not only *accepted* but *done* by the society. If not, intercultural dialogue will be nothing else than a machinery producing activities by people and for people who already have entered this train, if this metaphor<sup>6</sup> can be used.

But intercultural dialogue is a plural phenomenon (although we tend to use the expression as a singular), and most of the intercultural dialogues are done on the street, beyond the governance, beyond the so-

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<sup>4</sup> For the nation as a modern “product,” see Guerra, F.-X. “La Invención de la Nación y el Problema de las Comunidades,” in E. Banús, A. Llano (eds.), *Razón Práctica y Multiculturalismo*, Pamplona, Newbook Ediciones, 1999, pp. 239-258.

<sup>5</sup> He was apprehended on 3 December 1577 and retained in a cell of the Toledo convent. After some months, in May 1578, he fled. A summary of the history of the controversy within the Carmelites can be found, for example in Imízcoz, A.F. *Historia de España en la Edad Moderna*, Barcelona, Ariel, 2004, p. 355.

<sup>6</sup> The Budapest Observatory used once the expression: “The Intercultural Dialogue Machinery Has Been Set in Motion” (*Memo July 2006*, <http://www.budobs.org>, consulted 27 June 2010).

called civil society, which so often is confounded with the society as a whole, given, however, the fact that most people (members of the society) are not organised in the structures we commonly call civil society.<sup>7</sup>

Being “on the street” it has to be taken into account that “the other” is no more far away or on the other side of the frontier. In the first case, it provokes maybe admiration (see the vogues of “exoticism” in Europe’s cultural history),<sup>8</sup> in the second the fear of an invasion or a silent contamination, a fear that – as expressed above – can be exploited by the political powers. “The other” is now part of the daily “landscape.” The encounter with this “otherness” provokes different reactions. Of course, not all of them can be qualified as desirable.<sup>9</sup> Therefore, education for daily life has to include education to intercultural dialogue.<sup>10</sup>

There are many theories on social changes – and this is not the space for discussing such a complex issue.<sup>11</sup> One of these theories underlines the role of elites in the changes – and the European integration seems to confirm this theory insofar as it has been launched and developed by a handful of politicians (the “fathers of Europe”) with no relevant participation by the civil society, the parliamentary structures or the public opinion. This can be criticised – and it has been criticised,<sup>12</sup>

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<sup>7</sup> According to Wikipedia, “Civil Society is composed of the totality of voluntary civic and social organisations and institutions,” consulted 17 July 2010.

<sup>8</sup> See <http://www.pangloss.de>, consulted 1 July 2010.

<sup>9</sup> According to the Spanish Observatory against Racism, in 2006, around 4,000 immigrants have been attacked (see Cea D’Ancona, M. Á. Valles Martínez, M.S., *Evolución del Racismo y la Xenofobia en España [Informe 2009]*, Madrid, Ministerio de Trabajo e Inmigración, 2009, p. 332).

<sup>10</sup> This idea, in a certain sense, is coincident with the survey conducted in the years 1999-2001 by the UNESCO asking who should be in charge of intercultural dialogue education. An overwhelming majority of respondents (80%) place the responsibility with the family. But more respondents (82%) see the responsibility of the educational system to provide this education. All the other factors are far away: the representatives of the different religious traditions with 78%, the actors of the different cultures (74%) and the civil society (69%). The last rank is for the public authorities, with 64% (Division of Intercultural Dialogue of UNESCO, *An International Survey on Education and Teaching of Intercultural and Interreligious Dialogue (1999-2001)*, consulted 23 March 2010).

<sup>11</sup> See, for example, Harper, C.L., *Exploring Social Change*, Engelwood Cliffs (NJ), Prentice Hall, 1993 and Eisenstadt, S.N., *Tradition, Change, and Modernity*, New York, Krieger Publishing Company, 1973.

<sup>12</sup> See one example: “The gradualist approach of European construction, devised by Monnet, was possibly the only one feasible and the one that has allowed progress in the integration process. However, that way of building up Europe has been based on

probably with an anachronistic approach that does not take into account that in post-war Europe there is an implicit support to this project by almost the whole society. The project is promising “no more war,” “no more destruction,”<sup>13</sup> and a population living in ruins is probably not interested in knowing the details, but in the goal that is guaranteed.

Peace was in the immediate post-war years a social claim. Intercultural dialogue must become a social claim like – let us become poetic – the rain that is going down and into the earth.

Here, in this idea of guaranteeing an education for everyday life and for the street, the square, the supermarket, the city bus, is place for local authorities, organisations as well as for individuals’ initiative.

## **II. How to Educate for Intercultural Dialogue?**

The first answer is by doing. We are indeed fascinated by practice. But maybe practice has to be complemented by and more based on reflection. Here can also be found the specific role for the universities. In the website of the International Association of Universities it is said about intercultural dialogue: “Higher education institutions have an important role to play. Disciplines, teaching methods, student skills, and knowledge itself can be deepened and strengthened through an intercultural dialogue approach.”<sup>14</sup>

This indeed is an integral, transversal, all-embracing approach (with all the risks such approaches have). It would presuppose a reflection procedure which is impossible at the beginning of this project. So the paper will focus on one methodological element: how to transmit intercultural dialogue.

Via stories – as usual. Stories are one of the oldest pedagogical instruments, now rediscovered under the concept of “good practices” or “success stories” – which sounds incredibly modern, but signifies by no means a change of paradigm or a discovery. In old stories, taken from the founding sources of European culture, different aspects and attitudes

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bureaucratic institutions negotiated by official élites that produce essentially decisions of economic sort” (Ocaña, J.C., *The History of the European Integration. The European Citizenship*, Chapter *Citizenship and Identity*, at: [www.historiasiglo20.org](http://www.historiasiglo20.org), 2003, consulted 18 July 2010).

<sup>13</sup> The literature in many countries provides examples of this attitude. Here only the German author Wolfgang Borchert with his drama *Draußen vor der Tür* and his anti-war manifesto *Dann gibt es nureins! Sagt Nein!* shall be mentioned.

<sup>14</sup> <http://www.iau-aiu.net/>.



towards dialogue can be found. Here only one attitude shall be analysed that is intrinsically related with intercultural dialogue: the hospitality.

If we look to the Greek literature, there we find hospitality not only as an attitude but also as a narrative element with a relevant function in the development of the story. In Homer's *Odyssey*, for example, the same narrative scheme can be found several times for two characters: for Telemach, who starts travelling for finding his father and for Ulysses himself travelling back from Troy under countless adversities. Both arrive during their wanderings at places where they are accepted, invited, treated as guests – and, then, invited to tell their story. The questions: Who are you? On which way have you arrived to us? What are you looking for? – All these questions are put after the acceptance of “the other” and after the treatment that is considered “normal” towards foreigners. And then the guest tells his story (which is the “pre-story” to the events with which the narration started). On that way, hospitality (the acceptance of “the other”) becomes the guiding, the moving narrative resource for the book.

But the Greek world also knows the punishment for the negation of the hospitality. There is, for example, the story from the Greek mythology (transmitted by the great “loudspeaker” Ovid and his *Metamorphoses*) in which Philemon and Baucis, the old married couple are the only ones in their town to welcome the disguised gods Zeus and Hermes. As a penalisation to all the other inhabitants, the village is destroyed by a flood and only Baucis and Philemon survive.

At the other main stream of the European culture, the Judeo-Christian tradition knows both the relevant positive consequences of hospitality and the punishment for the non-existing hospitality. A very eloquent example from the *Old Testament* can be found in Abraham's history,<sup>15</sup> when the Lord appeared to Abraham when he was sitting in the entrance of his tent, “while the day was growing hot.” Abraham offers his hospitality,<sup>16</sup> and on that occasion the Lord will transmit his promise to Abraham: “I will surely return to you about this time next year, and Sarah will then have a son. [...] Shall I hide from Abraham what I am about to do, now that he is to become a great and populous nation, and all the nations of the earth are to find blessing in him?” In

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<sup>15</sup> See Chapter 18 of the *Genesis*.

<sup>16</sup> “Sir, if I may ask you this favor, please do not go on past your servant. Let some water be brought, that you may bathe your feet, and then rest yourselves under the tree. Now that you have come this close to your servant, let me bring you a little food, that you may refresh yourselves; and afterward you may go on your way.”

the *New Testament*, Jesus blames a Pharisee who has invited him and takes no care about the commandments of the hospitality.<sup>17</sup>

The lack of hospitality is considered as a sign of little appreciation of “the other.” The exclusion from hospitality can be also a punishment for the crime: so, Cain – after having murdered his brother – is excluded for being accepted by “the others,”<sup>18</sup> although also his life is protected by God.<sup>19</sup> The others’ mistreatment is also punished, as it is shown when the people’s claim in Egypt is the explanation why God will call Moses for conducting the people back to the Promised Land.<sup>20</sup> The summit of the acceptance of “the other” in the *Bible*’s perspective can be seen in Jesus’ genealogy as presented by Matthew (1, 2-16) with the mention of four women belonging to Jesus’ ancestors and coming from abroad: Tamar, Rahab, Ruth and Bathsheba.

In this way, showing how the acceptance of “the other” is included into the cultural mainstreams that have formed the “common narrative heritage,” the education to intercultural dialogue can be combined with the so needed transmission of the knowledge of this common cultural heritage.

Of course, this is a selection from both sources, in which we also find many examples for non-acceptation, for exclusion, for rejection or consideration of “the other” as an enemy. When presenting these models a certain story is transmitted, a narrative; but this is not uncommon: national narratives – based also on selection – have been common (and still are, sometimes with new definitions of “nation”);<sup>21</sup> also the “European identity” is a narrative and the values mentioned in the Lisbon Treaty as European characteristics are a selection that not necessarily reflects the whole of the history of Europe. Europe’s history has been a bloody one; the respect for the European values has not been

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<sup>17</sup> The Pharisee has criticised internally Jesus for accepting the care of a sinful wife. Jesus reacts with the allegation: “I entered into thine house: Thou gavest Me no water for My feet [...]. Thou gavest Me no kiss [...]. My head with oil thou didst not anoint” (Luke 7, 44-46).

<sup>18</sup> See *Genesis* 4, 12: “A fugitive and a vagabond shalt thou be on the earth.”

<sup>19</sup> *Genesis* 4, 15: “And the Lord said unto him, “Therefore whosoever slayeth Cain, vengeance shall be taken on him sevenfold.” And the Lord set a mark upon Cain, lest any finding him should kill him.”

<sup>20</sup> *Exodus* 3, 7-8: “And the Lord said, ‘I have surely seen the affliction of My people who are in Egypt, and have heard their cry by reason of their taskmasters [...]. And I have come down to deliver them out of the hand of the Egyptians.’”

<sup>21</sup> The very controversial Catalan Statute from 2006 uses in the Preamble the word “nation” as link to Catalonia, which – among other points – has provoked a legal action in front of the Constitutional Court.

the predominant element in Europe's history. Their inclusion into the Lisbon Treaty witnesses the result of a long history and is at the same time a desire and a guideline. They are at the same time the recognition that narratives are able to change reality.

What are the effects of stories, of narratives? They want to "take out." That means: if you enter the subject on a frontal way, maybe there will be resistance by many people.<sup>22</sup> It should not be forgotten what in fact is one of the challenges for intercultural dialogue: how to attract to it people not willing to be introduced into this dynamics, not open for the possibility of a shift of paradigm. But if you look for alternative ways, then acceptance can be increased. Only one example shall be mentioned: the common theatre project in a third country for all participants, as organised by EMUNI.

This is practice of "doing," but behind there is a theoretical concept that does not simplify, that does not believe that each contact is *per se* creating nearness and dialogue (it can also create hate, the confirmation of prejudices, etc.). The coexistence of unity in diversity is a challenging aim and not an easy task.

It includes also some intellectual challenges. For example the following one: "Fortis est veritas" – this sentence can be seen at the streetlamps in Oxford. It is the city's device. It is not by chance that a city with such a strong university tradition believes in the power of truth. How to combine intercultural dialogue with the truth? How to combine it with the European values and the conviction that they have to be guidelines for social life in Europe and maybe also in other continents? The UNESCO affirms that "dialogue among civilisations, cultures and peoples, based on mutual understanding and respect and the equal dignity of all cultures" is considered as "the essential prerequisite" for achieving the intercultural dialogue's goal.<sup>23</sup> However, the analysis of the cultures shows that within all cultures there are elements that manifest dignity and others that are far away from the basic categories of human dignity. Here challenges are hidden that have to be solved on an intellectually coherent way.

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<sup>22</sup> To the different attitudes (also inside relatively homogeneous groups) in front of intercultural dialogue, see, for example Yang, L., Rancer, A.S., "Ethnocentrism, Intercultural Communication Apprehension, Intercultural Willingness-to-Communicate, and Intentions to Participate in an Intercultural Dialogue Program: Testing a Proposed Model," in *Communication Research Reports*, no. 20.1, 2003, pp. 62-72.

<sup>23</sup> See UNESCO's website on intercultural dialogue, consulted 18 July 2010.

At the end, intercultural dialogue is probably a question of personality. See, for example, the “founding fathers” of the European Communities. See, for example, so many people doing intercultural dialogue day by day, accepting the other whilst maintaining their values. Or, coming back to John of the Cross, remembering the prophet Jonas he has considered the time in the prison as the time he has passed in the whale’s stomach, a time of darkness and of proof; it was the time in which he has conceived a good part of his most impressive literary work. In a letter he wrote: “At the end of your life you will be examined for your love.” With this attitude, intercultural dialogue will never be a problem.

At the end, the key could be to educate the personality, to be a personality who represents values and attitudes. In that sense, education needs models. In front of technocratic, bureaucratic and other “critic” visions of the university, this “*veritas est fortis*” could be a guideline for the education to a personality that is able to realise intercultural dialogue.

# Multiculturalism vs. Interculturalism in Educational Practices

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The question of defining what we exactly mean when we talk about “culture” is not so easy because there are so many different approaches and convictions between human groups, as well as within human groups themselves, that the answer does not appear finally to be a question of concept and knowledge. It seems in fact to be rather a question of feeling, a kind of irrational conviction helping human beings to overcome the fundamental fear they experience when facing a world which seems to overcome them. The French philosopher specialised in comparative cultural studies, Philippe d’Iribarne, raised the question if the term “culture” was well adapted to the reality described by the experience, and came to the conclusion that it remains the less inappropriate concept “to describe the lasting basis of all the important ways of living together one can observe on this planet.”<sup>1</sup>

We would therefore propose to consider culture as that mixture of values, norms and lasting traditions, which could affect as much the moral dimension of life as the taste and vision of things, which are indeed directly affecting how individuals of a particular group perceive, think, interact, behave within the group and outside, and finally make judgments about their own world and other societies. That relation to the fact of judging oneself and the other implies therefore the idea that a culture contains some elements of truth, even if many societies would not be able to define precisely what that truth implies. Larry Siedentop rightly underlined this fact in his famous *Democracy in Europe* when he wrote:

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<sup>1</sup> d’Iribarne, P., *Penser la Diversité du Monde*, Paris, Seuil, 2008, p. 159.

Few societies are good at identifying the things they take for granted. These are the things that structure their vision of the world, providing them with categories which shape their experience of fact and underpin their judgment of what is valuable. The result is that, when trying to understand ourselves, we often miss the obvious.<sup>2</sup>

The question raised here is how to help people know and understand other cultures, if they do not always understand the implication of the particular richness of their own. It is a fact today that most human societies in the world do no longer live in completely isolated territories, so that their cultures are no longer the specificity of a given society limited by closed boundaries. We live in contact with each other, more or less intensively, and therefore other cultures are part of our daily life. This is the result not only of immigration in particular industrialised countries, but as the material results of the huge change in relationship that our modern technology is developing in travelling on Earth, transforming communication systems and rebuilding relationships. The “Intercultural Dialogue” becomes therefore a way of living in our historical situation. Indeed, it becomes important in order to avoid conflict and even war, to understand that others do not vision their world as we see our own, do not follow the same values to judge similar situations, do not identify themselves as different on criteria similar to our own. There are, it seems, two approaches to define the way different cultures relate to each other in our present world: we will call them “*interculturalism*” and “*multiculturalism*.”

*Interculturalism* presents itself as a realistic approach believing and affirming that cultures should be recognised for what they are, as different and separated as the social groups to which they belong. They must be respected for what they are because they remain socially (sometimes geographically) different, but one should be able to meet them, recognise what they represent, understand the people belonging to them, dialogue with them in order to avoid any form of conflict so that the society within which they sometimes meet and the interests they separately share should be protected. The important goal to reach is what is concretely happening between the existing cultures, while trying not to intervene mutually in the life of each other.

*Multiculturalism*, on the other side, ideologically and voluntarily postulates that we live in societies which are composed of several and different cultures and/or civilisations, that they all are of equal value for human beings, that they must live together in spite of their differences, and that they can positively influence each other in their own

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<sup>2</sup> Sidentop, L., *Democracy in Europe*, London, Penguin Books, 2000, p. 81.

development and changes, because they contribute together to shaping the nature of the societies they constitute. A “multitude” always implies diversity but is still perceived as one unity. Multiculturalism suggests therefore that human beings are able to merge diversity of cultures within one society on the same territory and that the remaining existing differences can be considered as a richness for all without being denied or eliminated. Culture, in that perspective, is not only a heritage which determines what we are and what we believe, but also what individual human beings are able to build together.

But it is obvious that these two definitions or approaches are not the result of factual observations of reality, but rather a mode of defining what could be the most desirable attitudes and policies to be proposed to face the “fact of multiplicity.” When European heads of governments in Germany, France and United-Kingdom lately declared officially that “multiculturalism” failed, they were not referring to objective and scientific observations of factual reality, they simply politically declared that they did not want to accept that approach any more, even to discuss the problem of their own internal cultural diversity. An illustration of that conception was the title proposed for the 5<sup>th</sup> *Intercultural Practice Exchange*, organised by the “Platform for Intercultural Europe,” end of November 2011 in Ljubljana: “Multiculturalism is dead. Long live interculturalism!” Slovenia between old and new diversity.<sup>3</sup>

That illustrates what we would like to make obvious here. It is the way people approach and define the diversity of cultures in a given society which determines the nature of that diversity, and not the reality itself. Thus Slovenia should, according to the approach mentioned above, move to a new “diversity” just by considering its situation from an “intercultural” point of view, and no longer from a “multicultural” one. Will that objectively change reality? Obviously not! But how can we overcome that confusion?

## **I. The Main Functions of one’s own Culture in Social Life**

As we said earlier, it is not always simple and clear to define what is the character and nature of our own culture, and in what aspects it differs from that of other people. First of all, it seems obvious that a society of completely isolated human beings which developed its own way of living, like one on an isolated island, would never think that it represents an original and unique group of human beings. In their eyes and awareness, as we can imagine, their way of living is just life as it is

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<sup>3</sup> Platform for Intercultural Europe, in *Newsbulletin*, no. 3, 2011.

given by nature. The only way for the members of these groups to discover what they really are and how their way of living is really unique could only happen through an encounter with others. The long history of humanity must contain millions of these kinds of surprising discoveries, but they happened so long ago, without observing witnesses, that we have no concrete memories of what really happened.

Today, however, we are more aware of the nature of these events, first of all through the written heritage of Antiquity and the description of many different groups which met, fought, and mutually dominated each others in Antique times, but especially since the numerous discovery trips that European colonial powers organised around the world since the 15<sup>th</sup> century. But for most European societies, these discoveries happened outside, very often on the other side of the Earth, but never at home. Thus only the “others” had a different culture and different ways of living. As the practical moral philosopher would say today: human character, weaknesses and faults are like the car’s lights at night: you only see those of the others. Thus only the others were different. We, the powerful Western societies, were normal. As Montesquieu wrote in his famous *Lettres persannes*: “Comment peut-on être persan?”

Today’s European, Western and World realities function differently. Not only globalisation is bringing all people of the world to meet and know each other, but the people themselves do not seem to be definitively limited to one territory alone. Further, economic exchanges and developments force human beings to circulate, and many of them have to go and work in other places and continents. More developed areas are attracting millions of migrants so that everywhere societies and countries are slowly recomposed with new people and their social and cultural reality are transformed. Europe is certainly one of these places. So the “other” is no longer far away on his island; he has become my neighbour.

Further, the unification of Europe led to eliminate the frontiers between countries and people and the free circulation of European citizens led to a transformation of the relationship between the national territories and cultural identities. We are therefore entering an age in which old traditional national realities and separations are slowly disappearing. The “other,” who contributed by his cultural difference to make me discover who I am, is no longer a stranger, he is today a member of my own society. My own culture is no longer the only one existing in my own environment. A new question raises therefore in my own mind: how do I relate to my own culture?

In order to clarify that question, we will shortly discuss what we call “the functions of culture,” which are indeed the same as what we could



use to explain the “functions of language.” We do not pretend to propose a general theory or an objective scientific model to explain all aspects of the problem. We just want to clarify certain aspects of the relationship of individuals with the way they become aware of what their own culture is.

First of all, a culture or language has a function of *communication*. It determines the way people talk to each other and use sounds, signs, meanings, movements and attitudes so that each individual of the group understands what the others are saying and doing, and can self tell them what he wants to share. Communication uses mostly language, but there a lot of other means, as body language, sounds, music, colors, images, symbols, perfumes, etc., which participate, like the spoken language, to share and communicate with all members of the group. Of course all the means of communication change with time and the technical environment (developments of radio and television have revolutionised communication throughout the world very recently), but whatever the kind of means they used, social groups will recognise themselves in the way they understand each other and share what they say.

Secondly the language, as all non-verbal cultural communication means, becomes an instrument of *socialisation*. This represents an instrument of recognition which allows the individual to know to which group he belongs on one side, and on the other to be recognised by the group as one of its members because he is sharing the same understanding and use of the group’s cultural communication means. This process exists in all social groups: family, ethnic group, people, nation, religion, profession, political party, private clubs, etc. This process of socialisation represents one of the goals of the education systems which are supposed to transmit to the children the language, behaviour and liturgies of the group. This process leads very often to a final public event of initiation, baptism, or public confirmation of the social belonging of the individual. Similar processes are presently used very often to contribute to the integration of migrants into local societies through language learning and other local training. But a difference will always remain in the personal sentiment of “belonging” to a society, between those who have been assimilated by birth, and those who have acquired later a social recognition. A public acceptance of new members in a social group does necessarily create a full assimilation, thus the development of situation of multiculturalism.

The third impact of language and cultural belonging is the process of *identification*, which represents for the individual the growing awareness of his social *identity*. This is of course very important to find one’s own place and role within the group to which the individual belongs. But it certainly plays a more important function in a society

where multiple different groups are living together, families, professions, religions, ethnic groups, nations, etc. Of course, we are still influenced in Europe by the historical manipulations to which the notion of identity has been submitted by the nation-states. The failure of the recent initiative of the French president to revive a political interest for the “French identity” illustrates the complex evolution of the notion of cultural or political identity. If many people are still presenting themselves by mentioning their national identity (of course, passports are exclusively national!) many other aspects of life reveal other characters of individual identities which play another type of relationship among individuals within the same society. Pluralism of individual identities is indeed growing in relation to professions, education, religion, family, careers, etc., and we should recognise in it a cultural evolution of modern societies.

Finally, the fourth function of language and culture is that of *self expression*, i.e. the capacity of the individual to use his heritage to create and to manifest his own desires and goals. It comes from the capacity of individuals not only to use the acquired linguistic and cultural tools to participate in social life, but to give a new dimension to them. Needless to underline the role that literature has played in the development of languages and human knowledge in the history of societies. The written work contributes to help a civilisation to be remembered in history. Poets and writers have contributed to create the legends, myths and heroes which have given to historical cultures their own identity. The same can be said about art which, for thousand years, has contributed to slowly change the framework in which human beings were developing their cultural objects and environment. All these factors explain why cultures are not only what we inherit from our past, but what our artists and creators are building by their self expression for the future. Sure, the creators are influenced by their own cultural heritage, but the result of their work is concretely to change cultures, to contribute to create new forms of expression, new symbols of identification, to increase diversity and multiplicity, thus to contribute to the development of a future multicultural society.

## **II. The Impact of European Unification**

This is evidently a world phenomenon, but the special challenge the unification of Europe is facing in that field, is to know if, and how, the working together of the European countries, with their different languages and cultural traditions, will have an influence on what we have presented here as the four functions of cultures. Will the communicative function of languages change? Shall we admit that one or two languages only become the communicative ones for all, while

many others will remain traditional tools of identification and creativeness? Will socialisation and identity remain related to territories and conditioned by cultural majorities, or are they going to become more and more individualised and thus alter the character of our common political culture?

The nation-state structures which dominate Europe and to which we are still referring to describe the present reality do not make references directly to the functions of cultures as rapidly described above, but are using three notions which are more or less playing similar roles. We mean: “*identity*” which affirms as much the reality of the state itself as that of its members; “*nationality*” which indicates a kind of belonging to the state’s authority which decides about it; and finally the notion of “*citizenship*” which refers to an active right of participation of the individuals belonging to the state through their nationality.

In fact, the traditional thinking of the nation-states which have dominated the European political scene for the last two centuries, and because of the ideological identification of the people with the idea of nation, led to a kind of intellectually confusing merger of the three notions of identity, nationality and citizenship. Populations were identified by the nation-state ruling over them (*Le peuple français, Le peuple belge*, etc.); they were defined as “national” because they belonged to their country (*Ein Volk, ein Land, ein Führer*) and this national status gave them their citizen’s rights.

The first steps towards the unification of Europe didn’t change anything to that way of thinking. Sovereign states were signing treaties among themselves, and these states were the exclusive legal bodies acting legally according to the treaties. Political action by the citizens was accepted only within their national boundaries, never outside, because citizens had neither an “identity” nor a “nationality” outside of their dependence on a particular state. Not surprising then that one started talking more recently about the “democratic deficit” of the Union.

However, with the Treaty of Maastricht that perspective started indeed to be undermined. In establishing a “European citizenship,” the Treaty introduced the idea that it was no longer necessary to rely on the merging interdependence of the concepts of identity, nationality and citizenship. Sure, it was specifically stated that the new European citizenship should apply exclusively to those individuals who hold the nationality of one of the member states, but the very fact that a “common citizenship” was proposed, applying to “many nationalities” and with rights no longer exclusively limited to national frontiers, changed radically the traditional nationalistic way of thinking about identity and groups of human beings. If one accepts that the idea of

“citizenship” can relate to a multiplicity of “nationalities,” it becomes feasible that a multiplicity of “identities” can be envisaged under the traditional notion of “nationality.”

If one adds to this revolutionary change in the traditional way of defining the concepts of political realities, the concrete freedom of movement and establishment for all citizens of the Union, as planned by the Schengen agreement, we are indeed entering a new period of restructuring the cultural relationships of human communities throughout the whole European Union. It seems therefore obvious that in the coming decades – something which will be accentuated by external immigration and the mobility of the workforces within the Union – demands for the recognition of particular identities and minority rights (based on languages, cultures, religions, ethnicity, gender, sexual orientation, etc.) will develop even more strongly within national structures, while at the same time requests and initiatives for greater citizens’ participation at the supranational and transnational levels will contribute to accelerate changes in our ways of thinking about our own “cultural paradigm.” We thus believe that *multiculturalism* will become the European “cultural paradigm” of tomorrow?

### **III. How can Education Help to Face that Challenge?**

Once we accept the idea that a multiplicity of identities living together within one society does not contradict necessarily its unity, what are the steps to be taken so that people become prepared to live such an experience positively?<sup>4</sup> Because in spite of the factual changes that the evolution of Europe has introduced in the new “cultural paradigm,” people are not always free from values and norms inherited from the past, and certainly not conditioned to think about their own culture in terms of future creativity. Education has thus to play a specific role in this matter.

Our purpose is not to propose here possible programmes that could be introduced into the school curricula of the different European education systems, but to see what is the position of education itself in relation to general culture developments. We know that “educational practices” depend not only from proposed programmes, but more fundamentally from the structures of the educational system itself. We propose therefore to simplify somewhat our thinking in considering

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<sup>4</sup> One important contribution to that specific topic is the new book of Martinello, M., *La Démocratie Multiculturelle. Citoyenneté, Diversité, Justice Sociale*, Paris, Presses de Sciences Po., 2011.

global social, political, technical and educational developments which have affected educational systems in their overall development. There are, in our eyes, four main important revolutions, or fundamental ruptures, which happened and have radically changed the position of education in society.

The first one is of course the *invention of scripture or writing*. This implied that the content of education was no longer limited to the knowledge transmitted by earlier generations who were proposing their views of the world to the younger people (illustrated by the famous saying: one old man dying is like the burning of a library), but that education was indeed developing with the accumulation of knowledge through time, relating it directly to traditions and memories. Thus education was contributing to build up the historical development of a “culture” determining the ways people would look at their own lives and that of their society. The idea that there were “fundamental books” which were determining religious faith, morals, eternal human goals, etc. – thus establishing human cultures through time whose values could be transmitted by education, and referred to quasi eternally, would have never happened without that first fundamental human technical creation.

The second revolution, which is more institutional and political, is the *creation of schools*, i.e. the establishment, among the different structures of societies, of a particular institution whose specific function is the transmission to future generations of the acquired and accumulated knowledge that writing allowed. The responsibility of educating future generations was therefore no longer exclusively that of the parents, the families or the tribes of the children, but that of social, religious, political, military or other social powerful institutions (today the economic sector) which could create, control and maintain with their own power the educational function within society.

Many studies devoted to the history of education are indeed devoted to describe these institutions, from the most simple initiating tribal functions, to local schools, church establishments which dominated for centuries, regional or national structures and universities (private, local, national, religious, ideological, professional, etc.) to international institutions as they are developing today. Thus education as such became professionalised, but remained more or less developed according to the role of knowledge which was recognised by the cultures of that time.

It is only recently in the history of humanity that education is considered as a right for all human beings. But for centuries, the main instrument for transmitting knowledge and science to the new generations was to assemble children and youngsters in groups to whom the written, inherited wisdom was loudly “read,” based on the

manuscript books then available. The education institutions were thus mastering the content of transmission, without requiring for everyone the ability to read. It influenced, of course, the content of the cultural transmission, according to its role and situation, local education systems favouring local languages and tradition, while for centuries the church-related institution transmitted Latin as a common language for all Europe.

The power of the educational systems has been indeed transformed by the third fundamental historical revolution, which is the invention of *printing* in the 15<sup>th</sup> century. The cultural heritage of society could become available to everyone and thus no longer the privilege of the choice of the education systems. Sure, it took a few centuries until the effect of that transformation became real, because societies had first of all to decide to educate everyone and not only a privileged minority. It also permitted an easier spreading of local cultures to other territories, thus contributing to the recognition in Europe of the diversity of cultures throughout the continent.

The fourth fundamental revolution of education is now happening, which is the result of *new information technologies* and especially the development of *Internet*. It is still difficult to say what will be the real impact of that revolution, but one can well imagine that the way of learning, the access to information, and certainly the breaking of territorial conception of education systems will fundamentally change the way of conceiving education programmes and their content. The use of languages will also be affected and new concepts will certainly alter the relationship between the four functions of culture that we mentioned earlier. Which language of communication will become common? With which community will individuals identify themselves? What kind of territorial belonging will develop? How do you express yourself in another world? We cannot answer these questions yet, but it seems evident that education through “softwares” is not going to remain very traditional and cannot be imagined on the sole basis of local, ethnical or national cultural heritages.

Few elements are playing a role here. The extremely rapid development of new knowledge in sciences and technologies make it impossible to determine what should be learned to be considered up to date and thus fully qualified. Education cannot be considered as a process with a secured finality. As a consequence, the schools and education systems are progressively losing the power they had of defining the final goals of education. Education becomes therefore a kind of permanent status for everyone that can therefore no longer be controlled by the political and social powers. If each individual could therefore have a direct influence on what he or she would like to learn,

the decision in this matter will directly be influenced by the cultural dimension of individual experiences and identification.

Education and culture will therefore influence each other in the choices of individuals, and thus contribute to build a society which will consequently become more and more diversified. Multiculturalism will therefore develop in the long term, not so much because different people immigrating from external societies are joining local groups, but mainly because everyone will be forced by the development of knowledge and the multiplications of means of information and human contacts to develop his or her own way of living. If multiculturalism could be declared a failure as far as immigration is concerned by recent politicians, it is indeed beginning to succeed by the nature of our contemporary changing societies.





# **Intercultural Dialogue in Territorial Cooperation: an Education Perspective**

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My reflection on an education perspective of intercultural dialogue in territorial cooperation generates from the following key question: “How can we come to a European education policy that strengthens our human capital and provides students – of all generations – with the right skills and attitudes to take full advantage of the net-worked and interdependent world we live in?” In order to respond to this crucial question we first try to identify the European education context, distinguishing between the EU competences in education, the future outlooks for EU education and the need for an integrated EU vision on education. In a second part, the relevance of multidimensional partnerships is shown for a multi-level governance in education. The final section presents some policy proposals for the EU 2020 Strategy and assesses the role of the Committee of the Regions in this context.

## **I. European Education Context: Present and Future**

### ***A. EU Competences in Education***

I would like to briefly recall the division of competences in the field of education policy within the European Union. Education policy remains chiefly a competence of the member states. Indeed, the European Union has only supporting and coordinated competences in this field. The Bologna agreement is, of course, providing for the general European framework and its content is well known. However, I like to point out that in many member states, local and regional authorities are vested with direct responsibilities and powers in the field of education and training. They are responsible for the delivery of educational and training services, which provide a structure for lifelong

learning, through the provision of pre-school, school, youth, adult and community education services.

Local and regional authorities throughout the Union have a long and continuing historical role as initiators, pioneers, providers and enablers of educational services across the whole of the education sector. Moreover, as major employers they stand to gain directly from efforts to improve the skills of their workforce. Hence, education policy is essentially a multi-actor and multi-levelled field of competence. Therefore, its success will largely depend on joint coordination and cooperation between all private and public actors involved.

### ***B. Future Outlooks for EU Education and Training***

Second, we should ask ourselves “what kind of education and trainings will be vital for the future?” The European Council notes that education and vocational training are crucial to the EU’s ability to rise to today’s challenges. Education initiatives must include encouragement for various forms of knowledge acquisition and development so that more people can be supported more successfully.

For the Committee of the Regions of the European Union, education issues are crucial if Europe is to mobilise competitively in conditions that can safeguard welfare. Europe’s biggest asset – is its people. They must be equipped for a working life and type of work that differ significantly from those of previous generations. Therefore, effective transfer of knowledge and skills across the regions and localities of the EU through greater mobility of its citizens can help boost competitiveness and employment.

The CoR has pronounced itself on the EU’s integrated programme for lifelong learning. The CoR can endorse much of the European lifelong learning strategy, which starts in early childhood and continues all through life, and welcomes the fact that it embraces learning acquired in various ways such as formal, non-formal and informal learning. On several occasions we have emphasised that the lifelong learning strategy concerns the local and regional level closely, as it often shoulders political and economic responsibility for the education and training sector in the member states.

Access to a knowledge society is a fundamental right and a cornerstone of a “citizens’ Europe.” This concerns not only the integration of people into the labour market, but also into social, cultural and civic life. Education is crucial in combating racism and xenophobia and in imparting basic values of private, social and civic life such as solidarity, tolerance and understanding of cultural diversity.

It can also help promote the ability of people to participate in the democratic decision-making process and participation in civil society. A common thread running through our CoR opinions has been a focus on using education and training actions as a key to promoting social cohesion. Today, we can see that a large group of young people with inadequate basic education either interrupt their studies or abandon compulsory education altogether.

The CoR has consistently supported the promotion of access for disadvantaged groups to EU programmes in these fields. The issue of access is inextricably linked to a lifelong learning approach to education and training, which ensures that each individual can reach their full potential to meet the challenges of a rapidly changing world. This means ensuring maximum advantage of opportunities provided by new technologies that equip everyone with the skills they need for this digital age.

### ***C. An Integrated Vision for Education Policy in the EU***

Third question: “How to create an integrated vision for education policy, and notably how to link education better into the new EU 2020 Strategy?”

Education and training systems are very often developed in total isolation from the enterprise environment and labour market demands of a locality or region, despite the fact that the development of an area is increasingly dependent on the skills of its current and future workforce. Recently, I learned that in terms of academic publications, the European Union is actually ahead of the United States. However, when we compare the number of publications that are also commercialised afterwards, the US is clearly ahead of us. This needs to change! We have to make the so-called knowledge triangle work together as cogs in a wheel. Education, business and research cooperation should thus be stepped up so newly developed products and services could easier be commercialised and will faster find their way to the market.

Also, we know that there is a gap between the creative potential of Europe and its economic advantages. The communities of creativity and innovation are often not well connected. Very few European early stage companies using innovative technologies have grown to become global leaders in their sector. Therefore I was very pleased that 2009 was earmarked as the European year for innovation and creativity. Today, there is a clear acknowledgement of the existence of this gap and several initiatives have been taken in order to bridge it, amongst others by showing with concrete examples the value of the concepts of creativity and innovation in a number of domains, such as in schools, universities, private and public organisations.

Innovation is a chief driver and promoter of economic development in Europe's regions: after all, the creative industries sector is one of the fastest growing sectors in the global economy. Creative industries add to the welfare of European citizens in ways that go beyond the purely economic results, especially in times of change.

Creativity is the ability to find new solutions in the most varied fields of human activity and is the *sine-qua-non* of technical, cultural and social innovation. To succeed in European and global competition, regions must develop their creative potential and capacity for innovation.

Therefore, innovation and creativity furthermore provide vital tools to recover from the economic slowdown we are facing. As Francis Gurry, Director General of the World Intellectual Property Organisation put it:

Economic crises have, in the past, been a catalyst for innovation as greater emphasis is placed on improving standards of efficiency, doing more with less and identifying and developing smarter business solutions. In the current economic climate, technology, innovation and creativity are critical in creating opportunities for economic renewal and addressing pressing global issues such as climate change.<sup>1</sup>

Therefore, education is crucial in encouraging creativity and I am convinced that in this field there is scope to do better. More emphasis should be placed on early, pre-school learning and primary education for the development of basic competences, i.e. the knowledge, skills and attitudes that equip people to live and work in modern European society, and to acquire additional knowledge.

Creative problem-solving abilities and innovative thinking must be an integral part of all formal education processes. Consequently, it is obvious that there is a need to include entrepreneurship in education programmes. Together with the European Commission I have established the European Entrepreneurial Region scheme, rewarding regions that put forward a political vision on the development of an entrepreneurship culture within their region, including increased attention for entrepreneurship in education and training.

However, next to the promotion of innovation, creativity and entrepreneurship, care should also be taken to provide sufficient training in humanities and values. It is important to give the teaching of

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<sup>1</sup> See WIPO Press Release on the Global Economic Slowdown Impacts 2008 International Patent Filings, PR/2009/583, Geneva, January 27, 2009, available at: <http://www.wipo.int>.

European history and culture the attention it deserves within the education system. In this connection, we should draw particular attention to the importance of multilingualism as a prerequisite to educate truly European citizens.

## **II. Multidimensional Partnerships and Multi-level Governance in Education**

It is my conviction that through a common education policy based on shared values, we strengthen the EU integration process in educating future generations that have the capacity to truly engage in an intercultural dialogue. Of course, EU mobility programmes as the well known Erasmus programme provided thousands of students already with an unforgettable and tangible first hand experience of the EU integration process.

However, it is my opinion that the time has come to step up also the cooperation between the politicians and policy shapers themselves, and notably at the regional and local level. Through their strategically well placed position, local and regional authorities are able to promote multidimensional partnerships and networks bringing together all relevant actors, in particular bringing together the world of education and training on the one hand, and the world of work on the other – in order to develop a co-ordinated education and training, industrial and employment policy, to the benefit of the entire European Union.

In this respect we have continuously called for the promotion of multi-level governance and network-structures at EU level, in particular coordinated by local and regional authorities. These MLG-arrangements are particularly valuable in tackling the challenges of unemployment and providing an integrated approach where in many instances fragmentary approaches currently exist.

When the European Commission decided to make the European area for lifelong learning a reality, one of the practical results, which the Commission achieved in cooperation with the Committee of the Regions was “Learning Regions,” the Regional networks for lifelong learning (R3L programme), launched in April 2003 in Brussels. This is an excellent example of dissemination and development of lifelong learning in Europe. Obviously, we would welcome several other initiatives of this type that can rapidly take hold and actively contribute towards stimulating European integration at grassroots level.

Another key point concerns the further promotion of mobility in the EU. Mobility projects are extremely important for the local and regional level. It is often the small mobility projects that make a significant

impact and can advance the idea of European integration, active citizenship and intercultural dialogue between all levels of governance.

Local and regional authorities bear indeed a major responsibility for shaping and supporting the rich variety of cultures and organising cultural activities, and have a key role in promoting the development of networks in the cultural sector.

Concerning the field of culture, we have always stressed that cultural diversity is one of the defining characteristics of the European Union, a diversity that has significantly increased with the accession of twelve new member states. Accordingly, the key role of regions and cities in promoting and celebrating the culture of their communities is clear. Also regional and local authorities should highlight the socio-economic benefits that culture can bring, notably how it can help contribute to achieve the Europe 2020 Strategy goals.

### **III. Policy Proposals for the EU 2020 Strategy**

Let me conclude with some reference to the “*Europe 2020 Strategy*,” and notably its governance and relation with the EU’s cohesion policy. As Special Advisor to the European Commission for regional policy it is my task to make some concrete proposals as to how to step up ownership, coherence and partnership in these fields.

The EU 2020 Strategy is the successor of the Lisbon Strategy. The objectives of the Strategy are three-fold, i.e. stimulating smart, sustainable and inclusive growth across Europe. The strategy sets out five quantifiable headline targets to be reached by 2020. One of them concerns education; i.e. the share of early school leavers should be under 10% and at least 40% of the younger generation should have a tertiary degree by 2020. Again, I reiterate that these targets are only valid for the EU level. Consequently, these targets will have to be translated into member states so-called “*National Reform Programmes*.” In contrast to the Lisbon Strategy, these Programmes will now be submitted to the Commission together with each member state’s stability or convergence programme. This happened for the first time in April 2011, under the umbrella of the so-called “European Semester.” Hence, growth enhancing measures are carefully studied together with the budgetary picture the Commission receives of each state.

In contrast with the Lisbon Strategy, the Europe 2020 Strategy introduces also seven Flagship initiatives that will be initiated at the EU level and that are to complement member states’ actions on the ground. From an education point of view, three out of seven are of particular interest: 1) “The Digital agenda for Europe initiative” to speed up the roll-out of high speed internet and reap the benefits of the digital single

market for households, firms and education centres; 2) “An EU Agenda for new skills and jobs” to modernise labour markets and empower people by developing their skills throughout the lifecycle with a views to increase labour participation and better match labour supply and demand, including through labour mobility; and 3) the “Youth on the Move flagship” to enhance the performance of education systems and to facilitate the entry of young people to the labour market.

I would like to analyse in greater detail the “Youth on the Move flagship initiative.” The initiative was presented by the European Commission on 15 September 2010 together with a proposal for a Council recommendation on learning mobility. The same day, the Commission has launched public consultations on the future (post-2013) programmes on Lifelong learning, Youth and Erasmus Mundus.

Youth on the Move aims at helping young people to gain the knowledge, skills and experience they need to make their first job a reality. The initiative proposes twenty-eight key actions, mostly launched in 2010/2011, in the fields of lifelong learning systems, higher education (or equivalent), learning mobility, and youth employment.

Proposed actions include political, legislative and technical actions, such as: – Council recommendations on how to tackle early school leaving, and on the validation of non-formal and informal learning; – apprenticeship-type vocational training; – information websites; – a Youth on the Move card to facilitate mobility; – databases to support policy development and mutual learning; – the legislative proposals for the future programme generations; and finally – the use of European Social Funds to support the objectives of Youth on the Move.

From a cohesion point of view, it is important that the role of the European Social Funds is clearly highlighted in the Flagships. Therefore EU co-financing will help regional and local authorities to deliver on the above mentioned actions. Today, about 60% of cohesion spending is already Europe 2020-earmarked. In its 5<sup>th</sup> *Cohesion Report*, the European Commission made it very clear that this figure is likely to be stepped up as cohesion policy it to become the main instrument at EU level to help member states reaching the Europe 2020 targets. However, delivering on Europe 2020 via cohesion policy means that regions and cities have a key role to play in translating the strategy on the ground as they are both the chief co-financers and end beneficiaries of the funds.

Therefore in making a stronger link between cohesion policy and the Europe 2020 Strategy, the role of regions and cities is to be firmly stepped up and therefore the explicit recognition of multi-level governance in the regulation laying down the rules of the funds is a pre-

requisite for the success of the seven Flagships and the Strategy as a whole.

Second, also partnerships with the socio-economic and civil society actors as NGOs, universities and centres of excellence, is to be stepped up as their valuable expertise and knowledge is to be more taken into account in the development of the appropriate territorial strategies and the delivery of all seven Flagships on the ground.

In my view a kind of “cooperation-index” is to be established, measuring the degree of participative governance in the regions and the member states. The allocation of a part of the funds could then be made conditional on concrete governance and partnerships advancements. Furthermore, EU tables could name, shame or praise public authorities on a yearly basis. Excelling regions that respect the partnership governance paradigm could consequently gain a MLG-label as proposed by the European Parliament.

As from this year, the CoR will present a MLG-scoreboard measuring the degree of openness of certain key EU-policies towards the promotion of MLG and partnerships. Also, we are in the process of drafting a European Charter on Multi-level Governance together with the Congress of Local and Regional Authorities of the Council of Europe spelling out the core principles of participative governance public authorities commit themselves to respect in their decision-making process.

A European education policy based on shared values and the inclusion of innovation, creativity and entrepreneurship in the education programmes is vital to overcoming the economic downturn and the challenges this poses to each individual, the economy and society as a whole. Local and regional authorities have a strategic place in promoting this trend. Through their position, they are able to promote multidimensional partnerships and networks bringing together all relevant actors in an intercultural dialogue – even going beyond the borders of the Union – resulting in joint actions on the ground. These partnerships between different sectors and levels of decision-makers and actors are yet another example of multi-level governance that we need to bring Europe back to the fore.

In a world which has become increasingly interdependent and competitive, governments – together with socio-economic and civil society actors – at all levels of governance – have to seize opportunities together. It is vital for the European Union to be in a position to put forward, defend and flexibly adapt its unique development model in this changing “multi-polar” and “multi-actor” world that we are living in.



In my view, we have now a window of opportunities to make the case for a strong European Union, based on an intelligent system of multi-level governance, and a shared partnership culture. The contributions of the Jean Monnet Centre of Excellence at Padua University are in this respect highly valuable as it is the first centre in Europe – and the world – to put multi-level governance at the heart of its research.



## **SUBSECTION II**

### **SECTORAL APPROACHES**



# **The Regional Dimension of Educational and Intercultural Practices: a Forward-looking Multi-level Governance View of the CoR**

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## **I. Introduction to the Topic**

Over the years, the Committee of the Regions and its Forward Studies Unit have established fruitful cooperation with the University of Padua, in particular with its Interdepartmental Centre on Human Rights and its Jean Monnet Centre of Excellence. Most notably, we have been actively cooperating in the field of European governance via the CoR ateliers and conferences.

In June 2009, the CoR produced its first *White Paper on Multi-level Governance*. Immediately afterwards, a public consultation process was launched, and half a year later, a *Consultation Report on the White Paper on MLG* was produced. Both political documents were drawn up with the active and dedicated participation of several distinguished academics from the University of Padua.

The regional dimension of educational and intercultural practices can be approached in a number of ways and from a variety of perspectives. From the CoR's perspective, I would like to concentrate on the key issues of "How to develop a culture of dialogue?" and on "Education to intercultural dialogue." These issues arise from the emergence of the new paradigm of MLG, which requires proper involvement from local and regional authorities to reach this objective. Managing Europe's increasing cultural diversity in an open and interdependent world is a priority. It is also a challenge for local and regional authorities.

I propose to divide my comments into three short sections. In the first part, I identify three paradoxes which I have been observing working in this field; the second part expresses three concerns of the CoR in its developing a multi-level governance perspective in educational and

intercultural practices; and finally in the last section, I introduce three opportunities for the future, including some suggestions.

## **II. Paradoxes of Intercultural Dialogue**

I would like to start by introducing three paradoxes: 1) Intercultural dialogue is a cross-cutting component of each strategy and European policy but it suffers from a lack of visibility; 2) Intercultural dialogue preserves and enhances diversity, but the European process mainly encourages convergence (economic, social, etc.); 3) Intercultural dialogue cannot be prescribed by law, but requires strong enforcement and monitoring of fundamental rights (i.e. human, civic, economic, social and cultural rights).

These three paradoxes confirm that intercultural dialogue is a cross-cutting issue which is part of a complex system of governance based on diversity, equality and participation. This would also imply the introduction of mechanisms to activate cooperation between different levels of government and actors. Moreover intercultural dialogue and MLG contribute to the same European equation, represented by the European motto “United in diversity.” This motto is a substantial component in the shared understanding of the European cultural heritage and civilisation, and must lead to qualitative improvements in the governance system.

## **III. Concerns from the CoR’s Perspective**

Three main concerns can be distinguished from the CoR’s perspective and the priority objectives of regional and local authorities.

### ***A. The Culture of Citizenship***

It is the responsibility of all levels of government to contribute to building a culture of rights by raising citizens’ awareness of their rights. What does it mean? This culture of citizenship consists of many elements. It means *active citizenship*: it is necessary to promote direct civic participation with the aim of making an effective addition to the traditional multi-level and representative mechanism of democracy. It also means *social citizenship*: initiatives to promote social citizenship need to be strengthened at European level to serve the goal of a “social market economy” model; in that connection, measures to facilitate access to cross-border healthcare must be created. It means *civic citizenship*: it implies facilitating the free movement of EU citizens. It also means *political citizenship*: the right to complete freedom of movement in the political process, and for example encouraging European citizens to exercise their right to participate in municipal

elections in the member state in which they are resident and in European elections. It also implies *administrative citizenship*: the need to act at local and regional level, which means cutting red tape to make European citizenship rights a reality (in particular, freedom of movement) and to promote cross-border cooperation. In this respect, it is vital to support the various forms of territorial cooperation to implement projects and measures aimed at making European citizenship a reality. It finally includes *education to European citizenship*: inclusion of European citizenship in education and school programmes, including those for adults, is fundamental. It also involves the promotion of measures to inform and educate immigrants planning to acquire citizenship in a member state. This area also covers the promotion of volunteering. The 2011 Year of Volunteering might facilitate cross-cultural exchange for local and regional authorities.

### ***B. The Knowledge-based Society***

A knowledge-based strategic framework of European cooperation in education and training for local and regional authorities contains various objectives: 1) combating functional illiteracy – the CoR, for example, calls for a European definition of illiteracy, integrating the drive to combat functional illiteracy into the horizontal objectives of the EU 2020 Strategy and the strategic guidelines governing the European Social Fund; 2) promoting a European Heritage label and stimulating cultural and creative industries which generate multidisciplinary and multicultural solutions; 3) creating a vibrant European Research Area (ERA): regions and cities make a significant contribution to the creation of the ERA, through supportive programming and structural and legislative framework conditions as part of their research policies. Local and regional authorities are in favour of the idea of coordinating regional, national and EU research programmes and promotion. However, bearing in mind the subsidiarity principle, the CoR rejects the centralised planning of research and education at European level, as this is the responsibility of local and regional authorities; 4) encouraging the multi-layer approach and exploring new forms of cooperation between public institutions and the private sector in order to support new drivers of innovation in their regions; 5) promoting multilingualism through educational and cultural policies; and finally 6) emphasising a lifelong learning strategy, which is a key element in facing up to globalisation.

The knowledge triangle is a cornerstone of economic, social and territorial cohesion. It is also essential to develop the leverage effect of the single market. In the new multicultural context, citizenship must no longer be seen only in terms of protecting identity and belonging, but as a part of integration and social inclusion.

### ***C. The Partnership for Democracy and Shared Prosperity***

This new approach represents a fundamental step, a change in the EU's relationship with its neighbours based on a shared commitment to democracy, human rights, social justice, good governance and the rule of law. This new approach presents the European response to supporting change in the Southern Mediterranean. It's also an adaptation of the EU's neighbourhood policy of "an incentive-based approach." In that context, I would like to explain the local and regional dimension of the European neighbourhood policy and the role of the CoR as an active and constructive player in monitoring and influencing the ENP. The CoR closely follows the activities of the Union for the Mediterranean through the work of a political assembly called "*the Euro-Mediterranean Regional and Local Assembly*" (ARLEM), which has been granted observer status by the Union for the Mediterranean.

The institutionalisation of the local and regional dimension of the European partnership has been launched in 2011, with a "*Standing Conference of Regional and Local Authorities for the Eastern partnership*." The (CORLEAP) model has been put forward by the CoR in response to the European Commission's invitation to establish some form of local and regional assembly for Eastern Europe and the South Caucasus as an institutional platform for regular dialogue and cooperation between local and regional authorities from the EU and its partner countries in the Eastern neighbourhood.

The CoR is already involved in the multi-level dimension of the Eastern Partnership through its participation in two standing Platforms of which the CoR is a permanent member, namely the Platform 1 on democracy, good governance and stability, and the Platform 2 on contacts between people. Platform 1 has identified election issues as key areas of cooperation (i.e. legislation, code of practice, media and voter participation) and the exchange of best practices through seminars and training sessions. Platform 2 is dedicated primarily to issues such as education and research. In terms of research, this includes, for example, the "*European Digital Agenda*," higher education (including the Commission's initiatives in relation to the Bologna process), plans to boost learning mobility, and the EU 2020 flagship initiative "Youth on the move." These two platforms illustrate how the internal and external dimensions of the EU Agenda are interacting. They also present lessons learned from the past few years and shows how capacity building is a key to success for the EU's strategies and policies.

External pressures on the European Union will be increasing in this decade. Strengthening intercultural dialogue in EU neighbourhood policies is therefore crucial. The CoR's aim is to act as a catalyst in that



respect – in particular on tangible issues such as educational issues and cultural exchanges (especially with regard to minorities in terms of fostering the positive benefits of multilingualism and multiculturalism).

#### **IV. Opportunities for the Future**

In this third section I propose some EU policy suggestions.

a. Promoting interculturality and citizenship in every European strategy and policy. The European Commission's recent Report on the mid-term evaluation of the "Europe for Citizens" Programme suggests in particular the need to strengthen the policy impact of the programme for the next programming period. This involves a closer linkage with the key topics of the EU Agenda. In other words, the Programme needs to be consistent with improvements in European governance and to make the best use of synergies with other EU programmes and policies. No policy field should be exempt from engaging in intercultural dialogue. Intercultural dialogue is a key element of European added value to policy-making.

b. Strengthening the European citizens' initiative. It gives citizens the opportunity to initiate a bottom-up approach in the legislative process. Given the legal basis required for this new tool to be relevant, it could be appropriate, in the interests of citizens' participation in the European public sphere, to launch a proposal linked to intercultural dialogue, in order for example to strengthen young people's involvement in EU policies and programmes.

c. Revitalising the European Neighbourhood Policy. The European Commission is currently launching a reflection on the future implementation of the ENP and has conducted consultations to this end within the Union and with the ENP partners. The ENP strategic review will determine how the policy should evolve in the short and medium terms.

Intercultural dialogue is a European public good. Preserving and promoting it is crucial in order to achieve inclusive societies in the European Union and to be able to face up to the ever-increasing pace of transformation of our societies. In our open society, E-governance and E-participation with new media and networks, especially social networks, will necessarily change the conception, perception and management of intercultural dialogue. The local and regional authorities are well aware of this need to adapt their approach from this perspective to enable a further transformation of societies.

## **V. Suggestions**

I would like to end with a personal note and few suggestions directed not only to the students participating to the activities of the Jean Monnet Centre of Excellence of the University of Padua, but also to students throughout Europe. If Brussels is at the heart of Europe and, through the Committee of the Regions, somehow at the heart of multi-level governance, Padua is undeniably part of the Soul of Europe. This city is really the right place to develop the “European soul and identity.” My suggestions are: 1) Enjoy your stay in Padua. You must know that it’s a unique place in Europe. Italy remains an academic territory where high and deep reflection on Europe and its values are developing. It’s a heritage to preserve and develop; 2) Take advantage of this opportunity to gain experience in the interdisciplinary approach to human rights, governance, citizenship and the policy-making process. Generally speaking, the European Union is subject to a political balancing exercise requiring it to act and – all too often – to react, and we therefore need a place where we can think about our “*acquis*” and common understanding; and finally 3) be proud to be European: it is your identity, it is our “human capital.” Europe may be the Old World, but the world needs Europe and its ethics to face the phenomenon of cosmopolitanism in the context of globalisation.

# **Improving Intercultural Dialogue through Lifelong Learning and Multi-level Governance: the Experience of the European Training Foundation in the Partner Countries of the EU**

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## **I. The Importance of Intercultural Dialogue for ETF Partner Countries<sup>1,2</sup>**

Intercultural dialogue is important in our increasingly complex societies. Societies are changing rapidly. This does not only apply to countries within the European Union, but especially to the sweeping changes that are taking place in the transition and developing countries around Europe. Most of Europe's neighbours to the East are aging societies, while the neighbours to the South witness a growing young population.

Migration from partner countries to the EU has increased during the last years as people are in search of a better future; but there is also an increased migration among partner countries themselves and from partner countries towards other parts of the world. The world is getting smaller, and most neighbouring countries have been seriously affected by the current global economic crisis. New tools of information and technologies have made the information about developments in

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<sup>1</sup> ETF partner countries: Albania, Algeria, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Croatia, Egypt, Former Yugoslav Republic of Macedonia, Georgia, Iceland, Israel, Jordan, Kazakhstan, Kosovo (under UNSCR 1244), Kyrgyzstan, Lebanon, Republic of Moldova, Montenegro, Morocco, Occupied Palestinian Territory, Russia, Serbia, Syria, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine and Uzbekistan.

<sup>2</sup> Refereces for this chapter: ETF, Summary Report on *Inclusive Education in Contexts of Social and Cultural Diversity* (unpublished), 2009; ETF, *Teachers for the Future. Teacher Development for inclusive Education in the Western Balkans*, 2010.

neighbouring countries much more readily available, and the same is true for information about European developments in the neighbouring countries. The improved means of communication do not always imply an improvement of the intercultural dialogue.

In most partner countries of the ETF, different minorities have been living together over centuries. These countries have traditionally been much more culturally diverse than the nation states in Western Europe. During the past twenty years, tensions between some of these culturally, ethnically different groups or people with different religious background have increased. This has led to violent conflicts in particular in the aftermath of the break-up of the Soviet Union and Yugoslavia, but also in other countries. Two thirds of the partner countries have witnessed such conflicts or tensions to different degrees over the past twenty years, and many of these have not been resolved. At the same time, the population of ethnic or other minorities are often (though not always) exposed to socio-economic vulnerability also including a reduced access to education and labour market as well as a higher exposure to poverty which puts the social cohesion of countries under pressure. Moreover, territorial concentration of minorities being often the case endangers territorial cohesion.

As much as education and training can mitigate social differences and divisions between different groups within the population, it can also perpetuate them if not appropriately designed. The education systems in most partner countries promote a homogeneous, monolingual and monocultural image of the country, in spite of the diversity. Intercultural dialogues, social inclusion and social cohesion are not mainstreamed in education policies but often addressed on an *ad hoc* basis, both due to fragile societies from ethnic perspectives and huge rates of poverty, and limited education budgets. Many countries still use an overly limited and narrow concept of inclusive education related to bringing children and young people with special needs into education.

The key role of the education system in promoting intercultural dialogue is based on the capacity of education to teach young people their own culture as well as bring them closer to other people's cultures, nurturing respect and tolerance. Young people from different backgrounds meet each other in the education system, where they develop the key values and attitudes towards one another, and where they experience and practice intercultural dialogue. Education and training is a key vehicle for promoting respect, tolerance, interethnic dialogue, and non-discrimination. The development of intercultural competences and skills are integral part of any vision and national strategy of lifelong learning. Beyond education, intercultural dialogue

requires to be integrated into lifelong learning, particularly in societies that have witnessed traumatic conflicts.

It is the mission of ETF to help transition and developing countries to harness the potential of their human capital through the reform of education, training and labour market systems in the context of the EU's external relations policy. The ETF contributes towards the interplay between EU internal policies, the implementation of its external relations policies and the experiences of EU neighbouring partner country experiences. The ETF vision is to make vocational education and training a driver for lifelong learning and sustainable development, with a special focus on competitiveness and social cohesion.

The ETF's work on intercultural dialogue and social inclusion focuses its attention on cooperation with partner countries in the property of gender equality and equity, lifelong guidance, sustainable development and social inclusion. Inspired and guided by the EU and partner country policy frameworks and discussions, the work of the ETF is focussed on enhancing understanding of inclusive education for social cohesion as a strategic response to current human capital development challenges. Building systems and providing responses to human capital challenges which are equitable, inclusive and sustainable is both a positive indicator of human development, and has long-term benefits for society and economic and social development, thus contributing to competitiveness and well-being.

Social cohesion is an overarching concept which encompasses the full participation by all people, irrespectively of their social differences (such as gender, ethnicity, social class and disability), in economic, social and cultural life. It also ensures their participation in the decision-making which affects their lives and access to their fundamental rights.

As a response to this challenge, ETF committed itself, in its support to the Western Balkan countries (2007-2011), to emphasise how inclusive education and training can reduce social exclusion and promote social cohesion in culturally heterogeneous societies, and facilitate the development and implementation of long-term, sustainable strategic policy approaches. But also in other countries, ETF has been involved in initiatives promoting social cohesion and intercultural dialogue.

The ETF uses the following concept for inclusive education: it is a process by which a school attempts to respond to all pupils as individuals by reviewing the learning process and the curriculum and by allocating resources to enhance equality of opportunities. This means that schools increase their capacities to accept all the pupils from the local community, reducing any form of exclusion or degradation on the

basis of disability, ethnicity and obstacles that could render the school life of some children unnecessarily difficult.<sup>3</sup>

## **II. Lifelong Learning**

The link with lifelong learning goes back to the “European Year of Lifelong Learning” (1996). The themes for the European Year were aimed at making the European public more aware of lifelong learning. In that context six themes<sup>4</sup> had been identified: – the importance of a high-quality general education; promotion of vocational training leading to qualifications for all young people; – motivation of individuals to acquire education and training; – promotion of better cooperation between education and training institutions and the economic world; – raising the awareness of the social partners and parents; and – development of the European dimension of initial and continuing education and training. In sum, lifelong learning was clearly seen as a tool to support equal opportunities for Europeans citizens.

That same year the UNESCO Task Force on Education for the Twenty-first Century led by Jacques Delors<sup>5</sup> published the Report *Learning, the Treasure within*, identifying four “pillars” of education for the future: 1) Learning to know – mastering learning tools rather than acquisition of structured knowledge, which later evolved towards the learning to learn core competence; 2) Learning to do – equipping people for the types of work needed now and in the future including innovation and adaptation of learning to future work environments – which is essentially reflected in the current shift to learning outcomes; 3) Learning to live together, and with others – peacefully resolving conflict, discovering other people and their cultures, fostering community capability, individual competence and capacity, economic resilience, and social inclusion. Essentially what this article is about; and 4) Learning to be – contributing to personal development.

Beyond learning to live together, intercultural dialogue is about how to ensure that citizens feel they are fully part of society and are allowed to contribute being who they are through the development of their personal, social and economic potential. The key to intercultural dialogue therefore is to enable everybody to contribute. Intercultural dialogue can take place only when all individuals, irrespectively of their

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<sup>3</sup> ETF, Policy Brief, Teacher Development for Inclusive Education (forthcoming).

<sup>4</sup> European Parliament and Council Decision establishing 1996 as the *European Year of Lifelong Learning*, n° 95/2493/EC, 23 October 1995.

<sup>5</sup> Delors, J., *Learning: the Treasure within*, Report to UNESCO of the International Commission on Education for the Twenty-first Century, 1996.

ethnic, religious and linguistic background are guaranteed equal opportunities based on civic, economic, social and cultural entitlements.

Education can act as a vehicle for intercultural dialogue by – empowering individuals to act; – providing competences for access to the labour market and; – knowing and respecting different cultures, ethnicities and religions. The benefits of intercultural dialogue have to be real to individuals in terms of opportunities not only in terms of learning, but also in terms of better job opportunities after learning. It is clear therefore that this concept can not be linked exclusively to general education in the traditional sense, but needs to be embedded within a lifelong learning approach, focussing on the development of core competences, and on occupational competences through initial and/or continuing vocational education and training. An integrated approach within lifelong learning policies requires the appropriate forms of governance.

### **III. Multi-level Governance**

There are different approaches to governing education and training systems in every country. Contextual factors play an important role in defining which forms of governance are better fit for purpose for a particular education and training system and for governing intercultural dialogue. Intercultural dialogue cannot be established by decree, although the legal framework is part of governance.

According to the United Nations, good governance is participatory, consensus-oriented, accountable, effective and efficient, equitable and inclusive and follows the rule of law. For education, it must ensure effective management of public resources and problems responding to the critical needs of society.<sup>6</sup> Indeed good governance is the transparent and accountable management of human, natural economic and financial resources for the purposes of equitable and sustainable development.<sup>7</sup>

From the traditional centralised government models, new forms of government have emerged with authority being dispersed upwards to supranational institutions and downwards to regional and local governments. This leads to a new concept, i.e. multi-level governance. Multi-level governance can be defined as the arrangements for making binding decisions that engage a multiplicity of politically independent but otherwise interdependent actors, which can be public and private at different territorial levels through continuous processes of negotiation,

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<sup>6</sup> Derived from EuroVoc Thesaurus.

<sup>7</sup> Cotonou Partnership Agreement – Article 9.3, 2010.

deliberation and implementation, without assigning exclusive policy competences to any particular level.<sup>8</sup>

In the dynamics of multi-level government, actors at different levels are empowered to act, without a specific request from the central level. This creates simultaneous processes for decision-making and actions. The Committee of the Regions considers multi-level governance to mean coordinated action by the EU, member states and local and regional authorities based on partnership and aimed at drawing up EU policies.

Multi-level governance is a very useful concept for understanding how lifelong learning can be promoted, developed and implemented. Good governance in education implies partnerships between institutions and other stakeholders (e.g. companies, sectoral organisations, chambers of industry and commerce, government and local authorities, social partner and social groups, non-governmental organisations, parents, student organisations). These new forms of governance are often based on soft regulation, requiring further negotiation at lower levels. The open method of coordination in the EU is a good example of a tool for multi-level governance.

According to ETF,<sup>9</sup> good governance in lifelong learning should include the following four elements: 1) inclusive: enabling direct or representative participation of all stakeholders concerned; 2) multi-level: coordinated action with vertical and horizontal dimensions; 3) anticipatory: make use of knowledge of stakeholders and institutions at different levels to support policy making and vision building; and 4) attractiveness, transparency and coherence of lifelong learning systems, built on systems: that are innovative, responsive, aiming at quality enhancement and efficiency.

#### **IV. Governance in the Partner Countries**

Also in developing and transition countries, we can see a trend towards moving from centralised to multi-level governance models on issues of lifelong learning, social inclusion and intercultural dialogue. In some cases this has been part of a political post-conflict solution (e.g. Bosnia and Herzegovina, and Former Yugoslav Republic of Macedonia, Republic of Moldova, Tajikistan), but in most cases this is part of a wish

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<sup>8</sup> Elaborated from Schmitter, P., *The Future of Democracy in Europe*, Council of Europe, 2004.

<sup>9</sup> *Draft Guidance Note* in the field of Governance in Lifelong Learning (2011), unpublished.



to bring decisions on appropriate education policy implementation closer to the school level.

In practice, however, there is often a big gap between political intention, i.e. strategic and policy documents, legislation, guidelines (sometimes driven by the accession perspective) and actual practice in the field. Communication lines between policy and action level are still weak. There is often a lack of clarity in the devolution of educational responsibilities to local authorities. A big obstacle towards effective policy implementation is the lack of adequately enhanced capacities of the national institutions, the partner institutions and the professional communities. Public investment in education is under pressure due to shrinking public budgets. In general, the quality and relevance of training provision has much room for improvement and vocational education and training (VET) is often stigmatised as education for those who are unable to progress to higher education. Moreover, integration of donor-driven good “pilots” into national systemic solutions is weak – mainstreaming is the exception – and good projects often end with the departure of the funding institution.

## **V. Social cohesion issues**

Many children and young people from ethnic minorities are educationally disenfranchised – this perpetuates social segregation and impedes intercultural dialogue. This is particularly true for Roma but applies as well to other minorities. In most countries, a limited and narrow concept of inclusiveness is related to bring children in schools. There is, however, a tendency to omit prevalent linguistic and cultural issues for exclusion, equity and quality issues.

## **VI. More Attention Needed for Pedagogy, Curriculum Innovation beyond Compulsory Education**

Much of the discourse on education in terms of inclusiveness and intercultural dialogue has focussed upon issues of ethics and human rights while the discussion of efficacy and pedagogy has been given lesser attention. Analysis and action have predominantly focussed on the compulsory level of education, but little emphasis has been given to the post-compulsory level – while attitudes tend to become more negative as students get older.

Teachers are poorly prepared to work on inclusive education in the classroom and pre-service and in-service teacher training is not really informed by the analysis of the policies and practices. There is a great need to find ways of how to improve coupling evidence-policy with

enhanced capacities of research community and key stakeholders in the system.

## **VII. Key Messages from ETF Work on Social Inclusion**

Policies are an important starting point for improving intercultural dialogue. Change, however, will only happen if there is a genuine will for action. It requires education policy frameworks that are sensitive to diversity and representation of ethnic groups in shaping policies targeting the intercultural dialogue; while they provide solid ground for participative management leading to ownership, co-responsibility, shared decision-making. Policies also need to be evidence-based and include mechanisms for monitoring progress and evaluate where the gaps/barriers are so to design further action.

In order to move from intentions to action individual initiatives that aim at improving access, pedagogies and working with the community need to get better imbedded into the education system. There is a strong need for capacity enhancement and empowerment of actors at regional and local levels arising from devolution of responsibilities from central to local level.

## **VIII. Changes on the Ground Depend on Schools and Teachers**

Schools require a change in culture, policy and practice in the frame of a school development process, which should be part of a process that involves the schools as a whole, including parents. Transformation of schools into social organisations working together with learners and local community is paving ways to intercultural learning; while transformation of schools and training centres into learning organisations working together with local businesses is paving ways to social and territorial cohesion. Attention should be paid, however, to the autonomy of schools that may lead to greater segmentation.

Diversity should be recognised in the classroom and a genuine shift needs to be made from “diversity as the exception” to “diversity as a norm.” A more multi-ethnic view of schools is needed.

School leaders and teachers are potentially the most important agents of change, and need better preparation to work with children from different cultural (and socio-economic) backgrounds. The in-service teacher training, professional development and school development are inextricably linked, resulting in the school as a community of practice. It is important to work with families, not only with children and students.

For students, mobility can offer more exposure to diversity. Diversity should be brought into the academic arena to stimulate and develop dialogue. Research to map patterns of diversity, document practice and build knowledge about diversity should be stimulated.

## **IX. Examples**

ETF has been involved in initiatives to promote intercultural dialogue at local, national and cross-national levels. Subotica is a town in the North of Serbia in Voivodina. It has 150,000 inhabitants, coming from different ethnic, linguistic and religious backgrounds; they are Serbs, Hungarians, Croats, Jews, Roma and Slovaks. The town wants to use this multicultural asset for tourism. Tourism is a driver of socio-cultural change, but risk of mass tourism driven by numbers could undermine sustainable local development. Therefore there is a focus on environment, local culture and quality to maintain and strengthen local development.

ETF has also been involved with the Ukrainian platform of intercultural cities, and the EU/Council of Europe support for cultural diversity in Kosovo.

At the cross-national regional level, a multi-annual initiative has been developed for the Western Balkans and Turkey. The reform of education and training in line with the idea of inclusive education in the ETF partner countries and more specifically in the Western Balkans and Turkey is moving from the system level downwards to the institutional and individual level. Even if the countries report on the role of their VET system in promoting social inclusion (or, alternatively, reducing social exclusion) and social cohesion, only few schools are able to compensate for the multiple disadvantages experienced by students.

VET schools have been particularly slow in becoming more inclusive. Their “systemic environment” does not set appropriate external expectations, does not provide sufficient support and does not make the necessary human and financial resources available. Most of the time, even minimum levels of professional accountability are not ensured. Solutions to getting education and training systems and VET schools to be more proactive towards social inclusion are not likely to be found via “teacher-driven” processes alone. Attention is increasingly being given to the development of coherent integrative concepts covering the whole school.

Last but not least, ETF’s mandate and working methods facilitate the exchange of experience in education and training policy and practice and nurture the dialogue among stakeholders from EU member states

and partner countries towards the common goal of more cohesive and sustainable societies.

## **Conclusions**

Intercultural dialogue is an important factor for fostering and building human capital in partner countries and ensuring and promoting social cohesion. It contributes to the prosperity of countries and widens the opportunities of individuals.

Partner countries face specific challenges for intercultural dialogue. Many of them have experienced conflicts between different cultural, ethnic or religious groups. Inclusive education is seen as a marginal issue for special needs students. Education systems are promoting often a homogeneous, monolingual, mono-cultural image of the country. Fragile societies from an ethnic perspective, poverty and limited education budgets and limited capacities hamper implementation.

Intercultural dialogue requires an integrated lifelong learning approach and has to be built on multi-level governance. These concepts were first developed within the EU and consequently, partner countries can learn from the EU experiences. However, there is a need as well to contextualise these concepts to the partner countries' conditions and for cross-border learning among partner countries, as is happening in the Western Balkans and Turkey. There is a need to ensure stronger involvement of ethnic groups through multi-level governance and concrete implementation, monitoring and evaluation policies.

Existing examples show that actions are needed at local, national and cross-national levels. The school level and the role of school leaders and teachers are critical. Where possible, the required changes could be linked and integrated with wider education reforms that promote student-centred and competency-based approaches as part of a move towards modernised schools.

## **SUBSECTION III**

### **CASE STUDIES**



# **Roadmap for a Euro-Mediterranean Cross-Cultural Education: the Experience of Adyan Understanding Programme**

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## **I. Specific and General Background**

The following reflections are the outcome of a two year experience in the cross-cultural research, education and communication domain joining different partners from the Euro-Mediterranean region, led by Adyan Foundation and entitled Adyan Understanding Programme (AUP). The approach of the experience can be described as integrative since it combined different actors in cross-cultural education: in terms of region (actors from Europe and the Arab world), in terms of institutions (civil society, academic institutions and international and governmental organisations) and in terms of educational role (researchers, policy makers, teachers and students).

The experience was also multidimensional, combining different components: a research on the themes of “Christian diversity in the Middle East,” “Muslim diversity in Europe” and “Intercultural and Interreligious dialogue,” an online course entitled “Diversity and Intercultural Dialogue” based on interactive and co-operative learning joining youth (university students) and teachers from European and Arab countries and then joining them face-to-face with intercultural and interreligious actors from civil society and religious leaders; and finally, an International Conference on Cross-Cultural Education bringing together forty-four speakers from twenty-one Arab and European countries, that was concluded with recommendations on “cross-cultural education and better Euro-Arab understanding.”

## **A. Rationale**

The relevance of this experience is based on both its rationale and the context it was developed in. On the level of the rationale, it is based on the fact that pluralism and multicultural interactivity have grown faster than the ability of people to manage diversity. One would think that, in decades where internet, satellite TV and social media are widely available, people would have better knowledge concerning other places, other cultures, and other visions of the world. Yet, in reality, the case is rarely so. In general, we find confinement in single-minded thought, prejudices and misconceptions, negative feelings between people of different cultural backgrounds, misrepresentation of facts on behalf of opinion-leaders, leading not only to tensions in the public opinion, but also to wrong decisions and inaccurate strategies and policies.

The Lebanese renowned thinker Amin Maalouf, states:

When we look at to the reality of mutual perceptions, the problem of trust between people of the North and South of the Mediterranean has been developing and increasing over the last decades. It is connected to the real issues which need to be resolved and with a negative perception of the 'other'. For a significant improvement to take place over the coming years and decades, we must focus on resolving the problems through a balanced and sustainable solution for the Middle East crisis, and work tirelessly to change perceptions and mentalities.<sup>1</sup>

In his introduction to the Anna Lindh Report *Euro-Med Intercultural trends 2010*, Andreu Claret, Executive director of the Anna Lindh Foundation also asserts that:

Among the results we took from the survey emerged with a special vigor the confirmation that our societies are victims of the 'clash of ignorance' previously mentioned by the High level group of scholars who were the founding fathers of the Anna Lindh foundation. In fact, even if such common values are likely to be shared, the discernment of our concept of the 'others' and the values attributed to them are misleading and are at the root of many difficulties encountered by any dialogue strategy. On both shores of the Mediterranean, we do not perceive the 'others' as they perceive themselves, but only as we imagine them, distorted by a prism that encloses them in a stereotyped vision.<sup>2</sup>

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<sup>1</sup> Maalouf, A., "Identity and Mutual Perceptions," in *EuroMed Intercultural Trends 2010, The Anna Lindh Report*, p. 53.

<sup>2</sup> Claret, A., "The Making of the Report," in *EuroMed Intercultural Trends 2010, op. cit.*, p. 17.



As the Unesco Report *Investing in cultural diversity and intercultural dialogue* (2009) puts it, there is a cultural illiteracy that should be dealt with. The conclusion of this UNESCO report affirms:

In a globalised world in which the contacts between cultures are expanding rapidly, it is necessary to combat the spread of cultural illiteracy. Indeed, the ability to accept cultural differences, to welcome them without being unsettled by them, calls for intercultural competencies that some societies have learned to develop in particular contexts but which can sometimes appear sorely lacking at the individual level. Helping to equip individuals or groups with the tools they need to manage cultural diversity more effectively should be the new concern of public and private decision-makers. Intercultural dialogue should ensure equality between all stakeholders in society.<sup>3</sup>

The problems raised from cultural illiteracy also stem from a lack in autonomy and critical thinking among individuals, and the quasi-absence of spaces of intercultural interactivity, dialogue and sharing ideas. In matters related to the religious dimension of cultures, the reductionist and superficial knowledge about the other religions and beliefs as well as the personal religion and/or belief can be mainly traced back to two causes: the predominance of the traditional channels in the transmission of religious heritage on the one hand, and the radical secularism on the other. They make that questions related to religion are often treated in the public opinion and the media in a superficial way.

The Recommendation of the Council of Europe entitled *Dimension of religions and non-religious convictions within intercultural education* postulates that:

Students should have information on and knowledge of religious and non-religious convictions, which influence the behaviour of individuals in public life, in order to develop tolerance as well as mutual understanding and trust.<sup>4</sup>

Thus, a cultural literacy is needed and a certain degree of “cognitive mobility” is required to understand persons and issues in different cultural frameworks, and to build communication. This cognitive mobility, combined with cultural literacy, leads to the understanding of the other as well as the deeper understanding of oneself, for it takes into

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<sup>3</sup> UNESCO Report 2009, *Investing in Cultural Diversity and Intercultural Dialogue*, pp. 254-255.

<sup>4</sup> Committee of Ministers, *Dimension of Religions and Non-religious Convictions within Intercultural Education*, Recommendation CM/Rec (2008) 12 and *Explanatory Memorandum*, 10 December 2008, Council of Europe Publishing, Strasbourg, 2009, p. 10.

consideration the learning not only of “how” each one thinks and perceives things but also “why” each one, the other and the self, thinks and perceives the way they do. For according to Edward Said:

All knowledge that is about human society, and not about the natural world, is historical knowledge, and therefore rests upon judgment and interpretation. This is not to say that facts or data are nonexistent, but that facts get their importance from what is made of them in interpretation [...]for interpretations depend very much on who the interpreter is, who he or she is addressing, what his or her purpose is, at what historical moment the interpretation takes place.<sup>5</sup>

## **B. Context**

The introduction of the Barcelona Declaration, adopted at the Euro-Mediterranean Conference in 1995, stresses the strategic importance of the unity of the Mediterranean space. It confirms that its adoptees are “moved by the will to give their future relations a new dimension, based on comprehensive cooperation and solidarity, in keeping with the privileged nature of the links forged by neighbourhood and history;” and that they are “resolved to establish to that end a multilateral and lasting framework of relations based on a spirit of partnership, with due regard for the characteristics, values and distinguishing features peculiar to each of the participants.”<sup>6</sup>

Since that time, few initiatives were taken and rare were the policies adopted on the cultural level of the Mediterranean space. Hence, the Anna Lindh 2010 Report created a major advancement in public awareness of the Euro-Med process, as Andreu Claret puts in the foreword entitled “*The making of the Report*”: “With the Anna Lindh Report 2010, it is indeed the very first time since the 1995 launch of the Barcelona process that its human and cultural dimension is comprehensively investigated.”<sup>7</sup> Former secretary general of the League of Arab States, Amre Moussa, maintains in the foreword to the same report that: “Viewed as one geographical space, the ‘Euro-Mediterranean’ region needs to bring closer the existing cultures and civilisations based on the belief in cultural diversity.”<sup>8</sup>

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<sup>5</sup> Said, E., *Covering Islam: How the Media and the Experts Determine How We See the Rest of the World*, New York, Vintage, 1997.

<sup>6</sup> *Barcelona Declaration*, adopted at the Euro-Mediterranean Conference, November 1995.

<sup>7</sup> Claret, A., “The Making of the Report,” *op. cit.*, p. 16.

<sup>8</sup> Moussa, A., “Perspectives,” in *EuroMed Intercultural Trends 2010*, *op. cit.*, p. 8.

Amongst the effects of the Report, as the conclusion articulates it, is that it:

goes beyond the ‘North-South’ or ‘West-Islam’ traditional divides, revealing the existence of a Region with shared Mediterranean values and demonstrating that it is possible to draw interesting comparisons and connections across its countries thanks to the interaction of the various similarities and differences which characterise this space.”<sup>9</sup>

Another of its effects is that the questions of its poll indirectly induce in the minds of the people who were questioned and the readers of the Report the awareness of commonalities in the Euro-Mediterranean region, as well as the internal diversity within each region and religion, allowing thus to go beyond the stereotypes. The Report also confirms the importance of having projects combining Euro-Mediterranean partners and stakeholders.

Experience in such projects proves the accuracy of the Euro-Med and ALF vision, for an initiative or project cannot be called intercultural of cross-cultural if its designers and implementers belong to one culture only, even if they deal with intercultural issues. This is why, in the forward of the ALF Report, André Azoulay, President of ALF advances that:

The report will help political leaders reassessing and addressing more directly political questions by leveraging the opportunities for developing a common project based on shared values, true reciprocity, real co-governance and co-ownership.<sup>10</sup>

Along the same lines, the United Nations’ Alliance of Civilisations has promoted the Alliance’s regional strategy on Intercultural Dialogue and Cooperation in the Mediterranean in 2010. This regional strategy aims at promoting the Alliance’s mission in the different countries of the Mediterranean and also intends to “reinforce a dynamic partnership among all relevant international and regional organisations and stakeholders, particularly the Union for the Mediterranean” (article 9), adding that:

This strategy focuses specifically on intercultural dialogue and cooperation by taking into account the various relevant ongoing initiatives, in particular

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<sup>9</sup> EuroMed Intercultural Trends 2010, *op. cit.*, p. 134.

<sup>10</sup> Azoulay, A., “Foweword,” *ibidem*, p. 5.

those carried out in the framework of the Euro-Mediterranean Partnership such as the Barcelona Process. (Article 13)<sup>11</sup>

In fact, in the Recommendations about cross-cultural education for better Euro-Arab mutual understanding that the participants of the Adyan International Conference on Cross-Cultural Education came up with, amongst the proposed strategies and policies, “the necessity of enhancing intercultural dialogue and initiatives on an equal basis and through equal partnership between Europe and the Arab world.”<sup>12</sup>

## **II. Privileged Spaces for Intercultural Education and Communication**

Most of the recent declarations concerning intercultural dialogue and relations in the last two decades stress the importance of three elements: youth education, new media and the creation of spaces of encounter. The concept paper of the UNAOC Doha Pre-Forum (May 2011) states, for example, in its point 3:

The main four fields of action of the UNAOC are education, youth, media and migration. As an action driven initiative, the Alliance promotes and/or supports innovative projects in these four areas that aim at developing and implementing a paradigm of mutual respect between civilisations and cultures that contributes to avoid further deterioration of relations between communities and nations, in particular between Muslim and the so-called Western societies, which could threaten international stability, security, peace and development.<sup>13</sup>

The Conclusion of the Anna Lindh 2010 Report says in this regard:

The report also confirms that encountering other people is the best source for a non-biased knowledge, despite geographical distance, and this is the reason why the Anna Lindh Foundation fervently advocates in favour of bringing people from different countries and cultural backgrounds and supports the development of virtual communities for dialogue.

The conclusion adds more specifically: “From the Anna Lindh study it emerges that online media is a primary tool, especially for youth in the

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<sup>11</sup> The Alliance of Civilizations’ Regional Strategy on Intercultural Dialogue and Cooperation for the Mediterranean, adopted at the First Alliance for Civilizations’ Regional Meeting for the Mediterranean, 9 November 2010, La Valletta.

<sup>12</sup> <http://www.understandingprogram.net>.

<sup>13</sup> Connecting the UNAOC’s mission and the MDG: *an Agenda for Collaborative Action, Concept Paper*, United Nations Alliance for Civilisation, 3-4 May 2011.

southern and eastern Mediterranean countries, to encounter Europeans and have access to information.”<sup>14</sup>

Yet the establishment of virtual communities joining youth from different cultural backgrounds has to be carefully designed and studied, for according to Rym Ali, new media “can either play a constructive role or can consolidate prejudices. In this case media not only reflect perceptions, but go on to perpetuate or reinforce these perceptions.”<sup>15</sup>

The Adyan Understanding Programme experience showed that academic courses based on ICT, in other words e-courses joining together students from different universities, different countries and different cultural backgrounds, and designed and taught by teachers from those same different universities and countries, proved to be an ideal online space for real knowledge and the overcoming of stereotypes. It combines in a unique framework the three designated primary spaces for intercultural dialogue: youth education, new media and technologies and spaces for encounters.

From the evaluations of students and teachers, it appeared that this e-course was experienced as a safe environment where students were able to express themselves freely, listen to each other, learn from each other and develop social constructiveness. That space also allowed them to overcome the tensions in intercultural communication, to gradually abandon stereotypes and prejudices, to discover the complexity and richness of realities, and to develop the sense of respect and curiosity towards otherness.

Based on similar experiences, the “Recommendations about cross-cultural education for better Euro-Arab mutual understanding” of the Adyan International Conference on Cross-Cultural Education highlight the “online learning as a framework to deal with intercultural competences,” as they “advocate among universities the inclusion of intercultural e-courses.” Yet they stress on:

the importance of subject selection and analysis, the ‘modelling of proper methods of research and investigation’, and the importance of providing resources that are ‘inclusive, fair and respectful’ as well as using ‘an understandable lexicon’ where the words or expressions specific to each culture or religions are clearly explained.<sup>16</sup>

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<sup>14</sup> Anna Lindh Foundation, *Euro-Med Intercultural Trends 2010. The Anna Lindh Report*, 2010, available at: <http://www.euromedalex.org>.

<sup>15</sup> Ali, R., “Mutual Empathy against Ignorance and Misunderstanding,” in *EuroMed Intercultural Trends 2010, op. cit.*, p. 96.

<sup>16</sup> *Recommendations on Cross-Cultural Education for Better Euro-Arab Mutual Understanding and Peace building*, adopted at the International Conference on

Furthermore, the reason behind the effectiveness of cross-culturally implemented e-courses lies not only in the fact that they can provide studied and well designed virtual places for encounter, enriched with carefully crafted resources, but also in the fact that ICT permits fashioning courses that are learner-centred, allowing the development of learner's communication and cross-cultural analysis skills besides providing information through interactive online resources and additional resources. The courses are therefore structured in a way to develop learner-content interaction and learner-learner interaction. In other words, these e-courses are not based on video-conferences, but are mainly based on reflective fora, discussion fora, interactive exercises, and dialogue with invited speakers, group projects, etc. In all these activities, the teacher plays the role of facilitator, providing throughout the course a safe environment for learners to reflect and share their thoughts, helping in stimulating and redirecting discussions and reflections and providing new information related to the students' reflections and questions.

This is why, among the recommendations of the Adyan Cross-Cultural Education conference, the participants highlighted the importance of "the role of a teacher as facilitator, i.e. not only a provider of information but as a guide throughout the course discussions," allowing students to think with each other, as well as the importance of "the promotion of critical thinking among the students and most importantly the ability of self-critique."<sup>17</sup>

The students' evaluations can give an idea of the effectiveness of transforming ICT into an educational virtual space for youth. Here are some examples:

The opportunity of an online learning experience was just amazing.

This experience was valuable for me in many ways. I particularly enjoyed the wealth of new information I was exposed to, and even more so, I appreciated the challenge of being required to reflect on the course material, as the activities succeeded to stimulate my mind.

The opportunity to freely express our opinions via the course's assignments and activities (there is no correct or wrong answer, as long as we can backup our opinions and answers by facts) and the encouragement to interact with and listen to other student's opinion which teaches us all to respect each

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Cross-Cultural Education organised by Adyan Foundation in collaboration with Anna Lindh Foundation, Konrad Adenauer Foundation and Notre Dame University, on June 2-3 2011, Lebanon, available at: <http://www.adyanonline.net>.

<sup>17</sup> *Ibidem*, p. 2.

others' opinions and be able to have a civilized conversation regardless of our origins, race, or religion.

I finally had the place for a real dialogue with people. It would not be possible without the material (TTRs,<sup>18</sup> additional readings), because based on the knowledge we had and we gained, we also had a good field for fruitful discussions.

This course was definitely an eye-opening experience for me. I learned that matters are not black and white, that change is possible and that our world is extremely rich with diversity. I learned that diversity is not a disease, but rather a blessing<sup>19</sup> that we must learn to cultivate through dialogue and understanding.

Finally, such initiatives do not only touch students, transforming them into “intercultural intellectuals” but also touch university teachers who get the chance to work together in joint intercultural research and in the experience of teaching together within an intercultural and international team.

### **III. Integrative Approach for Social Constructiveness and Responsibility**

The Article 4.3.3 of the “*White Paper on Intercultural Dialogue. Living Together As Equals in Dignity*” by the Council of Europe states that:

As the Steering Committee on Higher Education and Research suggests, the university is ideally defined precisely by its universality – its commitment to open-mindedness and openness to the world, founded on enlightenment values. The university thus has great potential to engender ‘intercultural intellectuals’ who can play an active role in the public sphere. This needs to be assisted by scholarly research on intercultural learning, to address the aspects of ‘learning to live together’ and cultural diversity in all teaching activities.<sup>20</sup>

Working with universities can thus help in promoting a strategy for the “academia social responsibility” among partner universities. It refers to the crucial role and responsibility of universities in preparing young generations of students to live, work and interact in a global

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<sup>18</sup> Online interactive Teaching and training resources.

<sup>19</sup> To access all students' feedbacks, please visit <http://www.adyanonline.net>, section Courses/Understanding Program.

<sup>20</sup> Council of Europe, *White Paper on Intercultural Dialogue, Living Together as Equals in Dignity*, Strasbourg, Council of Europe, 2008, p. 31, launched by the Council of Europe Ministers of Foreign Affairs at their 118<sup>th</sup> Ministerial Session.

multicultural world in a positive way. Students, who represent the future opinion leaders and policy makers, ought to be equipped by their academic studies with skills for cross-cultural understanding and analysis, so that they can build their opinion and contribute in building others' opinions based on both objective knowledge and empathy, instead of stereotypes and prejudices.

This is why, among the recommendations of the Adyan Cross-Cultural Education Conference, the participants stressed on the importance of "integrating cross-cultural education everywhere, not only in multicultural places," and voiced a need to "integrate studies about the rest of the world in Arab education curricula," to "integrate a multicultural dimension in all education curricula," and to "include intercultural activities in universities."<sup>21</sup>

Yet academic education is not the only form of effective education nowadays, for non-formal education is also playing an important role in the Euro-Mediterranean region. In the section on "Partnership in social, cultural and human affairs: Developing human resources, promoting understanding between cultures and exchanges between civil societies" of the Barcelona Declaration (1995), participants "stress the essential nature of the development of human resources, both as regards the education and training of young people in particular and in the area of culture." They also "recognise the essential contribution civil society can make in the process of development of the Euro-Mediterranean partnership and as an essential factor for greater understanding and closeness between peoples."<sup>22</sup> The White Paper on Intercultural dialogue affirms also that: "Non-formal learning outside schools and universities, particularly in youth work and all forms of voluntary and civic services, plays an equally prominent role."<sup>23</sup>

Even though, formal and non-formal education have different protagonists and methods, one should not oppose these two approaches. On the contrary, we believe that the relationship between them should be strengthened. More encounters and spaces of sharing should be proposed in order to "collect, evaluate and disseminate good practices to all relevant stakeholders and actors" as appears in the conclusion of the Education and Intercultural Learning Seminar of the ALF education initiative held in Cairo in December 2010.<sup>24</sup>

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<sup>21</sup> Recommendations on Cross-Cultural Education, *op. cit.*, p. 1.

<sup>22</sup> Barcelona Declaration, *op. cit.*

<sup>23</sup> White Paper on Intercultural Dialogue, *op. cit.*, p. 31.

<sup>24</sup> See the Anna Lindh Foundation website, <http://www.euromedalex.org>



The importance of joint collaboration and interaction between civil society organisations (CSOs) and academia is based on the complementarity of both approaches and on the significance of bridging between field experiences and academic theories in this specific domain. For our societies, and most specifically the CSOs, are the labs of humanities and social sciences of today. The UNAOC pre-forum held in Doha in May 2011 joining 190 participants from eighty countries, mainly from CSOs, was aimed at emphasising the role of CSOs in policy making, highlighting both their accomplishments in the field of intercultural communication and non-formal education, as well as their input in the shaping of history in the Arab revolutions.<sup>25</sup> Fethi Mansouri, Tunisian expert on citizenship, globalisation and social networking underlines in a recent article the role of civil society in the Tunisian and Egyptian revolutions and concludes that:

What happened in Tunisia and Egypt is nothing short of a seismic change in the political landscape of the region and the local political dynamics. These historical events refute once and for all the well rehearsed Western argument that the Arab people are incapable of achieving genuine political change through peaceful revolutionary means. Civil revolutions, we were told, are not likely to occur in the Arab world because the political culture there was not conducive to the emergence of vibrant civil societies as argued by Max Weber.<sup>26</sup>

In other words, civil society in the Arab world has developed in a way that makes CSOs a major stakeholder in public opinion-making through all the work they have been doing on the ground, whether in development or in non-formal education. Be it in Europe where CSOs have a longer history of effective action or in the Arab world, “policy makers and academicians should value the experience of centres and programmes working at a grass root level in the area of cross-cultural education” as stated in the Recommendations about cross-cultural education for better Euro-Arab mutual understanding of the Adyan International Conference on Cross-Cultural Education.<sup>27</sup>

This conference itself joined academicians, theologians, civil society representatives and non-formal educators, along with policy makers and representatives of international organisations. From the sharing of good practices, it appeared that academia can gain from integrating some of the methodologies used in non-formal education in its learning approach. The recommendations assert for instance that academia can

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<sup>25</sup> See <http://www.qatar4unaoc.org>.

<sup>26</sup> <http://www.theglobalexperts.org>.

<sup>27</sup> Recommendations on Cross-Cultural Education, *op. cit.*, p. 2.

learn from non-formal education's "alternative approaches" as well as "cross-generational and cross-sensorial approaches," to be able to reach out more to students. Non-formal approaches, on the other hand, do gain from research provided by the academic field to strengthen and deepen their work. Furthermore, the experience sharing and common reflection allowed academic researchers and theologians to realise the benefit of "articulating grassroots experience and theological elaboration," making thus the internal religious reflection to gain from the experience of societies in the field of interreligious and intercultural relations, while taking into account the transformations happening in our societies.

#### **IV. The Religious Dimension in Cross-cultural Education**

If the concept of intercultural education can be considered relatively old nowadays, starting with the 1954 *Cultural Convention* of the Council of Europe, the call for inclusion of religious dimension in intercultural education and communication is only a decade old. As of 2001, it starts appearing in UN resolutions as in the Article 4 of UN Res. 56/6 (21 November 2001) *Global Agenda for Dialogue among Civilisations* calling for: "enhancing mutual understanding and knowledge among different social groups, cultures and civilisations in various areas, including culture, religion, education, information, science and technology."<sup>28</sup> The Conclusion of ALF Report also asserts that:

In the Euro-Mediterranean region, religion is a crucial factor in the relations and perceptions between people of different countries, and one of the major challenges to deal with relates to understanding the different approaches to religious values and practices.<sup>29</sup>

Similarly, the Toledo guiding principles (2007) – although dedicated to the teaching of religions in schools – affirm in conclusion that: "Knowledge about religions and beliefs has the valuable potential of reducing conflicts that are based on lack of understanding for others' beliefs and of encouraging respect for their rights." The Toledo guiding principles also add that:

Teaching about religions and beliefs is most effective when combined with efforts to instil respect for the rights of others, even when there is disagreement about religions or beliefs. The right to freedom of religion or

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<sup>28</sup> United Nations General Assembly, *Global Agenda for Dialogue among Civilizations*, A/RES/56/6, 21 November 2001.

<sup>29</sup> EuroMed Intercultural Trends 2010, *op. cit.*, p. 135.

belief is a universal right and carries with it an obligation to protect the rights of others, including respect for the dignity of all human beings.<sup>30</sup>

The above quoted conclusions clearly show that there is a relation between learning about cultural and religious diversity and responsible citizenship. Likewise, the PACE (Parliamentary Assembly of the Council of Europe), in the Article 1 of its recommendation 1720 (2005) asserts:

The parliamentary Assembly forcefully reaffirms that each person's religion, including the option of having no religion, is a strictly personal matter. However, this is not inconsistent with the view that a good general knowledge of religions and the resulting sense of tolerance are essential to the exercise of democratic citizenship.

The PACE adds in Article 5: "*Politics and religion should be kept apart. However, democracy and religion should not be incompatible.*"<sup>31</sup>

A cross-cultural youth education, tackling religions and beliefs of people in the Euro-Mediterranean region can thus be an important milestone for future generations of Euro-Mediterranean citizens who take into account the other and who ensure the respect of the right of others, especially if others are considered "minorities" in their respective countries. This is even more important nowadays with the increasing mobility and migration movements, and with current changes in the Arab countries. The Recommendations of the Adyan Cross-Cultural Education Conference add that "studying human rights and social justice" must be included in cross-cultural and interreligious education.

Yet the success of including teaching about religions and beliefs in cross-cultural and intercultural learning depends on how these questions are approached. The Recommendation of the Council of Europe entitled the "*Dimension of religions and non-religious convictions within intercultural education*" sheds some light on how these issues should be tackled. In Article 3, the recommendations advance that:

Religions and non-religious convictions are diverse and complex phenomena; they are not monolithic. In addition, people hold religious and non-religious beliefs to varying degrees, and for different reasons. For some, these convictions are essential and may be a matter of choice, for others they are subsidiary and may be a matter of historical circumstances. The dimension of religions and non-religious convictions within intercultural

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<sup>30</sup> Toledo Guiding Principles on *Teaching About Religions and Beliefs in Public Schools* (prepared by the ODIHR advisory council of experts on freedom of religion or belief), OSCE/ODIHR, Warsaw, 2007, p. 14.

<sup>31</sup> Parliament Assembly of the Council of Europe, *Education and Religion*, Recommendation 1720 (2005), 4 October 2005.

education should therefore reflect this diversity and complexity at the local, regional and international levels.<sup>32</sup>

Among the principles of taking into account the dimension of religions and non-religious convictions in the framework of intercultural education (Article 4), the same recommendation stresses on the importance of an “agreement that religions and non-religious convictions are at least ‘cultural facts’ that contribute, along with other elements, such as language and historical and cultural traditions, to social and individual life.”<sup>33</sup>

Studying religions and beliefs in a contextual approach as cultural facts, placing them in the framework of different cultures and highlighting the reciprocal influence of beliefs on cultures and of cultures on beliefs, allows thus a deeper comprehension and analysis of both cultures and religions or non-religious convictions. Likewise, this approach allows taking into account the multi-perspective and multi-layered dimensions of both cultures and beliefs. This kind of cultural approach to belief issues also saves from generalisations, reductionism and allows deeper contextual analysis.

This approach should be strengthened by a historical approach that permits putting things into perspective. Among the PACE recommendations, we find for instance in Article 7 that “understanding the history of political conflicts in the name of religion is essential.”<sup>34</sup> The Recommendations of the Adyan Cross-Cultural conference also highlight the importance of history, stating that it is essential to “study the history of relations between cultures and religions and the history of mutual perception” but also to “study the history of good practices of religions in resolving conflict as well as the important texts and initiatives in interreligious and intercultural rapprochement.” The recommendations also stress the value of “studying compared history,” echoing Rym Ali who advocates that “Arab scholar’s work should be made available to Western scholars and students, and should serve as the bedrock for further studies,”<sup>35</sup> going on to give a more specific example of including Amin Maalouf’s book on *The Crusades through Arab eyes* to European students. Yet the recommendations of the Adyan

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<sup>32</sup> Committee of Ministers, *Dimension of religions and non-religious convictions within intercultural education*, Recommendation CM/Rec (2008) 12 and explanatory memorandum, 10 December 2008, Council of Europe Publishing, Strasbourg, 2009, p. 9.

<sup>33</sup> *Ibidem*, p. 10.

<sup>34</sup> Parliament Assembly of the Council of Europe, *Education and Religion*, *op. cit.*

<sup>35</sup> Ali, R. “Mutual Empathy,” *op. cit.*, p. 97.

Cross-Cultural education conference add that in order to achieve true understanding it is important “not only to include religions – as cultural facts – in education on cultural diversity but also to tackle the spiritual experience in religions.”<sup>36</sup>

In brief, projects dealing with cross-cultural education and including education on religions and beliefs should be able to take into account two dimensions of the problematic: the individual (perceptions, source of information, and lack of space to meet the other, etc.) and the socio-political and historical context influencing reception, perception, memory and interpretation. These projects gain by adopting a cross-cultural approach, implying a methodology presenting objective information (facts), with a space given to interpretation of facts and subjective views.

This approach differs from the inter-cultural methodology, where two subjective cultural visions are placed next to each other and a dialogue is created between them; for a cross-cultural methodology can include the intercultural aspect but adds to it an objective dimension: it not only produces a learning of different cultural points of view placed *vis-à-vis* each other, but crosses them, producing interaction, and identifying the common as well as a diverging points. This methodology is thus reflective and analytical, allowing not only the understanding of the other’s point of view, but also deepening the understanding of one’s own point of view, by understanding the cultural framework that these points of views were built upon.

The relational experience between Christians and Muslims in Lebanon can be taken here as an example for it teaches that:

A real encounter and dialogue has to take into account the psycho-sociological and historical aspects that haunt both parties in order to really achieve a mutual understanding and a firm ground for advancing. Both parties in dialogue assert their need for recognition from the other. Most of the time they think they need religious recognition, but if one looks more closely, it appears that what they need is that the other learn about and recognise their suffering, past and present [...]. The aim is not only to humanize the other, but to humanize oneself when each side takes [...] responsibility of all the harm each has done to the other. By doing that both sides can achieve a common social and spiritual solidarity that takes into account each side’s view of history, each side’s fear, hesitation and crises

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<sup>36</sup> Recommendations on Cross-Cultural Education, *op. cit.*, p. 2.

on the level of identity, and of course each side's dream for a better future, in order to build it together.<sup>37</sup>

Finally, the recommendations of the Adyan Conference on Cross-Cultural Education point out the necessity of widening the range of dialogue and cross-cultural communication partners beyond the sphere of academicians and politically correct discourse. They call for accepting the adventure of including or inviting people from other spheres with more radical discourse or attitudes.

## **V. Conclusion**

Opening the Adyan Cross-Cultural Education Conference, Fadi Daou says:

It's not insignificant that the first edition of the International Conference on Cross-Cultural Education is being held in Lebanon. Our country may perfectly represent this paradox of risk and opportunity that diversity is [...] Lebanon can be a privileged place and model of coexistence and understanding as far as its people and policy makers assume the responsibility of making from the differences a reconciled diversity within a common civilisational project.<sup>38</sup>

What he advances on Lebanon can be true in any place. Assuming the responsibility of "making from differences a reconciled diversity with a common civilisational project," rests on the responsibility of knowing challenges, taking them into account and facing them. On the Mediterranean level, cross-cultural education, with all its complexity as presented above, should be considered one of the primary means to make from this space a civilisational project. Experiences as well as studies strongly confirm this assertion. Policies, budgets and projects should be following. Thus, we hope that this paper can help in showing one of the possible itineraries to reach the aimed destination.

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<sup>37</sup> Tabbara, N., "The context of Christian-Muslim Encounter in Lebanon and the Near East: a Muslim perspective," in *Christianity and Islam in the Context of Contemporary Culture*, UNESCO Section for intercultural dialogue, Saint Petersburg, Beirut, 2009, p. 91.

<sup>38</sup> Fadi Daou's Opening Speech, International Conference on Cross-Cultural Education, available at: <http://www.adyanonline.net>.

# **Education and Citizenship: a Good Practice from the Region of Veneto**

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## **I. Context**

Training at the Interdepartmental Centre on human rights and the rights of peoples and related to citizenship education and human rights, has always been characterised by cooperation with the Regional School Office of the Veneto and the Ministry of Education. Its major objective was to meet the need for teacher education of the Region of Veneto recognising the urge for implementing demands of international human rights education, especially in the light of the regional legislation on the subject, i.e. the Law 55 of the Region of Veneto, as specified by the Memorandum of Understanding between the Centre on Human Rights and the Office of the Regional Education Centre of the Veneto (14/02/2008). Human rights education is, in fact, in addition to a formal request for international policy choices, especially in Europe, increasingly common in schools of all levels of the Region of Veneto.

The synergy implemented by the convergent actions of the Regional School and the Human Rights Centre of the University of Padua, often with the support of the Region of Veneto, made it possible to activate an exemplary training method, widely recognised by the Ministry of Education, University and Research (MIUR) and put the Veneto in a European and international level as an example of excellence in the field of human rights education.

## **II. Content: Overview of Activities**

In the following, we present a brief overview and description of the various training initiatives which have been activated by the Region of Veneto in this field:

– school year 2001/2002: the first training course for teachers and school leaders in the Region of Veneto “*Human rights, peace, development and solidarity in a multicultural school*” activated in the seven provinces of the Region (Padua, Rovigo, Venice, Belluno, Vicenza, Verona, Treviso), a course format structured in five distinct phases. The first phase was characterised by five thematic meetings in the various provinces; the second by two “workshops” that have engaged the participants in different locations, divided into groups; the third by the preparation by the teachers of an educational project on a topic related to the issues of human rights, peace, development and intercultural solidarity; the fourth phase involved the reading-assessment of the entries received by a committee; the last phase consisted of a final meeting at each of the seven provincial offices where the themes developed were brought to the attention of teachers. 550 teachers participated in the course actively.

– school year 2002/2003: the second training course on “*Education for citizenship and solidarity: human rights culture*” was the natural continuation of what was achieved in the previous school year. The course was set within a training course sponsored by the Directorate General for training and education of school personnel of the Ministry of Education, University and Research. It involved ten regions that had distinguished themselves for meaningful experiences developed by schools: Emilia Romagna, Friuli Venezia Giulia, Lazio, Puglia and Veneto (school year 2001-2002) and Calabria, Campania, Lombardia, Piemonte, Sicily and Tuscany (school year 2002-2003).

The course was placed in the core schools of the seven provinces of Veneto. Institutions helped with fitting logistic functions (either in classes, workshops, seminars, etc.), communication (sending and receiving educational material, documents, meetings, etc.) and administration (management of financial resources). Each working group was coordinated by a tutor and scientific experts with the aim of in-depth analysis of one of the human rights. This was set in a methodology grid developed by the Human Rights Centre. In many cases, participants joined in the deepening of individual teaching projects, related to the topic addressed. At the end of the course a cd-rom “Adopt a human right” was produced that collected in full the research on all human rights elaborated by the working groups as well as a number of projects developed by teachers.

– school year 2003/2004: the third training course “*Education for citizenship and solidarity: human rights culture*” was the natural follow-up of the previous educational experiences. The course was organised in the seven provinces of the Region of Veneto. It started with lectures taught by experts and was followed by the work of local groups. As a



conclusion of the experience there was the Cd-Rom output “Human rights, European citizenship and intercultural dialogue.” Simultaneously, this same school year, and in conjunction with previous training, the teachers had the opportunity to participate in the 15<sup>th</sup> Course “*European Citizenship and Human Rights*,” aimed particularly at teachers who had attended the training courses for teaching staff and management of the schools in the Region of Veneto in 2001/2002 and 2002/2003. The participation in this course of improvement, confirmed a synergic collaboration between the institutions responsible for teacher education of the Region of Veneto. Financial support was given by the Region of Veneto and the Council for Human rights in cooperation.

– school year 2004/2005: The fourth training course focussed on the theme “*Human rights, intercultural and participatory democracy in the European Constitution*.” It was a natural follow-up of the courses taught in the previous school years. The meetings, aimed at teachers and school leaders of the seven provinces of the Veneto, were held in the core schools in Padua, Mestre, Vicenza (Verona) and Treviso. The Regional Education Authority for the Veneto, in agreement with the Human Rights Centre, identified for each province teachers’ tutors with the task of providing a methodological support, content and organisational activities online, as well as of enhancing the development of educational projects.

– school year 2005/2006: In this school year a secondary level training for teachers, already trained in previous courses, was offered. It illustrated the growing educational needs of schools in the Region of Veneto. The major focus remained always “*Education for citizenship and solidarity: the culture of human rights*.” It was organised jointly by the National Agency of the Development of School Autonomy (ANSAS), the Regional Education Centre for the Veneto and the Centre for Human Rights. The course, lasting thirty hours, took place between December 2005 and March 2006 at the Modigliani school in Padua. It was attended by teachers coming from all Veneto provinces but also by students belonging to high schools, motivated by their teachers and parents. Everybody participated actively in the planning, helped by the core schools in each province.

– school year 2006/2007: The Region of Veneto allowed, through scholarships for teachers, teachers’ participation in two regional courses. It was implemented by the Human Rights Centre of the University of Padua during two different courses offered to participants: – the 18<sup>th</sup> training course “*Law, institutions and practice of global democracy: the role of schools, institutions of local government and the third sector*,” and – the 19<sup>th</sup> course dealing with “*The ombudsman institution from the city to the European Union*.”

– school year 2007/2008: A refresher course “*The European Union for intercultural dialogue and human rights: towards a European dimension of education*” was the first step on the way to the national “*Education to active citizenship and human rights*” training. Participation in the course was a key to resume, revitalise and strengthen the regional network of schools involved in the field of European citizenship and human rights. The course was held in Padua in the framework of the celebrations of the European Year of Intercultural Dialogue and the 60<sup>th</sup> anniversary of the Universal Declaration of Human Rights.

### **III. Assessment**

Particularly noteworthy in all the training courses implemented by the Human Rights Centre, has been the relationship between academic education and teaching practice. An action research methodology was adopted in the belief that human rights education for citizenship and solidarity needs an interdisciplinary approach within the existing curriculum of disciplines. This was one of the most interesting and innovative elements of the courses, together with an attention to behaviour patterns of universal citizenship being put into didactic practice.

We discern positive elements in these training activities as well as difficulties. These training initiatives were a positive vehicle for the dissemination of the culture of human rights at regional level, in some cases even at national level. They also evidenced the need for a proper education to human rights on a scientifically sound basis, free from one-sided interpretations and based on universal international law. The difficulties relate to the lack of adequate knowledge of human rights in general and concrete terms by the teachers participating in the course. This meant an introduction and a guided learning before discussing specific topics from a scientific point of view.

### **IV. Case Study: Advanced Courses on “Education and Citizenship”**

#### ***A. Context***

The legal context refers to the Law 169/2008 to which the specific training on “Citizenship and the Constitution” was added. Consistent with the training courses implemented, and the logic of a wider global

education,<sup>1</sup> the Centre for Human Rights of Padua University held two courses of higher education, addressing the teachers of the region. The aim was to provide an adequate response to the Law 169/2008 on education to “Citizenship and the Constitution.” Both the Region of Veneto and the Regional School Office (USR) supported it all. This was interpreted as a reference to a civic education which should take into account the constitutional and international obligations undertaken by Italy and the guidelines, increasingly converging, by the United Nations, UNESCO and the Council of Europe.

The Ministerial Committee set up for the training of teachers<sup>2</sup> identified in its document of March 4, 2009 four citizenship axes: 1) Human rights and human dignity; 2) Identity and belonging; 3) Otherness and Relation; and 4) Action and participation. The reference and the basis on which to build the new education, proper training to human rights education becomes the key needed to read the Italian constitution in a global perspective, and institutional collaboration. It is the means necessary for a scientifically sound training addressed to an educational and systemic planning.

## ***B. Content***

The two training courses were held in two consecutive years, i.e. 2009 and 2010 with the same teachings and similar modes of operation, but with different and logically interrelated end-products.

The first advanced course for experts in “*Civic education, human rights, citizenship, constitution*” was organised in 2008/2009. It aimed at teachers of secondary schools and was attended by twenty teachers, selected from among those who applied, and representatives of all provinces and all types of schools. The advanced training course provided 375 hours of individual training, distributed on the basis of nine teaching units, and eventually produced a project work based on useful contents for proper vision and planning for the development of education “Citizenship and Constitution.” The project work took account of issues taught during the courses, but also of the citizenship skills to be activated for specific teaching in the classroom.

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<sup>1</sup> Global Education Guidelines, Concepts and Methodologies on Global Education for Educators and Policy Makers, North-South Centre of the Council of Europe, Lisbon, 2008.

<sup>2</sup> Documento d’Indirizzo Riguardante la Sperimentazione dell’Insegnamento di “Cittadinanza e Costituzione,” Ministero dell’Istruzione, Università e Ricerca, 4 marzo 2009.

The advanced training course for “*Experts in civic education, human rights, citizenship, constitution*” in 2009/2010 used the same training methods as the previous year. It consisted again of 375 hours of educational activity and was directed to teachers of kindergarten, primary and secondary schools, so as to ensure experienced teachers of the subject in all the provinces of the Region and in all school levels. In this second training course, the staff focused on the structuring of curricular activities for a project work, thus entering the specifics of teaching, through reference grids that organised the objectives (skills, abilities, knowledge) in the light of the teachings that were offered at the various institutional levels. This work method was valid for every type of school. The work was completed by the production of specific projects for each school, connecting the course participants in a broad curriculum from kindergarten to secondary school, fully carrying out the transversality formulated by the Ministry of Education.

**Table 1 – First course of higher education – Organisation of project work for secondary school teachers of second-degree**

Teachings of reference	
<ol style="list-style-type: none"> <li>1. Human rights, intercultural dialogue, plural citizenship in the strategy of multilateral institutions</li> <li>2. Human rights in the Republican Constitution and international law in force</li> <li>3. The role of civil society for democratisation of glocal space</li> <li>4. Human rights and interreligious dialogue</li> <li>5. Citizenship, vulnerable groups and social inclusion</li> <li>6. International education policy</li> <li>7. European Union Citizenship, globalisation, multi-level governance</li> <li>8. Human rights and sport</li> <li>9. Human rights didactics</li> </ol>	

1 Key Concepts	2 Statement from the city to the UN
Premise A. Human rights and dignity of the person B. Multiple citizenship/respect for diversity/concept of intercultural dialogue C. Principle of non-discrimination, ethics, inclusion/exclusion D. Rule of law, social state E. Democracy F. Personal responsibility and social responsibility to protect, security G. Rights and guarantees H. The Italian Constitution	Premise: sources, generations of rights, international regulatory compliance, scheme comparison Constitution-UDHR A. Inviolable rights of the person in the Italian Constitution B. Municipal statutes, regional laws C. International Bill of Human Rights: Origins D. Code of human rights: pacts and international specific conventions E. International Regional Conventions F. Charter of Fundamental Rights of the European Union
Group 1	Group 2

<p><b>3 Institutions from the city to the UN</b></p> <p>Premise</p> <p>A. Organisation of the Italian Republic</p> <p>B. Local and regional infrastructure for human rights</p> <p>C. International institutions and the level of UN protection</p> <p>D. International institutions and OSCE-wide security</p> <p>E. The institutions and the CoE protection level</p> <p>F. Institutions and protection at EU level</p> <p>G. The institutions and security in non-European regional systems: OAS, AU, Arab League states and The Islamic Conference Organization, ASEAN</p> <p>H. Local, national and international NGOs</p>	<p><b>4 Policies for Human Rights</b></p> <p>Premise</p> <p>A. Peace</p> <p>B. Intercultural/interreligious dialogue</p> <p>C. Combatting racial discrimination</p> <p>D. The fight against poverty</p> <p>E. Environmental protection Bioethics</p>
<p><b>Group 3</b></p>	<p><b>Group 4</b></p>

<p><b>5 Cross-cutting skills of citizenship</b></p> <p>1. Respect and acceptance of self, of peers, of all people without discrimination through the ability to:</p> <p>a. express ideas</p> <p>b. cooperate/share</p> <p>c. work in small groups</p> <p>d. increase the value of diversity</p> <p>e. overcome conflicts</p> <p>f. accept different points of view</p> <p>g. look for affinity in different points of view</p> <p>2. Active participation in civic organisations</p> <p>3. Respect of civic responsibilities</p> <p>4. Respect of the environment</p>	<p><b>6 Teaching methods</b></p> <p>A. Brainstorming, to know the basic situation</p> <p>B. Cooperative learning (within a designed research project)</p> <p>C. Peer education (as a methodology in view of overcoming an attitude)</p> <p>D. Action - research (in the manner of Kurt Lewin or in an appropriate, well-defined context)</p> <p>E. Participatory planning: path designed and shared by adults and students</p> <p>F. Conferences, specialists followed by discussions</p> <p>G. Role-playing, simulations</p>
<p>Attached to the end of each chapter. Processed by each group.</p>	<p>Attached to the end of each chapter. Processed by each group.</p>

In sum, the two courses of higher education were an immediate response to the Law 169, which introduced education of “Citizenship and the Constitution” at all school levels, thereby making a systematic

approach to civic education in a democratic sense and linked, by ministry selection, to the paradigm of human rights. In these cases the staff worked on different training plans by focussing on the law just introduced, through the simultaneous presence of different forms of education. These forms were: – basic training for teachers with university-type teaching methods; – seminar discussions between experts and trainees; – personal insights and comparison of views among the teachers participating in the ongoing course; and – preparation of a final project work seen a joint effort of choice of content and criteria, and an evaluation at a personal level or in a small group.

This simultaneous activation of different forms of reflection was the real major innovation in the proposed training. It facilitated the transition from the paradigm of human rights theory to experience-driven learning and introduced the account of existing legislation and guidance, concerning democratic education at all levels.

### ***C. Future Prospects***

We believe that, in view of future training courses, it is of great importance repeating certain procedures tested and adapted to the specific context. Two issues of course innovation need further scrutiny: teacher training and fall-out teaching. In particular, differentiating the two aspects, some positive elements and possible difficulties can be detected.

#### *1) Teacher Training*

The positive aspects of teacher training are certainly related to the methods used: – the choice of appropriate teaching and a high level of culture, scientifically impeccable; – working with small groups of motivated people accompanied by a tutor of the institutional link, creating a climate of sharing and comparison; – the stress on the reflection view of the staff; – the respect for, and appreciation of, each product.

The difficulties relate to both – a relational aspect: the different points of view of students, especially with regard to some “hot” issues, can lead to cultural enrichment or forms of conflict and should be handled with great delicacy; and – an institutional aspect: full recognition by the Italian school of the course did not always exist, and can therefore create dissatisfaction and demotivation in teachers.

#### *2) Fall-out Teaching*

Following positive aspects of fall-out teaching are of great importance: – the guarantee to develop an education on scientifically

sound basis, with a global view as a standard reference; – the opening of a global vision of education, through methods and objectives which are the result of concerted international elaborations (such as the global education guidelines set by the Council of Europe in 2008<sup>3</sup> or the key competences for human rights education proposed by the Human Rights Education Associates in 2009<sup>4</sup>); – the structuring of educational paths often involve different courses, with a strong coupling to the environment and, consequently to an education to the practice of active democracy; – the overcoming of stereotypes and prejudices; and – the goodwill of correct forms of intercultural dialogue.

As to difficulties, we do not see major problems apart from the underestimation of the importance of the topics proposed by the majority of the members of the school. However, its overcoming is part of the general objectives of the training. It should therefore be noted that an involvement of the whole class council in the educational paths provided is needed.

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<sup>3</sup> Global Education Guidelines, Concepts and Methodologies on Global Education for Educators and Policy Makers, op.cit.

<sup>4</sup> These HREA (Human Rights Education Associates) competences have been drafted by Tibbitts, F., van Driel, B., Sganga, C., Kirchschräger, P. and Sinclair, M., at: <http://www.hrea.org>.





## **PART IV**

### **CIVIL SOCIETY PARTICIPATION TO INTERCULTURAL DIALOGUE**



# Introduction

Léonce BEKEMANS

Part IV contains contributions dealing with the civil society participation in intercultural dialogue. It concerns key concepts and practices of democratic citizenship and civil society participation in intercultural dialogue as well as human-centric approaches to international cooperation. Focal points of the various analyses are the relevance of civil society organisations and non-governmental structures in intercultural dialogue at local, regional and European level and the innovative processes of intercultural dialogue and civil society involvement with reference to participatory democracy.

In the paper “*Civil society participation in intercultural dialogue*” Manuel Manonelles, Director of the Foundation for a Culture of Peace in Barcelona, firstly clarifies the conceptual framework of the interaction between civil society and intercultural dialogue “in action” and secondly, identifies the most relevant institutional processes linked to intercultural dialogue of civil society participation at global, regional and local level. In doing so, the author clarifies the reasons why civil society and civil society organisations are unique contributors in creating both the spaces and the conditions that (pre-)determine intercultural dialogue.

Robin Wilson, an independent researcher of (inter)cultural studies, starts his well referenced and strong paper “*Civil society in intercultural dialogue, democracy and governance*” by explaining the new paradigm of intercultural dialogue which is emerging in Europe. It clarifies the idea of civil society and explores its role in promoting dialogue, looking at the experience of reconciliation in Northern Ireland. Wilson views civil society as the best possible shell for dialogue and identifies valid policy frameworks for managing diversity at European, national and local levels. The paper concludes with expressing some concern at the rise of the populist radical right and points to the responsibilities of political parties.

In her paper “*Civil society in intercultural dialogue: the tension between individual and collective rights*” Vesna Čopič, a Slovenian professor of cultural policy and management, starts with an inventory of

concepts, uses, practices as well as dilemmas of intercultural dialogue in European and international organisations, with a particular focus on the results of the comparative study of “*Sharing diversity. National approaches to intercultural dialogue in Europe.*” The paper further describes the legal principles and frameworks of intercultural dialogue, linking it to human rights, including citizens’ rights. She argues that this might lead to some tension between the expression and protection of individual and collective rights in various countries and cultural systems as to the debate over minorities.

Prof. Marco Mascia, Director of the Human Rights Centre at the University of Padua, conceives democracy in his long but very interesting paper “*Civil society organisations in the European architecture of multi-level governance*” in its two-fold spatial dimension, internal and external, while referring to its original subjects: persons and peoples. In his in-depth analysis Mascia focusses on the role of civil society groups and the processes of structural change linked to human rights issues in understanding the changing nature of European and international democracy beyond national boundaries. His paper provides updated information and stimulus for thought, regarding the role of civil society organisations and non-governmental organisation, referring to those non-state groupings whose goals are solidarity and human promotion. He illustrates the living reality of CSOs’ platforms and places the role of CSOs in the European model of multi-level governance.

The paper “*Cultural organisations and intercultural dialogue*” by Yudhishthir Raj Isar, a Jean Monnet professor on Cultural Studies, deconstructs some of the uses, abuses and limits of the catch word “intercultural dialogue” in the current European context. Against this background, he highlights the key role that cultural organisations and networks can play in processes of mutual translation and dialogic exchange across cultural boundaries and differences. The author illustrates his point by exploring the objectives, achievements and challenges of the “Platform for Intercultural Europe.” He finally analyses the contributions to intercultural conviviality that can be made by urban cultural organisations and institutions.

John Farina, an American professor of Religious Studies, argues in his paper “*The role of religion in civil society and intercultural dialogue: a cross-cultural and comparative perspective*” that the role of religion in society needs to be addressed if Europe attempts to rethink its past in an effort to shape a new multi-cultural, plural conception of citizenship. In light of the new post-secular realities of the 21<sup>st</sup> century, Farina pleads for a re-examination of past assumptions about the place

of religion in civil society. Comparisons with the role of religion in U.S. culture yield interesting possibilities for such a re-examination.

Subsection II contains papers which present sectoral and geographical approaches to the civil society participation in intercultural dialogue. The first contribution is a short and ad-hoc policy overview of “*Euro-med intercultural trends and major challenges for the civil society dialogue*” by Gemma Aubarell, Head of the Programme Coordination Unit of the Anna Lindh Foundation. The paper first presents the major challenges for the Euromed Agenda for the Intercultural Dialogue: values and perceptions, social demands and civil society support. It ends with the presentation of the major conclusions of the Anna Lindh Report on Intercultural Trends.

The paper “*Intercultural dialogue as a means for building mutual trust: the role of civil society*” by Pietro de Perini, addresses the complex and, in some cases, paradoxical relation between intercultural dialogue and trust-building with a specific focus on joint Israeli-Palestinian civil society dynamics, as a crucial case study to analyse trust-building in the most instable areas of the Euro-Mediterranean region. The paper argues that, under specific conditions, intercultural dialogue is both an effective tool to build trust among people in situations of intractable conflict and an essential prerequisite for the development of successful intercultural dialogue initiatives and policies. Civil society organisations and networks, as the paper claims, play the central, driving role in both contexts.

The last contribution in this section is by Antonella Valmorbidia, Director of the Association of the Local Democracy Agencies. She argues in her paper “*Participatory Democracy and the Role of Local Authorities and Civil Society*” that decentralisation and civil society are the basis for sustainable development and social stability. She pleads for supporting participatory democracy and new forms of dialogue, locally based, to respond to the challenges for development and stabilisation. Examples of strong support to participative democracy in Eastern Europe, the Western Balkan and the Mediterranean countries as well as to decentralised international cooperation conclude her contribution.

The case studies in Subsection III focus on human-centric sustainable development projects in international cooperation practices. They constitute examples of community-based dialogue in a broad international setting. Laurens Bekemans and Ken De Cooman, young Brussels-based architects, introduce a challenging, open source-based, case in their paper “*Community-based and context-driven architecture for educating deaf children in Burundi.*” They explain the conceptual context and content of the approach of “Building Case Studies.” In the second part they illustrate their approach and vision with concrete and

applied case studies taken from their African experience. They demonstrate the relevance of mutual learning in an intercultural dialogue, focussing on sustainable and people-oriented community development in the built environment.

A similar human-centric and dialogue-based approach is presented in Elena Pisani's paper "*Dialogue-building of rural development in Somalia: the proposals of the international Somali Forum for Rural Development.*" The paper presents part of the analysis and recommendations made during international meetings in 2010-2011 by the International Forum for Rural Development in Somalia. The paper starts with a brief introduction of the Somali socio-political context. It is followed by a description of the development cooperation practices for reconstruction, focussing on the key problems in the agricultural sector. It concludes with the presentation of some recommendations to promote a sustainable rural development in Somalia.

The last paper, following a similar track as the previous two papers, analyses and assesses an interesting grass-root case study of committed international cooperation practice in Peru. Erika Ebermann Vera, an architect and president of ANES, a non-profit organisation that promotes natural and sustainable architecture, explains and assess in her paper "*A Socio-ecological architecture: building a well for the children of San Pedro in Peru*" the trajectory of the first development project. She draws lessons from the learning process of the building of a well for a small Peruvian village and refers to important shaping factors of project development such as assistance, time, trust and change. Finally she introduces a second San Pedro project adopting a community-driven approach which is based on socio-ecological principles of building, in particular the use of bio-architectural constructing materials (loam).

## **SUBSECTION I**

### **PERSPECTIVES AND CHALLENGES**





# Civil Society Participation in Intercultural Dialogue

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## I. Civil Society and Intercultural Dialogue<sup>1</sup>

### A. Civil Society, a Definition

This is neither the place nor the time to comprehensively address the unsolved question of the definition of a complex reality such as civil

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<sup>1</sup> References for this chapter: Academy de la Latinity, *The “Universal” in Human Rights: A Precondition for a Dialogue of Cultures. Reference Texts*, XV Conference of the Academy de la Latinity, Rio de Janeiro, UCM, 2007; Bekemans, L. *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007. Particularly: Akrimi, N., “Placer les Sociétés Civiles au Cœur du Partenariat Renouvelé des Défis et des Pistes pour l’Avenir,” Papisca, A., “Citizenship and Citizenships Ad Omnes Incluendos: A Human Rights Approach,” Pace, E., “Policy Dialogue among Cultures and Religions in the City”; Council of Europe – Council of Ministers, White Paper on Intercultural Dialogue, *Living Together as Equals in Dignity*, Strasbourg, 7 May 2008; European Union, Decision no. 1983/2006/EC of the European Parliament and of the Council of 18 December 2006 Concerning the *European Year of Intercultural Dialogue* (2008), Brussels, 16 December 2006, L 412/44; European Union – Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a *European Agenda for Culture in a Globalizing World*, Brussels, 10 May 2007, COM (2007) 242 final; European Union – Council, Council Conclusions of 22 May 2008 on *Intercultural Competences*, Brussels, 2008/C 141/09, 22 May 2008; European Union – European Commission – DG EAC/Jean Monnet Project, *The Euro-Med Youth Programme: Dialogue and Intercultural Exchange between Young People and the Mediterranean Partner Countries*, Brussels, 24-25 May 2004; Platform for Intercultural Europe, *The Rainbow Paper. Intercultural Dialogue: From Practice to Policy and Back*, Brussels, 25 September 2008; UNESCO, *World Report on Cultural Diversity. Investing in Cultural Diversity and Intercultural Dialogue*, Paris, 2009; United Nations, Alliance of Civilisations. *Report of the High Level Group*, New York, 2006.

society. Although important work has been done in trying to find a clear and shared definition of this key actor, both the theoretical – social sciences<sup>2</sup> – and the practical – e.g. the United Nations context<sup>3</sup> – dimensions have failed up now to reach to a common agreement on it.

The following are the parameters of the concept of civil society in which this article is based. With this I am not intending to propose “the” definition of civil society, one that excludes others, but to clarify the conceptual framework in which this article is driven. For instance, usually I do include the Academia – referring specially to the academics – as part of civil society, but in this case, I exclude it. And this is due to mainly two reasons: on the one side, for the very nature of the issue discussed (intercultural dialogue); and on the other, for the very particular role that the Academia and academics do play in this area, which enormously differs from the ones played by other civil society actors. Therefore, in this case by excluding the Academia from the definition, the role of the specific actor – civil society – in a specific field – intercultural dialogue – becomes much more clear and coherent.

Having said so, in this article civil society is to be understood as an actor defined by being non-governmental, non-profit, organised and genuine. While the two first concepts are clear, the two final ones may deserve some clarification.

By “organised” I mean a group of people that they coordinate themselves, in whatsoever manner, in order to achieve a specific goal, or to work towards one concrete direction. It necessary excludes the “citizen” or the “individual” whose contribution might be of high interest, but defers from collective action. However, it clearly includes non-hierarchical self-organised groups, better known as social movements, even in the case that they define themselves as “non-organised” actors.

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<sup>2</sup> One of the most relevant examples of academic research is the one undertaken by the London School of Economics at its Centre for Civil Society ([www.lse.ac.uk/collections/CCS/](http://www.lse.ac.uk/collections/CCS/)) and its Centre of Global Governance (<http://www2.lse.ac.uk/globalGovernance/HomePage.aspx>) being its flagship, since 2001, the Global Civil Society Yearbook. Likewise, the Hauser Center for Non-Profit Organisations at Harvard ([www.hks.harvard.edu/hauser/](http://www.hks.harvard.edu/hauser/)) deserves special attention, among others.

<sup>3</sup> See the Cardoso Panel Report on UN-Civil Society Relations formally known as the “*We the Peoples: Civil Society, the United Nations and Global Governance.*” Report of the Panel of Eminent Persons on “*United Nations-Civil Society Relations,*” United Nations General Assembly, doc. A/58/817, June 2004, and the controversy that followed to it.

By “genuine” I mean those actors which are value-based, which share some sort of humanist and internationalist approach, that they work for the common good, etc. Specifically, and this is the main reason of including this concept, I explicitly exclude those actors that take the form of civil society organisations (CSOs) – non-governmental, non-profit and organised – but do work for other goals in a more or less “hidden manner.” This would be the case of what it is known as GONGOS (from “Governmental NGOs”), these being NGOs or foundations that are created, funded and controlled by governments – or, for instance, profit-based lobbies – that, although presenting themselves and acting as genuine NGOs or CSOs, in fact are mere extensions of the policies of their respective government or lobby.

### ***B. The Dialectics of Dialogue vs. action: Intercultural Dialogue “in Action”***

There was a time in which it was argued that the core of intercultural dialogue remained in the “realm of ideas,” with a special emphasis in the central responsibility that intellectuals, the university and the academic *milieu* did face in this field. Afterwards, it was accepted that this was a shared responsibility with the political and social actors, in a debate driven by both the old and new media, being this last an actor with a pivotal role today as the main socialising mechanism of contemporary societies.

Nevertheless, and especially in Europe where this once theoretical debate is being constantly confronted by the growing complexity of everyday life, it is becoming evident the paramount importance that the “domain of the streets” has in order to ensure the viability of this dialogue. Indeed, the interconnection between the theory and the praxis has been identified as the corner stone of any credible approach to intercultural dialogue.

Today, the only way in which intercultural dialogue can become socially useful is when it is conceived as intercultural dialogue “in action;” this is, when it is committed to deliver, and is not just a theoretical exercise, but it is linked to a broader proposal with a specific programme of action.

In this context, civil society is central since it is a key player in the interconnection of both domains. In fact, it is thanks to its unique experience in “intercultural action” that civil society can be an exceptional contributor not only to the intellectual dimension of intercultural dialogue, but as a whole.

### ***C. Civil Society and Civil Society Organisations (CSOs): Key-players and Actors of Intercultural Dialogue***

As stated, civil society and CSOs are unique contributors in creating both the spaces and the conditions that predetermine intercultural dialogue, and this is due to a series of reasons.

First of all, and as mentioned before, because they are at the forefront of intercultural action. In many cases CSOs are the ones that reach those areas of society that the state, the government (even in its different multi-level dimensions) is not able to reach, and in some cases even not willing to reach. This Herculean work that actors of civil society are carrying especially in the fields of social action and integration, migration, mediation, etc., become a some sort of balsamic solution that contributes to reasonably reduce and confine what we could call the “multicultural tensions” of our current societies, and helps to convert them into “intercultural challenges;” therefore making more feasible the project of an inclusive society.

Secondly, because they are the guardians, sometimes the watchdogs, of the human rights paradigm – in the words of Professor Papisca, of this system *ad omnes includendos* – that also preconditions intercultural dialogue.

Thirdly, because they are value-based actors. Value-based in their nature and their constituency and, therefore, they are in a unique position to be genuine contributors of social innovation. Values are their *raison d'être* and this gives them a unique capacity of manoeuvre since they are not constrained by the “state interest,” the electoral calendar and are not profit-driven. Moreover, civil society is one of the most flexible and adaptable actors in today’s social arena and, again, this adds a plus to their relevance in our field of study.

Finally, CSOs are *sine-qua-non* actors in some areas that are central to intercultural dialogue, such as youth, non-formal education and learning, the interreligious dimension, etc., and any action in these fields without their active involvement is condemned to fail.

## **II. Institutional Interaction of CSOs and Civil Society in a Multi-level Framework**

### ***A. At the Global Level***

This central role of civil society in the field of intercultural dialogue has been identified and recognised, in the last years, at many levels. The following is a brief selection of some of the most relevant institutional processes linked to intercultural dialogue, highlighting the recognition

they do in each case of the importance of civil society; as well as references to the proposals for interaction with civil society that they include in their plans of action. This selection – which is not comprehensive but representative – is also done in a multi-level perspective, from the global level with the initiatives of the United Nations system to some samples at the local, municipal, level.

At the global scale – institutionally speaking – we find the Alliance of Civilisations<sup>4</sup> process. This process was born in the years 2004 and 2005, under the co-sponsorship of Spain and Turkey, and it was a step forward on the basis of the project of “*Dialogue among Civilisations*” that President Khatami presented in the years 2000 and 2001 with the backing of UNESCO. Indeed, the paradigm of this project was the need to reinforce and enhance the dialogue among civilisations plus, in parallel, moving to concrete common strategic action, this being the meaning of the need of moving from the “dialogue to the alliance.” In November 2006, a report that had been commissioned the year before to a high level group of experts was delivered to the Secretary General of United Nations in a ceremony in Istanbul. This was an action-driven report, and its second part was focussed in some general and specific recommendations for action in four main fields: youth, education, migration and media. The report did recognise the conditional role of civil society as an actor and as a potential partner in its implementation, as clearly stated in the whole document, and in particular in its paragraph 5.17:

The central importance of civil society activism: While political steps are necessary in order to advance each of the policy recommendations noted above, political action taken without the support of civil society often falls short of effecting lasting change. The High Level Group therefore calls for a greater role and involvement of civil society in the mechanisms for the advancement of its recommendations [...].<sup>5</sup>

Since then, the implementation of the report and the development of the process has resulted in a series of initiatives, some of them canalised through different civil society organisations, highlighting its Youth Programme including the different projects that are being funded by the Youth Solidarity Fund. Moreover, the annual Alliance of Civilisations Forums (Madrid 2008, Istanbul 2009 and Rio de Janeiro 2010) have become one of the global meeting points for intercultural dialogue and action.

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<sup>4</sup> [www.unaoc.org](http://www.unaoc.org).

<sup>5</sup> United Nations Alliance of Civilizations, *Report of the High Level Group*, New York, 13 November 2006.

Also in the global context, but in a slightly more specific subject, the United Nations General Assembly has been developing a process since it convened the High Level Debate on Intercultural and Interreligious Cooperation for Peace in 2007. This has been followed up by a series of meetings and resolutions that prompted a proposal, from a coalition of civil society organisations,<sup>6</sup> for the creation by the General Assembly of an International Decade on Intercultural and Interreligious Cooperation for Peace (2011-2020). While still under discussion,<sup>7</sup> the eventual possibility of an international decade under this subject deserves all our attention since it would position the debate at the highest level possible and would provide an important umbrella for civil society activities in this field. The role and activities of UNESCO, the United Nations agency entrusted to address precisely the issues debated in this article, are also to be taken into close account. Already in 2005, in its “*Convention on the Protection and Promotion of the Diversity of Cultural Expressions*,” UNESCO recognised: “[...] the fundamental role of civil society in protecting and promoting the diversity of cultural expressions. Parties shall encourage the active participation of civil society in their efforts to achieve the objectives of this Convention.”<sup>8</sup>

In its recent “*World Report on Cultural Diversity. Investing in Cultural Diversity and Intercultural Dialogue*” (2009), civil society is also placed as a fundamental actor; and in an “implementation point of view” this is clearly patent in the large programme of activities that the institution has developed for the International Year for the Rapprochement of Cultures (2010).<sup>9</sup>

### ***B. At the Regional Level (European and Euro-Mediterranean)***

At the European level, we find three main contexts. The first one is linked to the programmes and activities of the Council of Europe. At this level, the Council’s “*White Book on Intercultural Dialogue*” (2008) has become a point of reference for the theoretical basis and conditions of intercultural dialogue, as well as its main trends and potentialities in terms of implementation and action, including the role of civil society. A special attention deserves the North-South Centre,<sup>10</sup> an institution of the

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<sup>6</sup> Initiative for a UN Decade of Interreligious and Intercultural Dialogue, Understanding and Cooperation for Peace, <http://faithdecadeforpeace.net>.

<sup>7</sup> UN General Assembly, Resolution on Promotion of Interreligious and Intercultural Dialogue, Understanding and Cooperation for Peace, A/64/81, 7 December 2009.

<sup>8</sup> Article 11 of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions, 2005.

<sup>9</sup> <http://www.unesco.org/en/2010-international-year-for-the-rapprochement-of-cultures/>

<sup>10</sup> [www.coe.int/t/dg4/nscentre/default\\_en.asp](http://www.coe.int/t/dg4/nscentre/default_en.asp).

Council based in Lisbon, extremely active in their interaction with youth movements and organisations, as well as in the Mediterranean context. Also centred in youth activities and organisations are the two Youth Centres that the Council maintains in Strasbourg (EYCS)<sup>11</sup> and Budapest (EYCB),<sup>12</sup> institutions that for years have become “catalysers” of European citizens and icons of this human-rights-based pan-European permanent dialogue that the Council of Europe represents. Moreover, in a purely multi-level governance exercise linked to intercultural dialogue, we find the “Intercultural Cities Programme,”<sup>13</sup> being another example of the crucial role that local governments are called to play, in collaboration with other levels of governance, and civil society in this field.

The European Union, of course, is one of the nuclear frameworks to take into account. As stated by many, the EU process, history and experience are itself a paradigm of intercultural dialogue and action, with all its shadows, complexities and imperfections, but a reference and a model to be studied and observed closely. In terms of civil society, the EU experience and contribution is unique in fostering transnational CSOs networks (e.g. European Youth Forum,<sup>14</sup> but many others in different areas of work) that promote intercultural dialogue and are themselves examples of intercultural action.

To this, and in terms of the recognition of the need to increase civil society involvement in the EU policy on culture, it is of special importance, the “*European Commission Communication: European Agenda for Culture in a Globalising World*” (2007).

But in terms of specific action in order to promote intercultural dialogue, the International Year of Intercultural Dialogue 2008 (EYID),<sup>15</sup> that was promoted by the European Union, did represent an incredible container of activities that became a unique patrimony – for the number of activities but also for its diversity and, in certain cases, capacity of innovation – that should be properly studied and should become the basis for an important study of good practices that could be either replicated or even improved.

Indeed, in the same planning process of the EYID, civil society was identified not only as one of its key targets, but also as one of the main

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<sup>11</sup> [www.coe.int/t/dg4/youth/EYC/Strasbourg\\_en.asp](http://www.coe.int/t/dg4/youth/EYC/Strasbourg_en.asp).

<sup>12</sup> [www.coe.int/t/dg4/eycb/default\\_EN.asp](http://www.coe.int/t/dg4/eycb/default_EN.asp).

<sup>13</sup> [www.coe.int/t/dg4/cultureheritage/culture/cities/default\\_en.asp](http://www.coe.int/t/dg4/cultureheritage/culture/cities/default_en.asp).

<sup>14</sup> [www.youthforum.org](http://www.youthforum.org).

<sup>15</sup> [www.interculturaldialogue2008.eu](http://www.interculturaldialogue2008.eu).

stakeholders of the whole process, under the premise of being one of the key connectors between the citizen and the institutions. In the words of the European Parliament and of the Council:

Building on the basis of Community experiences and initiatives, a fundamental step is promoting the participation of each citizen, men and women on an equal footing, of each Member State and of European society as a whole in an intercultural dialogue, in particular through the structured cooperation with civil society. It contributes to creating a sense of European identity, by embracing differences and shaping the various aspects of belonging to a community.<sup>16</sup>

This was the rationale for the establishment in November 2006 of a Civil Society Platform for Intercultural Dialogue by the European Cultural Foundation (ECF), that was one of the driving forces in the planning and implementation of the whole EYID, and that with the time became the Platform for Intercultural Europe.<sup>17</sup> Also in the EYID process – and also as a result of it – the importance of civil society to foster intercultural competences was again underlined, especially in the fields of youth and media.<sup>18</sup>

But if there is an institutional context in which the EU is deeply involved and it is *per se* intercultural, this is the Euro-Mediterranean one, today within the new organisational framework of the Union for the Mediterranean/Barcelona Process. During its fifteen years of intermittent life, since its conception in the Barcelona Conference of 1995, this complex but at the same time indispensable political process has been an important laboratory for intercultural action and debate, with civil society not only as a key actor but for the first time, in a certain sense, as a key objective.

For more than a decade, an important effort in reinforcing the links between both shores of the Mediterranean was developed. Big part of this effort was done by devoting important quantity of resources (mainly through the MEDA I and MEDA II Programmes) to the cultural dimension of the Barcelona Process, also known as the third basket of the Barcelona Process. This basket was mainly centred in developing links between societies in the Mediterranean basin and in Europe by encouraging the growth of civil society, as well as promoting cultural awareness and mutual cultural respect throughout Europe and the

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<sup>16</sup> Point no. 8 of the Preamble of the Decisions of the European Parliament and of the Council Concerning the European Year of Intercultural Dialogue, 2008.

<sup>17</sup> [www.intercultural-europe.org](http://www.intercultural-europe.org).

<sup>18</sup> Points C and D of the Council Conclusions of 22 May 2007 on Intercultural Competences.



Mediterranean region. As highlighted before, in the Barcelona Process, civil society is not any more a “key factor” or “actor to take into account” in the process, but an objective in itself; with the understanding that the development of a strong network of capable and genuine civil society organisations through the whole Mediterranean is one of the basis for the success of the whole political process.

While the debate is still open<sup>19</sup> regarding the overall effectiveness of the work developed in this first decade, there is a certain agreement<sup>20</sup> in the positive and constructive impact that some of the experiences, such as the Euro-Med Youth Programme,<sup>21</sup> have had in fostering intercultural dialogue in the region.

Since 2005, the Euro-Med action in this third basket has been re-organised and centralised via the establishment of the “*Anna Lindh Foundation for the Dialogue Between Cultures*,”<sup>22</sup> an institution created to comprehensively canalise the resources that the EU devotes to this area. This foundation, with the headquarters in Alexandria, Egypt, is active in the forty-three countries that are part of the Barcelona Process, and has developed a region-wide network of over 3,000 civil society organisations. Moreover, the Anna Lindh Foundation organises a biannual forum, known as the Anna Lindh Forum,<sup>23</sup> that is to become the Mediterranean “meeting point” for all those actors – especially civil society – that work in the different shades of intercultural dialogue.

### **C. At the Local Level**

The nuclear role of the local level, especially the municipal one, as the forefront of the previously mentioned “intercultural dialogue in action” has been already clearly and sufficiently identified.<sup>24</sup> But, without doubt, in this exercise of mapping the position of civil society in the interaction with the multi-level dimension of institutional action in

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<sup>19</sup> As an example, see Steinberg, G.M., “Civil Society, Intercultural Dialogue and Political Activism,” in L. Bekemans *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio Editori, 2007.

<sup>20</sup> See the article of Ilgaz, D., “The Nurturing and Development of Intercultural Dialogue through Youth Action in the Euro-Mediterranean Region,” in L. Bekemans *et al.* (eds.), *op. cit.*, specifically pp. 249-250.

<sup>21</sup> Recently re-launched as the Euro-Med Youth Platform, at [www.euromedp.org](http://www.euromedp.org).

<sup>22</sup> [www.euromedalex.org](http://www.euromedalex.org).

<sup>23</sup> [www.euromedalex.org/forum2010/](http://www.euromedalex.org/forum2010/)

<sup>24</sup> See Bekemans, L., “Urban Environment of Intercultural Dialogue in Europe: Why Cities Matter in Building a Democratic ‘Urban Civitas’,” in L. Bekemans *et al.* (eds.), *op. cit.*

the field of intercultural dialogue, the local dimension is the most complex to be briefly defined.

On the one side, because there is certain confusion between two substantially different levels and actors: the regional and the local ones. Both are intra-state, but they are of a very different constituency and nature. To this regard, it is expected that the “White Paper on Multi-level Governance,” that is being prepared by the Secretariat of the Committee of the Regions<sup>25</sup> of the European Union – the consultation process of which has also highlighted the need to reinforce the analysis of the role that civil society plays within it, once finished, will be of help to clarify and put some methodological order in this open debate, including the position of civil society in the overall multi-level governance debate.

Secondly, because of the numbers: only in Europe there are more than 300 regions and over 90,000 municipalities, presenting a plurality of realities and a diversity of policy approaches and focus almost *ad infinitum*. To this respect, I will briefly point a couple of elements that can be of reference for this necessary debate.

Given precisely by the growing conscience that municipalities and local authorities do have regarding their role to play in the global scenario, since 2004 they count with an institution, United Cities and Local Governments<sup>26</sup> (UCLG), which has become its voice of reference at the global scenario. In this “glocal” dimension, interaction with civil society in relation with intercultural dialogue is mainly done through some of the thematic commissions of UCLG, such as the UCLG’s Committee on Culture, the one on City Diplomacy, its Mediterranean Interregional Committee, as well as the Working Group on the Local Dimension of the Alliance of Civilisations. Indeed, UCLG is interacting with the Alliance of Civilisations since the very process of preparation of the High Level Group Report, although concrete actions are exploratory and embryonic still.

On the other side, not only in Europe, but also in the United States,<sup>27</sup> we could identify hundreds of initiatives, at the local level, in which civil society is a structural part of the public policies that address the complex challenges linked to cultural diversity, especially when dealing with the management of public space. One good example is the

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<sup>25</sup> [www.cor.europa.eu](http://www.cor.europa.eu).

<sup>26</sup> [www.cities-localgovernments.org](http://www.cities-localgovernments.org).

<sup>27</sup> See Heckmann, F., Wolf, R. (eds.), *Immigrant Education and Integration. The Role of State and Civil Society in Germany and the U.S.*, Bamberg, EFMS Publications, 2006.

Barcelona Intercultural Plan,<sup>28</sup> presented in March 2010 after intensive consultation; another local step into the direction that was already proposed by UNDP in the year 2000:

It is crucial that civil society organisations and local governments work in partnership to explore the most effective means for delivering services to the citizens of a given community [...]. It is only through strong and capable local authorities, civil society organisations and empowered citizens that globalisation as well as localisation processes can be managed in a way that would be in the interest of the local population and of benefit to all.<sup>29</sup>

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<sup>28</sup> [www.interculturalitat.cat](http://www.interculturalitat.cat).

<sup>29</sup> See UNDP, *Responding to Citizens' Needs: Local Governance and Social Services for All. Report of the United Nations Global Forum on Local Governance and Social Services for All*, ST/ESA/PAD/SER. E/29, Stockholm, May 2000.



# Civil Society in Intercultural Dialogue, Democracy and Governance

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## I. Introduction: Old Models in Crisis

The means European governments have conventionally deployed to manage their demographic diversity are in crisis. As that diversity has markedly expanded and deference diminished in recent decades, these old models have become exhausted.

Two competing approaches to this challenge had been essayed in Western Europe in the post-war period. This in the context of mass immigration from the developing world in pursuit of a better life during the *trentes glorieuses* of capitalist growth and of a smaller movement of people in search of any secure life at all as refugees from dictatorships and conflict zones around the globe.

The first model was manifested in the purest form in France, though it was in many ways the norm as nation-states socialising mass publics crystallised in Europe in the later 19<sup>th</sup> and early 20<sup>th</sup> centuries. The “imagined community”<sup>1</sup> of the titular nation was sutured to the apparatus of the state via a defining ethos, to which individuals not identifying with the national majority were nevertheless instructed to subscribe.

This assimilationism clearly risked the alienation of members of minority ethnic or national communities within the state, particularly where the latter’s blindness to diversity could collude with economic discrimination and social marginalisation. It reached its explosive nadir in the riots in the French *banlieues* in the autumn of 2005.

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<sup>1</sup> Anderson, B., *Imagined Communities: Reflections on the Origin and Spread of Nationalism*, London, Verso, 1983.

The second model was associated particularly with the former European colonial powers of the UK and the Netherlands. Here, by contrast, under the banner of what became known as multiculturalism, minority communities were rendered very visible. But this, apparently modern and liberal, “politics of recognition”<sup>2</sup> was in fact premised on dated and conservative assumptions – the stereotyped conception that such communities could be treated as if they embedded timeless and homogeneous cultures which thus should be officially recognised.

The inadvertent effect of multiculturalism were the segregation and mutual estrangement of members of host and minority communities, and the empowerment within the latter of the most traditional – almost invariably male – leaders. It too was to meet its demise in violence, with the intercommunal clashes between young whites and Asians in declining Northern English mill towns in the summer of 2001.

Indeed, that dialogue was being all too often substituted by intemperate language and violence was recurrently evident in Europe during the 2000s. Other crisis symptoms were the bombs attacking commuter transport and so causing huge civilian casualties in Madrid and London in March 2004 and July 2005 respectively, the killing of the film-maker Theo Van Gogh by an Islamist in Amsterdam in November 2004 and the riots in the Muslim world provoked by the publication in a Danish newspaper of cartoons portraying the prophet Mohamed in September 2005.

This chapter begins by explaining the new paradigm of intercultural dialogue which emerged in the European institutions in response to these troubling events. It clarifies the idea of civil society and explores its role in promoting dialogue, bringing to bear the experience of reconciliation NGOs in Northern Ireland. It addresses what comprises the best possible political shell for dialogue and identifies integration plans as a helpful policy framework. Finally, it expresses concern at the rise of the “populist radical right” and points to the responsibilities of political parties, as organisations of civil society, in this regard.

## **II. Intercultural Dialogue**

The phrase “intercultural dialogue” entered the European lexicon with the launch in 2008 of the Council of Europe “*White Paper on Intercultural Dialogue*”<sup>3</sup> and the designation by the European Union of

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<sup>2</sup> Taylor, C., *Multiculturalism: Examining the Politics of Recognition*, Princeton, Princeton University Press, 1994.

<sup>3</sup> Council of Europe, *White Paper on Intercultural Dialogue, Living Together as Equals in Dignity*, Strasbourg, Council of Europe, 2008.

the term as the *Leitmotif* of that year. It had a prior gestation, however, being first referred to as an obligation of states party to the Council of Europe “*Framework Convention for the Protection of National Minorities*” (1995) and became a strand of work within the Strasbourg-based institution with the establishment of a project on intercultural dialogue and conflict prevention in 2002.

Indeed, the White Paper was called for at a meeting of Council of Europe culture ministers in 2005, reflecting an acute concern among those responsible for the management of cultural diversity that while they were well aware of the problem they needed advice on policy and good practice by way of solutions. A subsequent questionnaire circulated among member states during the consultation on the document manifested a pervasive sense that the traditional answers to this question were now found wanting.<sup>4</sup>

The Council of Europe found itself at the heart of this intellectual and moral debate not only because of the events across Western Europe described earlier but also, of course – considering its 47-member pan-European reach – the longer-run impact of the wars in ex-Yugoslavia as an extreme manifestation of ethno-nationalist conflicts in central and Eastern Europe since the fall of the Wall. But there was another, more profound, reason too.

The organisation had been established in 1949 to say “never again” to the Holocaust and global war, embodying the post-war consensus that only by upholding the values of democracy, human rights and the rule of law could individualistic society be inoculated against aggressive integral nationalism. And it worked, remarkably so. Except on its margins – Basque Country, Cyprus, Northern Ireland and Corsica – Western Europe was to become a post-war haven of peace.

The answer the Council of Europe elaborated to the contemporary challenge of intolerance built on this fundamental historical lesson. The universal norms it was established to promote were recognised as the essential foundation of intercultural dialogue, as the White Paper repeated at many points. In today’s language, those norms explicitly included gender equality.

This was a key breakthrough in the diversity debate. Assimilationism spoke to members of minority communities in nationalistic language, telling them to conform to the perceived dominant values of the titular

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<sup>4</sup> The author, one of the principal drafters of the White Paper, was responsible for distilling the responses from the member states for the Council of Europe secretariat in 2007.

nationality of the state. In fairness, in France it would be officially argued that “republican values” are liberal-universalist rather than majoritarian but there is an illiberal dimension to their enforcement, as the handling of the wearing by women of the Muslim veil has shown.<sup>5</sup>

Multiculturalism, on the other hand, was an entirely relativistic notion. Not only was it open to the charge of essentialism in its one-community-one-culture thinking, but its *raison d'être* was that particular cultural “traditions” should be upheld. In what became known as the “White Paper process,” from the outset it was determined that no such perceived tradition could be allowed to trump universal norms, particularly of human rights. This affirmation spoke to the concern of liberals in societies like the Netherlands that multiculturalism was asking them to respect cultural practices they could not in all conscience endorse.<sup>6</sup>

Thus, unlike assimilationism, the intercultural approach recognises the “really existing cosmopolitanisation”<sup>7</sup> of everyday life across Europe today. But it also recognises, unlike multiculturalism, that diversity can only be conceived as applying at the individual level, not that of the “imagined community” – that each individual’s identity is irreducibly complex and so unique and that we are therefore dealing with (infinite) “cultural variety,” not a (pillarised) “variety of cultures.”<sup>8</sup>

Intercultural dialogue breaks with stereotyped and communalist ideas of the “Self” and “Other,” which can so readily slip into a narcissistic self-image counterposed antagonistically to an enemy-image. Recognising that, in a cosmopolitanising context, “us and them” can no longer be clearly distinguished,<sup>9</sup> it aims to include the other within oneself.

Integration then becomes the key task, to ensure that diversity is tempered by unity, as in the unofficial European motto. And whereas assimilation treats integration as an obligation only of minority members and multiculturalism is cavalier as to social cohesion, in the context of intercultural dialogue integration is understood to be a “a two-sided

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<sup>5</sup> Joppke, C., *Veil: Mirror of Identity*, Cambridge, Polity Press, 2009.

<sup>6</sup> Sniderman, P.M., Hagendoorn, L., *When Ways of Life Collide: Multiculturalism and its Discontents in the Netherlands*, Princeton, Princeton University Press, 2007.

<sup>7</sup> Beck, U., *The Cosmopolitan Vision*, Cambridge, Polity Press, 2006, p. 19.

<sup>8</sup> Bauman, Z., “Cultural Variety or Variety of Cultures?,” in S. Malešević, M. Haugaard (eds.), *Making Sense of Collectivity*, London, Pluto Press, 2002, pp. 167-180.

<sup>9</sup> Beck, U., *World at Risk*, Cambridge, Polity Press, 2009, p. 176.



process,”<sup>10</sup> through which host societies as well as newcomers are changed.

Like any new paradigm, intercultural dialogue is a notion which needs to be fleshed out in and through concrete social activity. And, following the White Paper and the EU Year of Intercultural Dialogue, the Council of Europe and the European Commission have collaborated on a project called “*Intercultural Cities*,” which draws twenty-one municipalities across Europe into a network developing and sharing good practice. Its premise is that, rather than perceive immigration or the presence of national minorities as a threat, such cities can engage in “planning for diversity advantage.”<sup>11</sup>

### III. Civil Society

Before discussing the role of civil society in intercultural dialogue, it is necessary to clarify the meaning of the former, as it is subject to different definitions.

Civil society can be understood in an empirical way, as the arena between economy and state, populated by associations such as trade unions, third-sector organisations and political parties. It can also be conceived in a normative fashion, in which a civil society is a *good* society because of such features as a high incidence of social trust. Thirdly, however, these two conceptions can arguably be reconciled and folded into a third notion – of civil society as the public sphere, where a lively associational life is tempered by normative agreement on the conditions of deliberation, allowing an *agora* of free expression and exchange of ideas to emerge.<sup>12</sup>

It is clear from this discussion that not all associations are civil in the normative sense. The American concept of “social capital”<sup>13</sup> suffered in this context from its conceptual inadequacy. Defined in terms of the building of trust, adhesion to civic norms and the development of associational networks, it had to be bifurcated into “bonding” and “bridging” capital to cope with the fact that such ethnic and even paramilitary networks as mushroomed in the collapsing Yugoslavia were instrumentally nationalistic rather than embodying universal norms

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<sup>10</sup> Council of Europe, *op. cit.*, p. 10.

<sup>11</sup> Wood, P., Landry, C., *The Intercultural City: Planning for Diversity Advantage*, London, Earthscan, 2008.

<sup>12</sup> Edwards, M., *Civil Society*, Cambridge, Polity Press, 2004.

<sup>13</sup> Putnam, R.D., *Bowling Alone: the Collapse and Revival of American Community*, New York, Simon & Schuster, 2000.

and spurred the collapse of trust which led to war among former neighbours. The idea of social capital as the dependent variable can thus sensibly be replaced by social trust as the key *desideratum* associated with a strong and unified public sphere.<sup>14</sup>

In contrast to the “methodological nationalism”<sup>15</sup> of the nation-state, civil society is not limited by state boundaries. Hence the emergence of the term “global civil society,”<sup>16</sup> evidenced in the growing power of international NGOs in recent decades, such as Amnesty International, Greenpeace and Oxfam. A sense of such global citizenship provides an essential counterweight to divisive rhetoric about a “clash of civilisations.”

#### **IV. Civil Society and Dialogue**

The intercultural approach shifts the emphasis in how cultural diversity is managed from the vertical relationship between the individual or the collectivised community and the state to horizontal relationships among individuals across ethnic dividing lines. It envisages that the construction of a fine-grained web of such relationships will not only engender a social fabric which can withstand political shocks but, further, allow of a virtuous circle of enhancing trust and tolerance, so that integration can be both stable and spontaneous.

It is worth underscoring the fact – given the media are driven by such news values as novelty, challenge and threat – that across Europe a myriad of exchanges take place daily among diverse citizens. Most are experienced as simply normal or even pleasurable, only a minority are a source of friction and stress and only in those regions where vicious circles of mistrust and intolerance have taken hold are they marked by recurrent violence.

The day-to-day tensions which arise from ignorance and/or fear of the “Other” – as against those that could occur between any two individuals – can be diminished by ensuring that education provides all citizens with basic intercultural competences, just as it must ensure they can enter adulthood with basic literacy and numeracy skills. But in as far as these problems require collective solutions, they can only be effectively addressed by organisations which are active and seen as legitimate on the ground.

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<sup>14</sup> Rothstein, B., *Social Traps and the Problem of Trust*, Cambridge, Cambridge University Press, 2005.

<sup>15</sup> Beck, U., *The Cosmopolitan Vision*, *op. cit.*, pp. 24-33.

<sup>16</sup> Kaldor, M., *Global Civil Society: an Answer to War*, Cambridge, Polity Press, 2003.

Hence the key role for NGOs, including intercultural as well as minority associations, in promoting intercultural dialogue in everyday life. If assimilationism can seem a forbidding and abstract model, while multiculturalism appears to defy widely held norms, the intercultural approach, while genuinely challenging, goes with the grain of “really existing cosmopolitanisation” on the ground in fulfilling the simple cosmopolitan requirements of “translation and bridge-building.”<sup>17</sup>

Recognising that not all organisations *in* civil society (in the empirical sense) *are* civil (in the normative sense), it is nevertheless the case that in as far as there is a detectable ethos of those associations identified with the voluntary or third sector – to what, in shorthand, the term “NGOs” usually refers – it is of responsiveness, pluralism and tolerance. And this can provide a good milieu for dialogue.

The intercultural approach allows of a way beyond the otherwise intractable between assimilationists and multiculturalists over the manifestation of religious symbolism in public. In the former view, characteristically advanced from a dominant, state perspective, such symbols – the Muslim veil – should be confined to the private sphere. The latter position, typically advocated by religious figures within minority communities who present themselves as their representatives, is associated with a claim to don these accoutrements within any institution of the state (such as the school) as a badge of identity.

Once it is recognised that the sphere of civil society comes between the household and the state, it becomes evident that adherents to a particular religion should enjoy the same freedom of expression rights there as adherents to others or none, while accepting universal norms and the requirement to justify one’s claims in terms others can accept.<sup>18</sup> In such a context, dialogue has the potential to resolve legitimate differences on this issue, which does not lend itself to black-and-white conclusions, rather than leading to participants simply talking past each other.

Conversely, it is important to appreciate the potential of social cleavages which cut across lines of ethnic division to act as intercultural bridges. Evidence from a number of countries has shown the capacity of third-sector projects engaging migrant and non-migrant women, such as in labour-market activation, to make connections in this regard, linked to common gendered experiences.

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<sup>17</sup> Beck, U., *The Cosmopolitan Vision*, *op. cit.*, p. 89.

<sup>18</sup> Habermas, J., “Religious Tolerance – the Pacemaker for Cultural Rights,” in *Philosophy*, vol. 79, 2004, pp. 5-18.

Research on paired cities in India found that those which appeared immune to national tensions between Hindus and Muslims – unlike those which regularly erupted in intercommunal riots – were characterised by a plethora of labour, business and other associations of a cross-communal kind. Such associations buffered tensions by, for example, quashing exaggerated or mischievous rumours about depredations supposedly executed or envisaged on the other side. Purely intracommunal associations had no such benefits.<sup>19</sup>

## **V. Cases from Northern Ireland**

Northern Ireland provides one of the most challenging locations for intercultural dialogue in Europe, given its deep and sustained ethnic division along sectarian lines and other manifestations of intolerance.<sup>20</sup> A qualitative study of eight longstanding and well-regarded reconciliation NGOs operating in the region thus provides insights, *in extremis*, into what works in the pursuit of intercultural dialogue.<sup>21</sup>

Semi-structured interviews with thirty-seven individuals associated in various capacities with the organisations found consistent features recurred:

- a clarity of purpose;
- a holistic, teamwork approach;
- an idealistic and creative culture;
- a long-term commitment to social justice;
- individual and organisational reflexivity; and
- values of interculturalism and cosmopolitanism.

From the interviews, it emerged that success in dialogue derived from:

- a sense of security among those taking part,
- responsiveness to targeted individuals and groups,
- recurrent contact among participants in protracted projects,
- a focus on the quality of exchanges and
- (in some cases) creative use of the arts and electronic media.

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<sup>19</sup> Varshney, A., *Ethnic Conflict and Civic Life: Hindus and Muslims in India*, New Haven CT, Yale University Press, 2002.

<sup>20</sup> Wilson, R., *The Northern Ireland Experience of Conflict and Agreement: a Model for Export?*, Manchester, Manchester University Press, 2010.

<sup>21</sup> *Id.*, *What Works for Reconciliation*, Belfast, Democratic Dialogue, 2006.

Moreover, the research discovered tangible evidence that these organisations had not just had direct impact through the intercultural dialogue they had sponsored but had engendered wider “ripple effects” in this divided society. They had stimulated networks diffusing their innovations, new “spin-out” ventures had been established by individual practitioners and they had trained many individuals in the facilitation of dialogue.

Consider as an example the Ballynafeigh Community Development Association (BCDA). Ballynafeigh is a neighbourhood in South Belfast of some 5,000 individuals which due to historical patterns of migration into the city was always mixed by religion. At the height of the violence in Northern Ireland in the early 1970s, a group of local residents formed the association to preserve the shared character of the neighbourhood.

Over the decades, BCDA has established itself as the hub of a dense network of local groups – fifteen of these, ranging from a Protestant marching band to a (Catholic) Irish-language project have recently been engaged in a project promoting a sense of interdependence. Its work has demonstrated that, in a city which at the last independent count had eighty-eight “peace walls” dividing working-class neighbourhoods,<sup>22</sup> a common civic life is not a utopian ideal.

## VI. The Best Possible Shell for Dialogue

Civil society is a fragile fabric, patchy and at some points full of holes. Its constituent associations can prove evanescent and vulnerable to attack from the forces of intolerance. Yet a common mistake is to assume – as repeatedly asserted by the current UK prime minister, David Cameron, with his idea of the “good society” – that civil society and the state comprise a zero-sum game, in which the former will be crowded out if the latter is too powerful. In fact, the contrary is the case, as evidenced by the experience of the Nordic countries, where a strong state and a strong civil society have gone hand in hand.<sup>23</sup>

More specifically, civil society requires a supportive political architecture, over and above commitment to the universal norms of democracy, human rights and the rule of law. The best possible political shell for dialogue is provided by what has been called “cosmopolitan” governance, defined in terms of three features: a) egalitarian

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<sup>22</sup> Jarman, N., *Towards Sustainable Security: Interface Barriers and the Legacy of Segregation in Belfast*, Belfast, Community Relations Council, 2007.

<sup>23</sup> Trägårdh, L. (ed.), *State and Civil Society in Northern Europe: the Swedish Model Reconsidered*, New York, Berghahn Books, 2007.

individualism, where humankind is treated as belonging to a single moral realm; b) reciprocal recognition, in which this status of equal worth is recognised by all and c) impartial treatment, where all claims arising are subject to rules that all can share.<sup>24</sup>

It is worth focussing on impartial treatment, a state function key to supporting a civil society conducive to dialogue. The Nordic societies are characterised not only by strong states and civil societies but also by high levels of trust, by comparison with other European societies. It has been argued that this can be linked to the impartial authority provided by universal welfare states. In contrast with their minimalist, Anglo-American opposite, in which complex but parsimonious, means-tested benefits favour tax aversion by the middle class and gaming of the system by beneficiaries, the transparent and comprehensive arrangements offered by Nordic welfare states favour a perception of common fate and a wider social solidarity.<sup>25</sup>

Impartial authority has also been associated with the notion of “constitutional tolerance.” This reflects on how in modern Europe it came to be recognised that the principle of *cuius regio, eius religio*, in which the ruler was deemed to determine the religion of the ruled, was incompatible with multi-religious societies. The idea of tolerance was founded on the notion that only a neutral state could guarantee freedom of conscience for all. This principle can be extended, it has been argued, to the multi-national societies of today – where, for example, Turks in Germany arrived as *Gastarbeiter* but their children may be entitled to citizenship of the state. Within this perspective, the “cosmopolitan state” should be neutral between different national identities so that these, too, can live side by side.<sup>26</sup>

## **VII. Civil Society and Integration Plans**

While the conventional models for managing diversity, as discussed, have been state-centred, in reality this task has become much too complex for states, which are neither omniscient nor omniscient, to achieve on their own. But it is essential that states – at every level – adopt policy frameworks and manifest political leadership.

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<sup>24</sup> Held, D., “From Executive to Cosmopolitan Multilateralism,” in D. Held, M. Koenig-Archibugi (eds.), *Taming Globalization: Frontiers of Governance*, Cambridge, Polity Press, 2003, pp. 160-186.

<sup>25</sup> Rothstein, B., *op. cit.*

<sup>26</sup> Beck, U., *Power in a Global Age*, Cambridge, Polity Press, 2005, p. 92.

In addition to the Europe-wide framework offered by the Council of Europe White Paper, therefore, there is a need for national and local initiatives. As to the first, Spain was the pioneer, with its “*Strategic Plan for Citizenship and Integration*” of 2007. The plan ran till 2010 with the significant budget attached of two billion Euro. It had ten objectives, disaggregated into a series of concrete actions covering a wide range of interventions.<sup>27</sup> As to the second, in 2010 Barcelona published an impressive intercultural plan for the municipality.<sup>28</sup> Such initiatives are essential to provide the “joined-up” responses the challenge of integration requires – straddling as it does departmental demarcations between responsibility for education, health, housing, the labour market, cultural affairs and so on.

It is also critical that the opportunity is taken – as is evident in both the above documents – to involve minority and intercultural civil-society organisations in the design of such plans. Indeed, it is equally critical to ensure they are partners in their delivery, as well as their monitoring and evaluation.

Hundreds of local authorities across Europe, particularly in Germany, have established consultative bodies to engage migrants and refugees.<sup>29</sup> These can ensure that issues with the potential to become sites of identity conflicts – say over concentrations of minority children in particular schools – can be treated as practical problems to be solved through dialogue.

## VIII. Conclusion: a Warning from History

A spectre is haunting Europe. But it is not the spectre of communism, as Karl Marx gleefully warned in the “*Communist Manifesto*.” It is the rise across the continent of the “populist radical right” – parties committed to “nativism” (nationalism and xenophobia), authoritarianism and populism.<sup>30</sup>

As in the 1930s depression, the crisis of neo-liberal economics since 2007 has not automatically translated into a political tilt towards the left

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<sup>27</sup> Ministerio de Trabajo y Asuntos Sociales, *Strategic Plan for Citizenship and Integration 2007-2010*, Madrid, Ministerio de Trabajo y Asuntos Sociales, 2007.

<sup>28</sup> Ajuntament de Barcelona, *Intercultural Plan*, Barcelona, Ajuntament de Barcelona, 2010, at: [http://www.bcn.cat/novaciudadania/pdf/en/PlaBCNInterculturalitatAng170510\\_en.pdf](http://www.bcn.cat/novaciudadania/pdf/en/PlaBCNInterculturalitatAng170510_en.pdf).

<sup>29</sup> Council of Europe, *Local Consultative Bodies for Foreign Residents – A Handbook*, Strasbourg, Council of Europe, 2004.

<sup>30</sup> Mudde, C., *Populist Radical Right Parties in Europe*, Cambridge, Cambridge University Press, 2007.

but has seen instead the emergence of “morbid symptoms.”<sup>31</sup> Parties committed to the demonisation of the ethnic “Other” – and to attacking a supposed liberal elite held to have opened the doors of the state to it – have gained ground, as the mainstream political forces in Europe have failed to engender an adequately transnational response to spiralling insecurity across the Eurozone.

The populist advance has been particularly militant and frightening in societies like Hungary – with the rise of Jobbik and its paramilitary associate, the Hungarian Guard, and increasing attacks on Roma – where the “fortresses and earthworks” of civil society<sup>32</sup> are weak. But even the Nordic societies have not been immune, with the Sweden Democrats securing a 6% parliamentary foothold in the 2010 election and the Liberal-Conservative government in Denmark held hostage by the Danish People’s Party.

Indeed, as this case exemplifies, the adoption of anti-immigrant rhetoric by centre-right political leaders has legitimated political stances which since the war had been deemed outside the political Pale. In 2010 the French president, Nicolas Sarkozy, sought to deport Roma immigrants wholesale from the country – only to find his path blocked by the vice-president of the European Commission, Viviane Reding, recalling the horror of the mass deportation of Jews under the Vichy regime.<sup>33</sup>

Soon afterwards, the German chancellor, Angela Merkel, told young Christian Democrats that multiculturalism had “utterly failed” – and not, as argued in this paper, with a view to moving on to the intercultural paradigm but to retreat into an assimilationist stance, insisting the onus was on immigrants to integrate better into German society.<sup>34</sup> While Anders Breivik must be deemed individually responsible for the massacre of young Social Democrats in Norway in 2011, his prolix “*European Declaration of Independence*” attacks multiculturalism in the name of assimilation – and claims that since Muslims supposedly cannot be assimilated they must be expunged from Europe.<sup>35</sup>

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<sup>31</sup> Hoare, Q., Nowell-Smith, G. (eds.), *Selections from the Prison Notebooks of Antonio Gramsci*, London, Lawrence and Wishart, 1971, p. 276.

<sup>32</sup> *Ibidem*, p. 238.

<sup>33</sup> Traynor, I., “Roma Deportations by France a Disgrace, says EU,” in *The Guardian*, 14 September 2010.

<sup>34</sup> Weaver, M., “Angela Merkel: Multiculturalism has ‘Utterly Failed’,” in *The Guardian*, 17 October 2010.

<sup>35</sup> <http://estaticos.elmundo.es/documentos/2011/07/27/manifiesto.pdf>.



Political parties are part too of civil society. Indeed, because of their influence and their potential access to state power, they have a particular responsibility to uphold universal norms and to facilitate intercultural dialogue. The least they can do is to stop the auctioning up of xenophobia, driven by the populist radical right, by agreeing not to “play the race card.”



# **Civil Society in Intercultural Dialogue: the Tension between Individual and Collective Rights**

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## **I. Concepts and Practices of Intercultural Dialogue: an Inventory**

### ***A. Concept***

Culture is a code of values that the members of a society are applying in their everyday life. Cultural differences are in the heart of discussion about different world views or ways of life. The international community recognises different world views or ways of life by placing cultural diversity at the centre of its legal activities (such as UNESCO *Universal Declaration on Cultural Diversity*<sup>1</sup> and the *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*<sup>2</sup>). The polarisation between Europe or Western civilisation in general and other regions reveals the importance of cultural values, identity and traditions. Migration flows, EU enlargement, globalisation, geopolitical changes, new means of communication and other factors which put traditional nation states in front of new challenges and pressures make them to feel more vulnerable than ever. Consequently the realistic European perspective has identified the concept of “unity in diversity” where an interaction replaces “multiculturalism” based on the appreciation, acceptance or promotion of multiple cultures that co-exist in separation.

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<sup>1</sup> UNESCO, *Universal Declaration on Cultural Diversity*, Paris, 2 November 2001.

<sup>2</sup> UNESCO, *Convention on the Protection and Promotion of the Diversity of Cultural Expressions*, Paris, 2005.

On the international level, the old-fashioned concept of cultural cooperation which was in the best case a cultural exchange and in the worst cultural expansion became insufficient and too far away from everyday reality. It has been slowly replaced, first with cultural diplomacy that goes beyond the patriotic forms – arts and culture have been increasingly used to promote trade and later with the set of cooperation programmes that are oriented towards some kind of partnership.<sup>3</sup> Within the larger social, economic, political and institutional contexts, culture is slowly integrated in foreign policy of EU as well.<sup>4</sup> Therefore the EU Agenda for Culture in a Globalising World, adopted in May 2007, “partially reduces the principle of subsidiarity” with the ambition of cultural integration of EU countries. It recognises three common sets of objectives – cultural diversity and intercultural dialogue; culture as a catalyst for creativity; and culture as a key component in international relations.<sup>5</sup>

All these changes are marketed increasing interaction that fits within theories of intercultural communication. New concept overcomes show-case culture using theories of intercultural communication to understand how people from different countries and cultures behave, communicate and perceive the world around them.<sup>6</sup> In order to extant interaction from collective level with the range of actors such as international organisations, governmental bodies, public institutions from different fields (arts, media, education, youth) and networks to the individual level, a *dialogue* that refers to the interactive communication between individuals and their groups and larger communities was introduced in the political discourse. Therefore the intercultural dialogue (ICD) has been invented as a form of intercultural communication. ICD became relevant political issue when international community decided to change its attitude towards cultural reality trying to overcome cultural differences. Uncomfortable feeling towards not Western cultures was replaced with rational relation towards cultural diversity. On one hand, its recognition gives legitimacy to cultural differences and ways of life, on the other, it calls for knowledge and skills to know, understand and

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<sup>3</sup> Fisher, R., *A Cultural Dimension to the EU's External Policies*, Amsterdam, Boekmanstudies, 2007.

<sup>4</sup> Dodd, D., Lyklema, M., Dittrich-Van Weringh, K., *A Cultural Component as an Integral Part of the EU's Foreign Policy*, Amsterdam, Boekmanstudies, 2006.

<sup>5</sup> Pavić, K., “The Clulture Network’s Regional Initiative – a Platform for Cultural Cooperation and Exchange in The Independent Scene,” in M. Pekić, K. Pavić (eds.), *Exit Europe: New Geographies of Culture*, Zagreb, Clulture Network, 2011.

<sup>6</sup> Chen, G.M., Starosta, W.J., *Foundations of Intercultural Communication*, Boston, Allyn and Bacon, 1998.

respect each other better and at the first place to develop the curiosity for the Other. Cultural diversity and ICD are in this respect two sides of the same coin and ICD is seen as a tool to come to terms with cultural differences on the basis of knowledge, understanding and respect.

### **B. Challenges and Practices**

There are many different dilemmas in the relation to ICD. According to Dragan Klaić individuals who are conducting a dialogue should not be seen as representatives of cultures “because no one can claim a representational authority of such immense proportions.”<sup>7</sup> Cultures are not distinct entities but the result of peoples’ behaviour, habits, traditions and beliefs. They only exist through the people with the plurality of stances, including radical that nevertheless belong to the certain circle. However, the objective side of cultural socialisation is so strong due to its institutional spaces that generate such strong common sense of belonging that it influences a dialogue as such. Therefore the relation between collective and individual presents one of the main challenges when ICD is introduced as an interactive tool. Similar hesitation concerning the culture as a magic tool means a danger to consider cultural rights as a substitute for political, social and economic rights. ICD that does not discuss problems that make it necessary can easily vitiate into the empty rhetoric.

Another dilemma is if ICD is mainly EU-Islam affairs. This opens the never-ending question of the definition of culture. If we stick to the anthropological approach to culture which dominates in UNESCO definition of culture then culture is “the set of distinctive spiritual, material, intellectual and emotional features of society or a social group, and that it encompasses, in addition to art and literature, lifestyles, ways of living together, value systems, traditions and beliefs.”<sup>8</sup> Since religion is an essential part of culture in this broader anthropological sense, the different position of religion in the Western societies in comparison to the Islamic world represents the main issue. The secularised Western societies are ruled by civic law that bases on human rights, observing the division between state and religion and keeping religion separate from executive, judicial, and legislative branches of government while Islamic societies do not recognise this distinction but embed religious norms into the public sphere and public law. Therefore it is not a

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<sup>7</sup> Klaić, D., “Politiche, Istituzioni e Sviluppo delle Competenze Interculturali,” in S. Bodo, M. R. Cifarelli (eds.), *Quando la Cultura fa la Differenza. Patrimonio, Arti e Media nella Società Multiculturale*, Rome, Meltemi, 2006.

<sup>8</sup> UNESCO, *Universal Declaration on Cultural Diversity*, *op. cit.*

position of religion within the definition of culture that makes this difference, but the position of religion in relation to the state. In this situation, the religion is dominating component of culture and ICD gets closer to the interfaith dialogue which opens dilemmas and aspects which cannot be addressed outside of the realm of human rights.

The controversies and debates on values systems and some incidents of discrimination, racism and populism motivated Eurobarometer in 2007 to engage in two surveys: *Discrimination in the EU*<sup>9</sup> and *Flash on ICD in Europe*.<sup>10</sup> The first survey was published in January 2007 and it shows that visible differences and practises (e.g. the Roma, Muslims, etc.) are considered by the majority of EU citizens as a main motive in discriminatory thinking and a basic barrier to further interaction. On the other hand, the second survey, the November 2007 Eurobarometer *Flash on ICD in Europe*, shows that the majority of EU citizens tend to agree that diversity and intercultural dialogue could have positive impact on their countries' cultural life. The fear of differences on one hand and depreciation of culture on the other resulted in a lack of knowledge and understanding about different cultures.

ICD, recognised by the Council of Europe's White Paper on Intercultural Dialogue<sup>11</sup> as "a process that comprises an open and respectful exchange or interaction between individuals, groups and organisations with the different cultural backgrounds or world views" became the main tool to overcome this lack. Its aims are to develop a deeper understanding of diverse perspectives and practices, to increase participation and the ability or freedom to make choices, to foster equality and to enhance creative processes. Following these political ambitions, the EU has designated 2008 the European Year of Intercultural Dialogue<sup>12</sup> to give expression and a high profile to best practices and processes of intercultural dialogue aiming at establishing a sustainable strategy beyond 2008.

The promotion of ICD has been recognised in 2007 in the European Commission's "*Agenda for Culture in a Globalising World*" as one of the main instruments of peace and conflict prevention contributing to

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<sup>9</sup> Eurobarometer, *Discrimination in the European Union*, no. 263, Brussels, European Commission, 2007.

<sup>10</sup> Eurobarometer, *The EU's Relations with its Neighbours – A Survey of Attitudes in the European Union*, no. 285, Brussels, European Commission, 2007.

<sup>11</sup> Council of Europe, *White Paper on Intercultural Dialogue, Living Together as Equals in Dignity*, launched by the Council of Europe Ministers of Foreign Affairs at their 118<sup>th</sup> Ministerial Session, Strasbourg, 7 May 2008.

<sup>12</sup> European Parliament and the Council, Decision no. 1983/2006/EC, 18 December 2006, OJ L. 412, 30 December 2006.

the governance of cultural diversity. This was based on mutual understanding and respect for shared values within European societies, trans-nationally across European countries and globally with other world regions. The protection and promotion of human rights and the protection of languages are extended through different communitarian programmes such as Culture programme 2007-2013<sup>13</sup> that recognises among different objectives also the facilitating mutual understanding, the programme Europe for Citizens,<sup>14</sup> EU Neighbourhood programmes<sup>15</sup> and some other programmes that support lifelong learning and exchanges of young people (including Erasmus and Erasmus Mundus)<sup>16</sup> and multilingualism.<sup>17</sup>

### ***C. The Comparative Study “Sharing Diversity: National Approaches to Intercultural Dialogue in Europe” (ERICarts)***

The same attention to ICD has been paid in other international organisations such as Council of Europe, the OECD and UNESCO. The comparative study “*Sharing Diversity: National Approaches to Intercultural Dialogue in Europe*” was commissioned in 2007 by the European Commission<sup>18</sup> and carried out by the European Institute for Comparative Cultural Research (ERICarts).<sup>19</sup> The study was aimed to clarify concepts, assess projects and understand experiments in the context from policy to practise. The results show that ICD has multiple meanings and that there is no uniform approach to ICD: this is mainly due to the fact that national approaches are shaped by different historical experiences, legal and substantive contexts within which ICD concepts and strategies are being developed across EU member states. The study

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<sup>13</sup> European Parliament and the Council, Decision no. 1855/2006/EC, 12 December 2006, OJ L. 372, 27 December 2006.

<sup>14</sup> European Parliament and the Council, Decision no. 1904/2006/EC, 12 December 2006, OJ L. 378, 27 December 2006.

<sup>15</sup> European Commission, Communication to the Council and the Parliament, *Strengthening the European Neighbourhood Policy*, COM (2006) 726, Brussels, December 2006.

<sup>16</sup> European Commission, Communication from the Commission on *Making a European Area of Lifelong Learning a Reality*, COM (2001) 678, Brussels, November 2001.

<sup>17</sup> Eurydice, *Key Data on Teaching Languages at School in Europe*, 5<sup>th</sup> ed., Brussels, Eurydice, 2005.

<sup>18</sup> ERICarts, *Sharing Diversity: National Approaches to Intercultural Dialogue in Europe*, 2008.

<sup>19</sup> V. Čopič, the author of this paper was one of the key experts covering the legal aspect of the study.

identified four major sectors where ICD issues and related policies could be observed: education, culture, sports and youth.

As far as the civil society is concerned, the study identified the following non-governmental actors: neighbourhood groups, minority or migrant agencies, church organisations and charities, arts, culture, youth and sports clubs and other formal and informal organisations that have been actively engaged in interactive activities long before they became known as intercultural dialogue. Non-institutional spaces such as public parks, train stations, streets and neighbourhoods in general have been discovered as important places of ICD. The professionals of different fields are active in protection of minorities' rights, fight against xenophobia, advocacy for better legislation, organisations of different events and programmes on ICD related issues. An important part of activities presents efforts aimed at better representation of these issues in press and media. International organisations such as Amnesty International, Human Rights Watch, different UN agencies together with transnational NGOs enable local NGOs and professional organisations to play key role where formal ICD structures are less developed.

The study recognises important regional distinctions from different shares of traditional minorities, immigrants and refugees to different historical reasons for them. Western European countries have heterogeneous populations being the result of post-colonial immigrant communities and new immigrants (guest workers). In central and Eastern European countries, the focus of integration strategies is on traditional minorities including Roma population. In some post-communist countries, being the outcome of a decomposition of the Soviet Union and Yugoslavia, the central topic centres on how to overcome the feelings of resentment caused by historical events, sometimes resulted in the existence of stateless people in Latvia, non-citizens in Estonia or "erased" people in Slovenia. However, there are common points. Intercultural dialogue is often seen as part of, on the one hand, national immigration and/or security policies and, on the other hand, as part of social and/or education policies addressing migrants or minorities (frequently involving a – not always voluntary – participation of artists). It is rarely a main feature of domestic cultural policy and more often a means for artistic trans-border exchanges or cultural diplomacy.

The Study identifies two main approaches in relation to strategies and policies of governmental sectors (ministries, governmental and semi-governmental bodies responsible for foreign affairs, integration of traditional minorities and new migrant groups, education, youth, culture and sport): a social cohesion approach and a cultural diversity approach:



1) The cohesion-driven approach aims at creating a more unified society by promoting a common national identity, language and values, providing equal opportunities for all citizens and creating political and economic stability. In Denmark, for example, immigrants and refugees are to sign an integration contract as a declaration of their commitment to integration and active citizenship at the beginning of their stay in the country. Citizenship is only granted following a test on Danish values, history, and traditions. In the Netherlands, a new canon for Dutch history was introduced in the primary and secondary school education. Are we witnessing the revival of an established “*Leitkultur*,” a dominant culture that is to serve as a blueprint for all residents in European countries? 2) The diversity-driven approach aims at recognising differentiated cultures and identities and provide them with specific rights; some of which are accompanied by affirmative action measures. The idea is to create meeting places for different views, backgrounds and cultures. This intercultural practice does not seek to integrate others into a given order, but to remake the civic and public sphere so they reflect the diversity of the city and its citizens. In most EU countries, ICD is given a role in domestic plans and activities that try to promote an integration of minorities and immigrants. In short, the first approach prevails to the great extent.

The study offers the following findings and recommendations:

1. ICD depends upon the full fulfilment of human, civic, economic, social and cultural rights. ICD cannot resolve the problems of bad housing, unemployment, social security and economic problems.

2. Acknowledgment of intercultural dialogue at the heart of citizenship and integration strategies would imply the recognition of equal rights, responsibilities and opportunities for everyone, while at the same time advocating respect for different cultural and religious traditions, world views or lifestyles could become a subject for dialogue rather than a pretext for exclusion or assimilation.

3. Intercultural dialogue requires transversal approach and strategic efforts which bring together different policy fields addressing: human rights and citizenship, integration of minorities, immigration, social affairs, employment, health, security, social and labour affairs, sectors such as culture, education, sport, and youth. This would also imply cooperation between different levels of government – European, national, regional/local and cross-sector partnerships with civil society actors.

4. Strategies which recognise intercultural dialogue as a process of interactive communication within and between cultures could be built upon the identification of specific ICD barriers within countries such as

incidents of discrimination against “visible minorities” or specific groups (e.g. the Roma or Muslims).

5. Intercultural dialogue depends upon the opening up of institutional structures in terms of diversity of governing boards’ staff, content production and coverage of intercultural and inter-faith issues.

6. The active participation of the media/culture industries in ICD would imply the creative ways to implement the UNESCO Convention on the diversity of cultural expressions.

7. The development of intercultural competencies and skills as part of an overall political vision or national strategy on life-long learning would involve the production of special resources such as manuals, toolkits, glossaries to assist teachers at the kindergarten, primary and secondary school levels, the introduction of intercultural modules at the university level for different professional fields such as journalism or heritage management and programmes to “train trainers” in intercultural literacy.

8. Strengthen ICD in EU Neighbourhood policies would require an evidence-based evaluation of successes/failures in present and past schemes.

9. Further expand EU cooperation with other European and international bodies needs new initiatives to monitor ICD and cultural diversity policies in a new framework agreement of cooperation with the Council of Europe in the culture sector or through creating links between EU and UN Years or designated days which focus on issues relevant to cultural diversity, tackling racism and improving intercultural understanding.

10. Establishment of clear concept/definition of intercultural dialogue is especially important for the future development of European, national, regional/local policies, strategies and funding programmes to promote intercultural dialogue since it will help avoid potential misinterpretations and make it easier to evaluate results.

11. Implementation and harmonisation of evaluation methods for ICD programmes and activities including quality criteria and indicators to assess their impact should take into account the new developments at the heart of such processes.

12. Improvement of research methodologies for intercultural comparisons would require improvements in the comparability of ICD-related research and statistics with special expectation regarding Eurostat.

An increasingly diverse demographic and sub-cultural make-up of European societies push for the corresponding changes in policy and

research paradigms which would be built upon a broad vision, in which economic and social inclusion policies and policies for cultural diversity are integrated and orchestrated in accordance to each other. In this regard, the study ended with the four-step policy approach where European, national and local authorities and the various ICD actors of civil society could work together in: 1) Mapping roads: develop favourable political and societal guidelines to improve conditions and create a basis for ICD; 2) Breaking down walls: remove barriers for ICD to enter into mainstream political, economic, educational and cultural spheres; 3) Building bridges: develop intercultural skills and competencies through, e.g. educational, artistic and media programmes; and 4) *Sharing spaces*: create spaces where different ideas, experiences and beliefs can meet and interact.

## II. The Legal Framework of Intercultural Dialogue

In the context of a politically constituted society, law is a decisive means for societal regulation.<sup>20</sup> Therefore the legal dimension of intercultural dialogue presents an important issue. Intercultural dialogue is not a legal category and it is not about rights, obligations or relations that would be legally regulated in whichever country or international law. Neither is it a legal standard that guarantees what could be legally considered as intercultural dialogue. Moreover, intercultural dialogue does not provide legal security or protection and there are no legal mechanisms or rules that would directly refer to intercultural dialogue. In short, legal obligations to promote intercultural dialogue do not exist.

Given the non-existence of a formal legal framework, intercultural dialogue very much depends on the indirect legal frameworks and principles of free and democratic countries. These are: – the principle of the division of state authorities into legislative, executive, judicial and administrative functions with a built-in system of checks and balances that prevents abuse by state authorities of the principle of constitutionality and legality, which imposes a consistent regard of constitutionally and legally guaranteed rights, prevents arbitrariness and self-will by the state authority, and limits the ruling political option to avoid easy accommodation to own views and interests; the independence of the judicial system in order to protect the individual from the state; – a judicial control over the legality of administrative work that is exerted by the regular supreme and special administrative courts; the recognition of a constitutional complaint system that enables

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<sup>20</sup> Banakar, R., Travers, M., *Understanding Law and Society*, New York, Routledge, 2010.

anybody who believes that a private or public act, a local authority or a representative of public authorisation violated his human rights or basic freedoms can start proceedings at the highest judicial body (e.g., constitutional court); and – the existence of special entities for the guarantee, security and control of human rights, such as, for instance, Ombudsman.

Besides general democratic postulates, intercultural dialogue is influenced by the regulation of those rights, obligations or relationships in the society which define social relationship towards otherness. Because of the close connection between intercultural dialogue and human rights, it is possible to say that legal regulations referring to human rights are of an essential meaning for intercultural dialogue. These regulations determine the circumstances that can, at the same time, either encourage intercultural dialogue or make it even more difficult. Is intercultural dialogue possible at all if there are no adequate regulations of the fundamental issues concerning the existence of the other? The enjoyment of human rights facilitates intercultural dialogue, which is difficult to imagine in a situation of denial of human dignity. In the absence of legal regulations of intercultural dialogue as such, a human rights approach to intercultural dialogue becomes very important.

### ***A. The Human Rights Legal Context***

Legally, human rights are those individuals' entitlements towards the state that are safeguarded by law. The rights prevent others (i.e. the bodies of the state authorities) from encroachment upon it and, consequently, their violation. The rights exist only in case when they are juxtaposed with the obligation of one or more legal individuals that permit or even enable a certain action. When a person is not only acknowledged, but also guaranteed freedom, safety, equality, dignity, etc., circumstances emerge which are favourable for intercultural dialogue as a process of interaction that encourages mutual understanding, recognising and respect. In the absence of legal regulations of intercultural interactions the human rights legal context makes even more sense.

When discussing otherness, values such as dignity, freedom, equality, solidarity and justice, are central. The Charter of Fundamental Rights of the European Union organises the human rights around these values:<sup>21</sup>

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<sup>21</sup> Charter of Fundamental Rights of the European Union, 2000/C OJ 364/01, 18 December 2000.

– Dignity (i.e. right to life, right to the integrity of the person, prohibition of torture and inhuman or degrading treatment and punishment, prohibition of slavery and forced labour).

– Freedoms (i.e. right to liberty and security, respect for private and family life, protection of personal data, right to marry and right to found a family, freedom of thought, conscience and religion, freedom of expression and information, freedom of assembly and association, freedom of arts and sciences, right to education, freedom to choose an occupation and right to engage in work, freedom to conduct a business, right to property, right to asylum, protection in the event of removal, expulsion or extradition).

– Equality (i.e. equality before the law, non-discrimination, cultural, religious and linguistic diversity, equality between men and women, the rights of the child, the rights of the elderly, integration of persons with disabilities).

– Solidarity (i.e. worker's right to information and consultation with the undertaking, right of collective bargaining and action, right to access to placement services, protection in the event of unjustified dismissal, fair and just working conditions, prohibition of child labour and protection of young people in work, family and professional life, social security and social assistance, health care, access to services of general economic interest, environmental protection, consumer protection).

– Justice (i.e. right to an effective medicine and to fair trial, presumption of innocence and right of defence, principle of legality and proportionality of criminal offences and penalties, right not to be punished twice in criminal proceedings for the same criminal offence).

Besides these groups of rights, the Charter recognises also citizens' rights (i.e. right to vote and to stand as a candidate at European Parliament elections, right to vote and to stand as a candidate at the municipal elections, right to access to documents, ombudsman, right to petition, freedom of movement and residence, diplomatic and consular protection).

Every human being, regardless of one's legally political status, has human rights but citizens' rights are reserved for persons with a citizenship of a certain country, and are not granted to foreigners. While mainly personal rights belong to human rights, political rights belong to civil rights. The political and civil rights can mostly be sued. Differently, economic, social and cultural rights as a rule cannot be exacted before the court. It means that the political and civil rights have the status of the so-called negative rights. The state authority has no right to interfere in them and this principle is protected by the court. To the contrary, economic, social and cultural rights have a "positive"

status, which means that the state is expected to enable their execution and help the individual to become a part of the society. As this is connected to competences of state authorities, those rights cannot be sued for. Therefore the crucial difference between the first and second type of rights lies in their ability to be sued.

In this context it is necessary to mention the distinction between the legal state and the rule of law. While the legal state refers to the existence of legal regulation, the rule of law concerns its implementation in practice. However, there is a permanent danger that laws too often act as an end in themselves and not merely as a means to achieve substantial goals. The other danger concerns the relation between different rights. The offensive publication of cartoons by a Danish magazine depicting the prophet Muhammad opened the old problem of competition of different rights, in this case between the freedom of expression and the right of religion.

Another legally important distinction refers to a shifting attention from a formulation which identifies culture as a separate human right to one in which the pursuit of human rights is approached in itself as a cultural process. This topic has been discussed within the Council of Europe during the 1980s when serious attempts were made to elaborate the possibility to recognise cultural rights as separate human rights.<sup>22</sup> Finally, a group of specialists came to the conclusion that cultural rights cannot be considered specific human rights. Instead, cultural rights are embedded in the concept of human rights itself as a cultural dimension of human rights, meaning that cultural rights are just another intrinsic crucial element of human rights.

While culture is mostly mentioned in the connection with international cultural cooperation, the right of an individual to belong to and to enjoy a culture is explicitly identified in the International Covenant on Economic, Social and Cultural Rights.<sup>23</sup> The human rights' discourse allows culture to become an object of rights' claims. This understanding of cultural, religious and linguistic diversity is based on the principles of freedom and democracy, human rights and the rule of law. Cultural rights as separate rights appear only in the connection with collective rights or rights of different groups such as minorities, children, disabled people, etc. Although the recognition of cultural

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<sup>22</sup> Council of Europe, *Cultural Rights at the Council of Europe (1949–1979)*, Strasbourg.

<sup>23</sup> *International Covenant on Economic, Social and Cultural Rights*, UN doc. A/ 6316 (1966), 993 U.N.T.S. 3, entered into force 3 January 1976.

diversity is grounded in the human rights of each individual, the question of group rights remains essential.

### ***B. The Tension between Individual and Collective Rights***

One of the most important questions for intercultural dialogue is the question of the universal nature of human rights. Although the human rights' doctrine advocates the universal value of human rights, those rights are not recognised with one voice and guaranteed in practice. In Eastern and other traditional or cultural systems they, to a large extent, depend on the compatibility with Islamic law, Hindu (Indian) community law, Chinese and Japanese law, traditional (ordinary) African law and, after all, with the Christian point-of-view. In an optimistic scenario it is about a cultural process of approaching parallel worlds, but in pessimistic scenario culture prohibits, at least potentially and in some cases, the pursuit of universal individual rights. There is a fundamental tension between the desire to establish universal rights and the awareness of cultural differences, which seems to negate the possibility of finding a common ground on which to base such rights.

The distinction between individual and collective rights was after the Second World War the object of ideological polarisation. It reflected itself in a process of forming international security of human rights, when Western countries strived primarily for primacy of individual rights, while Eastern countries and countries of the so-called third world emphasised collective elements of human rights. Collective rights guarantee the existence and activity of a particular community, by which they only create conditions for their members to assert their own individual rights. The rights that mainly belong to collective rights are rights of minorities.

The distinction between "external protections" for groups and "internal restrictions" within groups must be taken into consideration. External protections are measures taken to protect vulnerable minorities against the state or other majorities, while internal restrictions are the kind of restrictions that some groups, usually in traditionalist mould, want to impose on their members in the name of the greater good of the group. While the external protections may actually advance the individual rights of group members and even promote their individual liberty, internal restrictions, may indeed often subject the individual to the group. The issue of group rights has proved to be contentious among liberal theorists, with a number of scholars having tested the bounds of liberal principles and their ability to accommodate claims for group-differentiated rights. Kymlicka offers a general framework for assessing the rights' claims of various cultural collectives by setting limits on the

purposes for which group rights may be claimed and by distinguishing among different types of cultural groups.<sup>24</sup>

It is obvious that cultural features are seen as intrinsic valuable and worthy of recognition and legal protection. Cultural claims invoke notions of culture, tradition, language, religion, ethnicity, locality, tribe and race, all being capable to legitimise progressive projects as easily as reactionary ones. Individuals can easily subject themselves to collective values even at the price of their own individuality. In some situations the need to promote the interests of a particular group which has suffered in the past in some way means that the rights of the individual must be subordinated to the needs of the group. The tyranny of majority is still tyranny even if exercised by the group over its members. On the one hand, there is the individual's right of equal treatment; on the other hand, there are the rights of women, blacks, disabled people, etc. as a group to challenge oppression.

The question is which concept will prevail in the future, the individualist and philosophical view where rights can not be extended to groups "or the rights of peoples" as a response to concerns about indigenous peoples, migrants, minorities. It is often assumed that classical civil and political rights are unsuitable to address the specific concerns of cultural minorities. These rights are commonly seen as relying on an abstract conception of the individual, ignoring collective and cultural affiliations. They are said to be individualistic and universalistic whereas minorities supposedly claim for collective and special rights. The debate over minority's rights tends to turn on the question whether or not traditional individual rights should be supplemented with presumably a distinct category of rights specially designed to enable a minority to preserve their own separate identity. In short, in the process of forming international security of human rights, Western countries strived primarily for primacy of individual rights, while Eastern countries and countries of the so-called Third World emphasised collective elements of human rights seeing in collective rights of a particular community (mainly minorities) a guarantee for their members to assert their own individual rights.

As already pointed out, the successful participation of civil society actors in intercultural dialogue processes depends to a great extent on the recognition and realisation of rights, both human rights and cultural rights. Both rights are underpinning cultural creativity and participation in cultural life – human rights with the focus on individuals and cultural

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<sup>24</sup> Kymlicka, W., *Liberalism, Community and Culture*, Oxford, Oxford University Press, 1989.



rights with the focus on collectivities such as ethnic, linguistic, religious and other civic minorities. However, the protection of cultural diversity is only meaningful and can only make possible through the promotion of and respect for cultural rights within the human rights system as a whole. In this sense, the collective rights concept is closer to multiculturalism, while the recognition of cultural diversity must be rooted in the human rights concept based on the rights of individuals. The rationale behind lies with the assumption that cultural diversity is not, *per se*, good. Therefore promoting respect for cultural diversity without insuring respect for all human rights is opening the door to relativism and could provoke the universality of human rights.

Therefore it is so important that the *Universal Declaration on Cultural Diversity*<sup>25</sup> by UNESCO established the link between diversity and cultural rights and defined the principle of mutual protection between cultural diversity and human rights. This impedes relativist drifts and community's self-exclusion. An important move to this direction is the Fribourg Declaration.<sup>26</sup> In the explanation for its adoption stays: "The recent development of the protection of cultural diversity can only be understood as an attempt to avoid relativism, anchored in the indivisibility and interdependence of all human rights, and more specifically by clarifying the importance of cultural rights." In this context, universality is above culture but it is culture that needs to invent it and to develop it through a demanding dialogue.

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<sup>25</sup> UNESCO, *Universal Declaration on Cultural Diversity*, *op. cit.*

<sup>26</sup> Observatory of Diversity and Cultural Rights, University of Fribourg, *Fribourg Declaration on Cultural Rights*, adopted in Fribourg 7 May 2007.



# **Civil Society Organisations in the European Architecture of Multi-level Governance**

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## **I. The Participatory Dimension of Democracy in the European Union System**

Before being method and practice, democracy is a value. Today, the more stringently we proclaim the democratic principles as bonded to human rights, the more this common-sense caveat gains credence. Generally speaking, within the system of international relations, the democratic principles have been considered realisable within the limited space of national political systems separate from one another. Therefore, the horizon of democracy has been compressed into the space of national states. Today the time has come to abandon ambiguity and reticence in order to confront the theme of democracy in its two-fold spatial dimension, internal and international, while referring to its original subjects: persons and peoples.

In the historic circumstances facing us today, our discussion of European and international democracy appears in all its realism and urgency. Its variables derive from a three-fold set of factors. First of all: today's condition of complex planetary interdependence, implying various processes of globalisation, whose dimension is forcing the traditional nation-state governance to redefine its scale of action. Then, we see a "new" international law deriving from the first part of the United Nations Charter, based on the human rights paradigm and on the principle of the original sovereignty of the person and of peoples. Thirdly, there exists a multitude of collective, non-state subjects with a transnational vocation, operating transversally, above and beyond national borders, both for profit and for the sake of human promotion.

The solidaristic segment of this last set of variables can be summed up as “global civil society.”<sup>1</sup>

The tangible presence of these variables proves that it is realistic, today, to vertically expand the borders of democratic practice, from the city to the great international institutions. Within this enlarged space, in fact, civil society organisations and movements are making “on-the-ground” claims for rights which have been legally recognised in that same space; they operate in the awareness that internal and international democracy are an independent variable with respect to internal and international peace, and that both democracy and peace are founded in human rights.<sup>2</sup>

The circumstance explicitly urging EU institutions to discuss the issue of political participation – and therefore, a more substantial democratic legitimation of the entire EU system<sup>3</sup> – is clearly two-fold. On one hand, we find a superabundance of political demand – intrinsically European, transnational in its articulation – addressed directly to the European institutions, which ends up putting the EU in a condition of “input overload.” On the other hand, we see a progressive expansion within the civil society of EU member states, of misgiving toward those same supranational institutions charged with effectively responding to the political demand addressed to them.

A further factor lies in the clear perception that the development of the integration process can no longer rely – as it did in the past, and as extensively theorised by the neo-functional school – on the centrality of the role of “Eurocrats” and “experts,”<sup>4</sup> and on the predominance of

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<sup>1</sup> See Keane, J., *Global Civil Society?*, Cambridge, Cambridge University Press, 2003; Kaldor, M., “The Idea of Global Civil Society,” in *International Affairs*, no. 3, 2003, pp. 583-593; Baker, G., Chandler, D., *Global Civil Society: Contested Futures*, London, Routledge, 2005; Albrow, M., Anheier, H.K. et al. (eds.), *Global civil society 2007/8*, London, Sage, 2008; Armstrong, D., Bello, V., Gilson, J. (eds.), *Civil Society and International Governance: the Role of Non-state Actors in Global and Regional Regulatory Frameworks*, London, Routledge, 2011.

<sup>2</sup> See Papisca, A., “Relevance of Human Rights in the Global Space of Politics: How to Enlarge Democratic Practice beyond State Boundaries and Build up a Peaceful World Order?,” in K. De Feyter, S. Parmentier, Ch. Timmerman, G. Ulrich (eds.), *The Local Relevance of Human Rights*, Cambridge, Cambridge University Press, 2011; *Idem, Il Diritto della Dignità Umana. Riflessioni sulla Globalizzazione dei Diritti Umani*, Venezia, Marsilio, 2011.

<sup>3</sup> Greenwood, J., “Review Article: Organized Civil Society and Democratic Legitimacy in the European Union,” in *British Journal of Political Science*, no. 2, 2007, pp. 333-357.

<sup>4</sup> See *White Paper on European Governance*: “Public perceptions are not helped by the opacity of the Union’s system of expert committees or the lack of information

economic lobbies, finally on the virtual exclusion from decision-making processes of all those social groups whose actions and claims are driven by universal human values and interest in the common good.

In an early historical phase of the European communitarian system, whose decisions were prevalently economic in content, the information, consensus and legitimation deriving from economic interest groups were vital to the functioning of the system itself. Today, instead, the EU presents itself as a governance system which makes decisions, widely and pervasively, in a multitude of sectors increasingly interrelated among each other: just consider the field of justice, human rights, security, environment, humanitarian aid, development cooperation, anti-discriminatory policies, social marginalisation, capital punishment, education programmes, labour, the rights of persons with disabilities, minority rights, international criminal law. In all such areas, the actors best qualified to provide information to the EU, thus allowing it to create consensus and substantial legitimation for its legislative acts, are non-governmental organisations.<sup>5</sup>

In the EU's new perspective marked, as it is, by the seal of human rights, formally affixed to the EU identity, the system's tripartite division of political labour, based on interest groups and lobbies, the European Commission's formulation of proposals deriving from the political demand, and states protecting their respective vital national interests, must be supplemented by the role of civil society organisations whose mission is human promotion.<sup>6</sup> The European institutions are showing an awareness that the profound changes which have occurred both in the EU and in the wider international system, as touched by multiple globalisation processes, demand a democratic reform of governance, based on principles of openness, participation, responsibility, efficacy and coherence.

The institutions cannot but perceive the situation of crisis afflicting representative democracy in the "politically developed" political systems

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about how they work. It is often unclear who is actually deciding – experts or those with political authority. At the same time, a better informed public increasingly questions the content and independence of the expert advice that is given." European Commission, *European Governance. A White Paper*, doc. COM(2001) 428 final, Brussels, 25 July 2001, p. 19.

<sup>5</sup> Finke, B., "Civil Society Participation in EU Governance," in *Living Reviews in European Governance*, no. 2, 2007, pp. 4-31.

<sup>6</sup> Papisca, A., "Human Rights and Civil Movements: the Critical Mass for Improving European Integration," in *The European Union Review*, no. 4, 1999, pp. 7-11; Mascia, M., *La Società Civile nell'Unione Europea. Nuovo Orizzonte Democratico*, Venezia, Marsilio, 2004.

of EU member states and, even more tangibly, in the supranational European system itself.<sup>7</sup> One datum is especially eloquent, and not in the least extraneous to our discussion here: the progressive decrease in citizens' participation in electoral processes, on both the domestic and European level.

This decrease derives partly from the fact that national political parties are losing their militants and their popular consensus as they suffer a chronic crisis of political leadership. It also derives from the fact that, despite official recognition of their status and role by the Treaty of Lisbon, the European party confederations, the so-called "European parties,"<sup>8</sup> have great difficulty in carrying out the role of aggregating political demand and selecting political personnel, which should naturally pertain to parties in democratic political systems. However, the discernible crisis in the "representative" articulation of democracy is flanked by encouraging evidence of an expanding, simultaneous demand for the participatory dimension, both on national levels and directly within the EU system. This demand, we might say, is providential.

Such was the backdrop for this study. The abundance of empirical evidence available regarding the role of civil society groups in the EU should help to deepen our analysis of that chapter of international political science, no longer "new," referring to non-state actors, and to processes of structural change linked to human rights issues. Our purpose here is to provide updated information and stimulus for thought, regarding a little-known realm; one often burdened by unjustified prejudices, on one hand, and hagiographic exaltation, on the other. In this essay, when I use as synonyms the acronyms CSO (civil society organisation) and NGO (non-governmental organisation), I am specifically referring to those non-state groupings whose goals are solidarity and human promotion.

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<sup>7</sup> See Farrell, D.M., Scully, R., *Representing Europe's Citizens?: Electoral Institutions and the Failure of Parliamentary Representation*, Oxford, Oxford University Press, 2007; Thomassen, J.J.A., (ed.), *The Legitimacy of the European Union After Enlargement*, Oxford, Oxford University Press, 2009; Mair, P., Thomassen, J.J.A., "Political Representation and Government in the European Union," in *Journal of European Public Policy*, no. 1, 2010, pp. 20-35.

<sup>8</sup> See Hix, S., Lord, C., *Political Parties in the European Union*, Palgrave Macmillan, 1997; Luther, K.R., Muller-Rommel, F., *Political Parties in the New Europe*, Oxford, Oxford University Press, 2002; Bardi, L., Bressanelli, E. *et al.*, *How to create a Transnational Party System*, Brussels, European Parliament, 2010.

## II. Civil Society Organisations in the European Union

The context of European integration – that is, of a system highly significant in the experimentation of multi-level governance<sup>9</sup> – clearly reveals that the non-governmental actors whose goals are solidaristic are useful not only in fostering new governance spaces, but also, increasingly, in qualifying those spaces democratically. Ph. Schmitter, a political scientist long versed in European governance issues, defines the building yard of the European Union as “Europolity”<sup>10</sup> to be increasingly open to new channels of access by CSOs. On their part, CSOs have definitely “discovered” this complex yard, and are committed to overcoming old prejudices and drawbacks whose nature is, to varying degrees, ideological, regarding the integration process. In the CSO sphere we now find widespread awareness that the EU system offers opportunities for good governance which may be presented as exemplary in other regions of the world as well, and that experimentation with democracy beyond national borders is finding fertile terrain within that system. As things stand today, we may say that civil society organisations generally tend to take up dialogue with European institutions both constructively and (obviously) critically. With an aim to exploit as much as possible the opportunities already present in the system, and to obtain others, NGOs and CSOs are not only declaring the priorities of their political agendas, but are also equipping themselves organisationally.

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<sup>9</sup> See, among others: Scharpf, F.W., “Community and Autonomy: Multi-level Policy-making in the European Union,” in *Journal of European Public Policy*, no. 1, 1994, pp. 219-242; Hooghe, L., Marks, G., *Multi-level Governance and European Integration*, Lanham, Rowman and Littlefield, 2001; Bernard, N., *Multilevel Governance in the European Union*, The Hague, Kluwer Law, 2002; Neyer, J., “Discourse and Order in the EU: A Deliberative Approach to Multi-Level Governance,” in *Journal of Common Market Studies*, no. 4, 2003, pp. 687-706; Aalberts, T.E., “The Future of Sovereignty in Multilevel Governance Europe. A Constructivist Reading,” in *Journal of Common Market Studies*, no. 1, 2004, pp. 23-46; Bache, I., Flinders, M. (eds.), *Multi-Level Governance*, Oxford, Oxford University Press, 2004; Papisca, A., “‘Europe 2020’: What Compass, What Soul, Which Kind of Architecture for the EU Governance? The Need for Human Rights Mainstreaming,” in *Pace diritti umani. Peace Human Rights*, no. 3, 2010, pp. 23-44; Piattoni, S., *The Theory of Multi-level Governance. Conceptual, Empirical, and Normative Challenges*, Oxford, Oxford University Press, 2010. See also: Committee of the Regions, “Towards Multi-Level Governance in Europe?,” in *The Cahiers of the CoR*, Volume I, Brussels, Committee of the Regions, 2009; *Idem*, *White Paper on Multi-level Governance*, doc. CoR 89/2009, June 2009.

<sup>10</sup> Schmitter, Ph.C., *How to Democratize the European Union ... And Why Bother?*, Lanham, Rowan and Littlefield, 2000.

Interestingly, such organisations are gearing their attention toward Europe, based on their rich experience and political culture gained from decades of work within the wider, global political system, particularly in the United Nations, its specialised agencies, and world conferences. There is emerging a new kind of political culture, acutely universalistic, which openly opposes the state-centric cultural snares that characterise a large portion of today's governing classes. CSOs introduce into the EU system a universalistic, solidaristic tension of which they are bearers, in the systemic context of interdependence and globalisation; they are confident in their increasingly clear, shared awareness that they are on the side of the "new" international human rights law, a law which marks, even formally, their legitimacy to act both within and outside national boundaries.

I do not mean to sing the praises of NGOs. Undeniably, however – apart from their role in witnessing for human values – together with transnational solidarity movements as a whole, they are committed to operations of delicate politico-institutional engineering. Such work, once the task and the privilege of governments, is guided by the need to "construct:" to define goals on the political agenda (agenda-setting), develop international human rights norms (universal law-building), trace pathways for dialogue before, during and after conflicts (universal peace-building), set up democratic institutions (democratic institution-building), form and perfect capacities for action and governance (capacity-building).

Their identity both testimonial and political, as well as their operative capacities, have finally been caught by the EU institutions, which consider solidarity-oriented civil society groups as an indispensable instrument for legitimising governance within the supranational system and, at the same time, an instrument which makes manifest, albeit in a surrogate manner, the EU unitarian identity and the Union tendency to speak to the world "with a single voice." NGOs and the EU were destined to meet, I believe, in order to reach common goals inside and outside the European system, such as coherent public policies fostering economic and social rights (implying economic and social cohesion as reformulated on the basis of human rights), an effective collective security system managed by the United Nations, or world-wide environment policies.

CSOs constitute an important element both in integration and democratisation.<sup>11</sup> In this perspective, they disturb not only those

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<sup>11</sup> See Liebert, U., Trenz, H.J., "Civil Society and the Reconstitution of Democracy in Europe: Introducing a New Research Field," in *Policy and Society*, no. 28, 2009,



Eurocrats who block – wearing white gloves, so to speak – progress toward integration, but also political forces representing the old guard of state-centred culture. The latter include traditional political parties which, given their stubborn intra-national near-sightedness – continue to look with suspicion on the development of any authentically European party system, and therefore help to prolong the Union’s democratic deficit.<sup>12</sup>

CSOs directly challenge the very capacity of political parties to correctly gauge the entity of the European supranational system’s needs with respect to their own position. As mentioned earlier, and as I shall attempt to illustrate in greater detail, such groupings are equipping themselves according to the scientific criteria of complex organisation, setting up platforms, networks and “umbrella structures,” all with a European dimension. Both on this terrain of infrastructure and in the area of programming, they are preceding political parties, and proving themselves ready to substantiate the participatory dimension of supranational democracy such rightly focussed on in a clearly drawn provision of the Treaty of Lisbon.

We must point out that in the area of representative democracy, as in other areas, the EU system is still in distress. While it is true that since 1979 the members of the European Parliament have been elected by universal, direct suffrage, it is also true that despite having reached the goal of “co-decisional” procedure, the Parliament has yet to become a fully legislative assembly. Therefore it may well be that in this phase of

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pp. 1-9; Liebert, U., “The Contentious Role of Civil Society in Reconstituting Democracy in the European Union,” in *Policy and Society*, no. 28, 2009, pp. 71-86; Kohler-Koch, B., “Civil Society and EU Democracy: ‘Astroturf’ Representation,” in *Journal of European Public Policy*, no. 1, 2010, pp. 100-116.

<sup>12</sup> See Lord, C., *Democracy in the European Union*, Sheffield, Sheffield Academic Press, 1998; Eriksen, E.O., Fossum, J.E. (eds.), *Democracy in the European Union – Integration through Deliberation?*, London, Routledge, 2000; *id.*, “Democracy through Strong Publics in the European Union?,” in *Journal of Common Market Studies*, no. 3, 2002, pp. 401-424; Warleigh, A., *Democracy in the European Union*, California, Sage Publications, 2003; Crombez, C., “The Democratic Deficit in the European Union: Much Ado About Nothing?,” in *European Union Politics*, no. 4, 2003, pp. 101-120; Fabrini, S., “L’Unione Europea Come Democrazia Composita,” in *Rivista Italiana di Scienza Politica*, no. 1, 2004, pp. 13-42; Caporaso, J.A., “Si Può Parlare di Democrazia per l’Unione Europea?,” in *Rivista Italiana di Scienza Politica*, no. 1, 2004, pp. 69-94; Follesdal, A., Hix, S., “Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik,” in *Journal of Common Market Studies*, no. 3, 2006, pp. 533-562; Etzioni, A., “The Community Deficit,” in *Journal of Common Market Studies*, no. 1, 2007, pp. 23-42; Jensen, T., “The Democratic Deficit of the European Union,” in *Living Reviews in Democracy*, no. 1, 2009, pp. 1-9.

Europe's construction, the added quota of political participation brought to the EU system by CSOs, and which they want to increase, may lessen the burden caused by the democratic deficit, even as regards the representative dimension.

As we watch CSOs organise directly on the European level, we spontaneously recall the actions of economic lobbies preceding them: groups representing sectoral interests, which have always been protagonists in influencing the EU decision-making process. Although this analogy is not unjustified, it clearly regards only the organisational processes. The important fact is that the growth in visibility and in the active role of solidarity-oriented civil society groups not only provides EU a huge horizontal input (representing "common good" interests), but also balances the overall logic of the European system, and is therefore a significant factor in constitutionalising the system itself.

While the central significance of "civil society," in this precise moment of Europe-building, lies specifically in this constitutive function, many aspects still remain to be clarified; and not only lexically. One touches on the very definition of "civil society" and so on the need to appropriately identify the types of actors involved. As we shall see, the EU institutions are performing conceptual exercises in this area, even while they continue to open up channels to those structures which are immediately embraceable by the "global civil society" identity. Indeed, we are seeing a tendency among European institutions to attribute this identity widely, extending it, in some cases, even to the private sector and to local communities, and including them under the umbrella of the acronym CSO. This wider usage produces negative reactions and forms of resistance, especially among solidarity-oriented CSOs and movements. Proud of their long experience as consultants for the United Nations, they fear being amalgamated with private organised structures based on interests which, though perhaps legitimate, are sectorial or corporate.

In the prospect of developing democracy in a European supranational key – a prospect both ambitious and unavoidable – art. 11 of the Treaty of Lisbon adds further queries to those already raised both by EU institutions and in the variegated sphere of civil society. They include: who is entitled to participate in civil dialogue? Only European CSOs, or national and local ones as well? Is civil dialogue limited to relationships of exchange with CSOs, or is it meant to involve the citizenry as a whole? Do all CSOs have the right to participate in consultations and dialogue, or only the most representative ones? Who defines the possible criteria for determining a CSO's representativity, and in what way? Is civil dialogue merely a consultative instrument, or should it promote participation? Do the actors in civil dialogue include

other social partners? What difference is there between “civil dialogue” and “social dialogue?” Do the two compete, or complement one another? Must CSOs find room on the European Economic and Social Committee, or must civil dialogue be transversal to all Union institutions? In other words, is there a chance for mainstreaming civil dialogue in the functional dynamics of the EU? What role can CSOs play in promoting the “political development” of the European democratic model, in the framework of multi-level governance?

### III. Civil Dialogue and Civil Society

“Civil dialogue,” like “civil society,” is an expression recurring more and more frequently in the language of political *milieux*, especially in the European Union system. Behind this expression, such refined political scientists and philosophers as Ph. Schmitter<sup>13</sup> and J. Habermas<sup>14</sup> rightly discern a sort of last resort for the rescue or development of democracy and good governance. In the EU, relations between the institutions and CSOs are included in the sphere of so-called “civil dialogue,” understood both as structured, regular dialogue between European groupings representing civil society and the EU institutions, and as a means of promoting in European civil society a widespread, firmly rooted consensus regarding the process of European integration and its development.

Civil dialogue has not (yet) taken shape as a system of formal accreditation for CSOs with the EU, comparable to the consultative status system for NGOs within other intergovernmental organisations. Moreover, it does not represent an alternative or a competing pathway with respect to “social dialogue,” regarding which – as we shall see shortly – the Treaty on the Functioning of the European Union (TFEU) has expressly defined actors and competencies. Instead, it is understood as being complementary both to political dialogue with national authorities, and to social dialogue between social voices and government institutions on the European level.

Civil dialogue is a “civil society communication forum organised on a communitarian level.” It may regard “horizontal or vertical issues and therefore assume the form of general or sectorial dialogue;” its competencies branch out to include multiple sectors: from social policy to environment protection, from international trade to human

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<sup>13</sup> Schmitter, Ph.C., *How to Democratize the European Union ... And Why Bother?.*, *op. cit.*

<sup>14</sup> Habermas, J., *Droit et Démocratie*, Paris, Gallimard, 1997.

development, from consumer protection to protection of human rights, from intercultural dialogue to education and youth policies. All the components of organised civil society can take part, including traditional “social partners” (trade unions and employers’ associations).<sup>15</sup> Clearly, we find ourselves in the presence of an “extensive” approach to the theme of civil society, partly due to the fact that the European Economic and Social Committee (EESC) includes not only, as before mentioned, representatives of employers’ interests and labour unions, but also of so-called “general” interests: that is, a nearly unlimited range of demands, aspirations, claims and goals.

The EESC has taken on the task of elucidating the concept of “civil society” by proposing not one, but several definitions. One definition identifies civil society as “the sum of all organisational structures whose members have objectives and responsibilities that are of general interest and who also act as mediators between the public authorities and citizens.”<sup>16</sup> Moreover, in a formal act, it offers a definition stressing the dimension of what we might call political socialisation: organised civil society is understood by the EESC as a “locus of collective learning,” as a “school for democracy,” as a “cultural process” founded on principles such as pluralism, autonomy, solidarity, participation, education, responsibility and subsidiarity.<sup>17</sup>

A further definition identifies the concept of “civil society” as a “collective term for all types of social action, carried by way of individuals and groups, which do not emanate from the State, nor by its extension. Civil society organisations ensure a function of mediation between the state, the market and the citizens.” Finally, the EESC provides a membership framework, defining NGOs and social parties as civil society organisations in the wider sense.<sup>18</sup> This approach is shared by the European Commission which, in its *White Paper on European Governance*,<sup>19</sup> defines civil society by listing its “representative actors:” trade unions and employers’ organisations (“social partners”); non-governmental organisations; professional associations; charities; grass-roots organisations; organisations involving citizens in local and

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<sup>15</sup> European Economic and Social Committee: opinion on *The role and contribution of civil society organisations in the building of Europe*, doc. EESC 851/1999, Brussels, 22 September 1999.

<sup>16</sup> *Ibidem*, p. 7.

<sup>17</sup> *Ibidem*, p. 6-8.

<sup>18</sup> *Ibidem*, p. 8.

<sup>19</sup> European Commission, *European Governance. A White Paper*, doc. COM(2001) 428 final, Brussels, 25 July 2001.

municipal life and receiving particular contribution from churches and religious communities.

In a later document, but in line with the widely inclusive definition of the White Paper, the European Commission notes that “civil society organisations are the principal structures not generally considered to be ‘third sector’ or NGOs,” whose role “in modern democracies is closely linked to the fundamental right of citizens to form associations in order to pursue a common purpose, as highlighted in Article 12 of the European Charter of Fundamental Rights.”<sup>20</sup> Clearly, the path chosen by the Commission is even wider than that taken by the EESC: ultimately, the Commission considers as “civil” anything which is not “governmental” or “administrative,” no matter what type of interest is pursued.

The aim to include as many non-state actors as possible in the definition of civil society is praiseworthy in itself; it may underlie a positive pedagogical impulse on the part of European institutions, and help spark off a lengthy process of fecundation or contagion of human rights values, capable of benefiting social and economic cohesion within the EU, and ultimately leading to social peace. In theory, this approach does foster greater visibility, and perhaps immediate strength, in the functional pole of subsidiarity. Most importantly, the perspective must remain that of democratic ethics, as visualised by L. Graziano when he refers to the lobbying system: “In short, we can accept lobbies into the arsenal of democracy only if we reinforce democracy as the sphere of equality.”<sup>21</sup> However, in the light of Walzer’s realistic warning that “democracy requires equal rights, not equal power,”<sup>22</sup> we must prevent any tampering with the identity that is essentially proper to the actors of solidarity: an identity recognisable today by the acronym NGO,<sup>23</sup> as such spendable in the field, in all parts of the globe.

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<sup>20</sup> European Commission, *Towards a Reinforced Culture of Consultation and Dialogue. General Principles and Minimum Standards for Consultation of Interested Parties by the Commission*, COM(2002) 704 final, Brussels, 11 December 2002.

<sup>21</sup> Graziano, L., *Lobbying, Pluralismo, Democrazia*, Roma, La Nuova Italia Scientifica, 1995, p. 270.

<sup>22</sup> Walzer, J.L., *Spheres of Justice. a Defense of Pluralism and Equality*, New York, Basic Books, 1983, p. 309.

<sup>23</sup> Currently there is a wide range of acronyms which are more or less similar to NGOs: CBOs (Community based organisations), GROs (Grassroots organisations), NPOs (Non profit organisations), NSAs (Non State actors), POs (People’s organisations), PVOs (Private voluntary organisations), CSO (Civil society organisations), TSMs (Transnational social movements), GSC (Global civil society), etc.

NGO acronym is used in the *milieux* of intergovernmental organisations to identify those collective actors which represent the “popular” part of the international system by pursuing objectives such as international solidarity, human development, humanitarian relief, intercultural dialogue, human rights protection and promotion, peace, disarmament, nonviolent conflict resolution, environment protection. As an essential requirement, they are non profit entities. In the academic literature of international relations, the current definition of NGOs reads as follows: NGOs are permanently organised structures of civil society with a transnational character, based on an agreement between subjects that are both different from states and their intergovernmental agencies. They have a democratic structure capable of self-financing. Their transnational activities aimed to promote the respect for human dignity are carried out “from the city up to the United Nations.” An important feature is their identification with the principles of international law of human rights. As actors of structural change of the international system, NGOs are actively committed to democratise intergovernmental organisations. To be more effective, they tend to coordinate among themselves by creating networks and carrying on campaigns.

This fertile dynamism sheds light on the opportunity – indeed, on the necessity – of disciplining the status of NGOs in the EU as distinct from that of other organisational forms in the private sector. Innovation should proceed in light of the “regional” context of Europe, characterised by a more advanced state of integration with respect to the universal standard of consultative status as defined and practised at United Nations headquarters: i.e., in an acutely intergovernmental context. The European Parliament seems to share this approach. In the resolution on the prospect of developing civil dialogue after ratification of the Treaty of Lisbon, in fact, it points out that civil society includes all those “non-governmental and not-for-profit organisations established by citizens, of their own will, that have a presence in public life, expressing the interests, ideas and ideologies of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations.”<sup>24</sup>

According to current reflection on such issues as it has evolved, we find convergence among the EU institutions in considering civil dialogue as an integral part of the “consultation” process within the EU system. As such, it is considered necessary in order to satisfy two fundamental principles of good governance: transparency and

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<sup>24</sup> European Parliament, Resolution on the Perspectives for Developing Civil Dialogue under the Treaty of Lisbon, 13 January 2009, doc. P6\_TA(2009)0007.

participation. In light of the phenomenology available to us, and of recent theoretical contributions, I believe that an acceptable definition of “civil society” today would identify it with the set of inter-subjective relations carried out transnationally, beyond borders, with the aim to achieve a range of goals fostering the common good for all members of the human family; relations directed, in particular, toward satisfying those vital needs of the person which international law recognises as fundamental rights.

In short, as regards objectives, magnitude, complexity of articulation and modes of action, “civil society” as identified today is light years away from the definition proposed by Hegel: i.e., a phase preparing the way for a sovereign state. On the contrary, civil society today, intrinsically global and transnational, constitutes a macro-indicator that the classical notion of “State,” with its traditional attributes of nationality, sovereignty, frontier limit has been overcome. Civil society is a political subject opening new horizons for “sustainable statehood.”<sup>25</sup>

#### IV. Recognition of CSOs’ Status

As mentioned at the beginning of this discussion, I shall continue to use the acronyms CSO and NGO as synonyms, encouraged by the fact that documents issued by institutions and bodies of the EU do the same. I realise that this choice might create some perplexity in the reader, or even confusion, but the ambiguity can be overcome if, when referring to “civil society,” we make a distinction between its for-profit actors and its not-for-profit ones. The process aiming to define relations between the European Union and civil society organisations began over twenty years ago; now it seems to have reached a turning point. Article 11 of the Treaty of Lisbon is expressly dedicated to participatory democracy. It obliges European institutions finally to regulate dialogue between the EU and CSOs, in a structured, permanent manner.

This important realisation emerged gradually, in awareness of the need to establish an organic framework of relations surpassing those traditionally linking the Commission to various lobbies. A fundamental tile in the expanding mosaic of EU-CSO dialogue is the Treaty of Maastricht which proclaims that respect for human rights, democracy and the rule of law underlies the Union: a concept reiterated in the EU Charter of Fundamental Rights. The “*Declaration on Cooperation with Charitable Associations*” attached to the Treaty of Maastricht was

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<sup>25</sup> Papisca, A., “Dallo Stato Confinario allo Stato Sostenibile,” in *Democrazia e Diritto*, no. 2-3, 1994, pp. 273-307.

followed by the “*Declaration on Voluntary Service Activities*” attached to the final Act of the Treaty of Amsterdam. The same trend is followed by provisions contained in the “*Protocol on the Application of the Principles of Subsidiarity and Proportionality*” attached to the Treaty of Amsterdam, which commit the Commission to carrying on wide consultation before proposing legislative acts, and to justifying the pertinence of its proposals in light of the subsidiarity principle.

### ***A. The European Commission Position***

The European Commission responds to such declarations with the *Communication on Promoting the Role of Voluntary Organisations and Foundations in Europe*,<sup>26</sup> aiming to give greater, autonomous visibility to all organisational structures operating in the sector of social economy, and to promote dialogue based on common values and actions. The document highlights the contribution given by associations in raising public awareness in favour of human development, democracy and international solidarity, in promoting respect for human rights in developing countries, in providing emergency aid, and in implementing programmes in development cooperation. The “civic” function performed by such associations is considered useful for realising the Europe of citizens.

A later working document<sup>27</sup> states that “NGOs can contribute to the reinforcement of participatory democracy both within and outside the Union.” The document advocates “a consolidated practise of systematic, regular meetings with NGOs in order to discuss political issues.” On the practical level, such Commission-NGO dialogue proceeds by way of *ad hoc* encounters and the participation of NGOs in groups of experts and consultative committees.

The Commission takes over the task of foreseeing a more organic type of involvement by NGOs in the functioning of the EU system, defining five main NGO functions.<sup>28</sup> The first, of clear political impact, is to *contribute toward the growth of “participatory democracy.”* NGOs can become a liaison between Communitarian institutions and citizens; they can provide supranational institutions with information regarding public opinion trends, and supply feedback between governors and the governed, relative to the impact of European policies, partly by monitoring activities. The second function is to *represent the interests of*

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<sup>26</sup> COM/97/0241 final, Brussels, 6 June 1997.

<sup>27</sup> European Commission, *The Commission and Non-governmental Organisations: Building a Stronger Partnership*, COM(2000) 11 final, Brussels, 18 January 2001.

<sup>28</sup> *Ibidem*, p. 4.



*the weakest subjects* to the European institutions. The third function acknowledged for NGOs is to *contribute toward defining EU policies* by way of their specific knowledge and competencies, nurtured by their direct links to social reality on the local, regional, national and European levels. The fourth function is to *help manage, monitor and assess projects* financed by the EU, both in member states and in third countries. The fifth function, of manifest strategic importance, is to *help develop the process of European integration*.

With the *White Paper on European Governance*,<sup>29</sup> among elements qualifying democratic governance, the Commission includes citizens' participation, in particular through spontaneous and institutional associations most directly expressing them, such as civil society organisations and local or regional authorities. The White Paper analyses the reform of the way in which the Union exercises the powers conferred on it by its citizens. The objective is to lend visibility, practicality and legitimation to two poles of subsidiarity not foreseen by the Treaty on the European Union (TEU): i.e., the "territorial" pole of local and regional government authorities, and the "functional" pole of the many, diversified civil society organisations. The Commission document reads:

Civil society plays an important role in giving voice to the concerns of citizens and delivering services that meet people's needs [...] Civil society increasingly sees Europe as offering a good platform to change policy orientations and society. [...] This offers a real potential to broaden the debate on Europe's role. It is a chance to get citizens more actively involved in achieving the Union's objectives and to offer them a structured channel for feedback, criticism and protest.<sup>30</sup>

The European Commission had defined requisites for CSOs aspiring to participate in consultative committees: representativeness, democratic character of its internal structure, transparency of the organisation and its mode of functioning, proven experience in one or more specific sectors, former participation in committees and working groups, capacity to give substantial contribution to the discussion, and capacity to function as catalyst in the exchange of data and ideas between the Commission and citizens.<sup>31</sup> These are the identifying traits of NGOs' status within the EU system. In 2002 the European Commission issued a

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<sup>29</sup> European Commission, *European Governance. A White Paper*, *op. cit.*

<sup>30</sup> *Ibidem*, p. 15.

<sup>31</sup> European Commission, Discussion paper *The Commission and Non-governmental Organisations: Building a Stronger Partnership*, doc. COM(2000) 11 final, Brussels, 18 January 2001, pp. 10, 11.

new communication dealing with such aspects. Its aim was three-fold: to standardise consultation machinery and methods by defining general principles and criteria; to involve civil society organisations in a more systematic manner; to promote a transparent consultation process and an exchange of best practices.<sup>32</sup>

The basic premise is that “first and foremost, the decision-making process in the EU is legitimised by the elected representatives of the European peoples,” and that the interested parties “express an opinion, but not a vote.” Naturally, this premise is shared by the entity most directly involved, the European Parliament. In its *White Paper on Governance Resolution*, it reiterates that:

consultation of interested parties [...] can only ever supplement and never replace the procedures and decisions of legislative bodies which possess democratic legitimacy; only the Council and Parliament, as co-legislators, can take responsible decisions on the context of legislative procedures.<sup>33</sup>

On its part, the Commission takes care to point out that all those participating in the consultative process must have the same chance of access, in order to ensure the right of expression for all societal interests, therefore including the “general” interests represented by civil society organisations. At the same time, the Commission affirms the need clearly to define both the subjects of the consultative process and, when necessary, the criteria for selecting the “interested parties” (for example, during hearings, or while participating in consultative bodies).<sup>34</sup>

By the term “consultation” the Commission means a process by which interested parties contribute toward setting up EU policies during the phase preceding adoption of a decision by the Commission itself.<sup>35</sup> The document recalls the “general principles” which must inform this process, and fixes the minimum requisites for participants. The general principles, already expressed in the *White Paper on European Governance*, are those of participation, openness and accountability, effectiveness and coherence. The minimum requisites are expressed in reference to the object of the consultation (which must be clearly visible); to the persons affected by the consultation (all interested parties must have the possibility to express their viewpoint); to the publication of information necessary in raising public awareness and clarifying the

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<sup>32</sup> European Commission, *Towards a Reinforced Culture of Consultation and Dialogue*, *op. cit.*

<sup>33</sup> European Parliament, *Resolution on the Commission White Paper on European Governance*, doc. A5-0399/2001, Brussels, 29 November 2001.

<sup>34</sup> *Ibidem*, p. 11.

<sup>35</sup> *Ibidem*, p. 4.

consultation's outcome (the portal "Your-Voice-in-Europe" serves such functions); to participation deadlines; to notifying the receipt of contributions and feedback.<sup>36</sup> The discipline regarding such general principles and minimum standards has been applicable since 1 January 2003.

### ***B. The EU Council Position***

On its part, the Council of the European Union – despite the strong intergovernmental identity distinguishing it from other EU institutions and bodies – has in a certain sense let itself be guided by the new orientation progressively chosen by the European Commission in matters of civil society. Until now, the Council's intervention has been mainly normative in nature. It has proven important not only because it has provided a legal basis allowing NGOs to accede to financing foreseen by pertinent Communitarian programmes, but also because it has authoritatively flanked the Commission and the EESC in defining criteria for recognising NGOs as eminent actors in the Union system. The Council has formally regulated NGOs' participation in numerous EU policies, including those hinging on development cooperation, humanitarian aid, the promotion of human rights and democratic principles in third countries, environment protection and social issues. However, we must again point out that the Council's regulations and decisions do not assign a legal personality to NGOs within the EU system; instead, they discipline the modes of access to EU financing, and recognise NGOs' (public) usefulness in the enactment of EU policies.

Constant interaction with CSOs belongs to the acquired set of communitarian practices; it is important in the area of common foreign security policy and common security and defence policy.<sup>37</sup> Consultation with NGOs in the framework of "early warning" procedures, strategic and operative planning, and implementation of civil missions, is foreseen in the Council document entitled "*ESDP Procedures for Coherent, Comprehensive EU Crisis Management*" (2003). The document states that "modalities for coordination in the field between the EU and international organisations, local authorities and NGOs need to be developed."<sup>38</sup> The "*Action Plan for Civilian Aspects of ESDP*"<sup>39</sup>

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<sup>36</sup> *Ibidem*, pp. 15, 16.

<sup>37</sup> M. Mascia, *Obiettivo Sicurezza Umana per la Politica Estera dell'Unione Europea*, Padova, Cleup, 2010.

<sup>38</sup> Council of the European Union, 2003, *Suggestions for Procedures for Coherent, Comprehensive EU Crisis Management*, Document 11127/03, 3 July, Brussels, p. 25.

(2004) foresees the regular “exchange of information with representatives of non-governmental organisations and civil society” in defining general orientation in the civil management of an EU crisis. The Plan also states that “NGOs experience, expertise and early warning capacity are valued by the EU.” Cooperation with NGOs is also discussed in *The Civilian Headline Goal 2010*, a document by which the Council commits itself to identifying and exploring “possible synergies with other actors in the civil crisis management, in particular with non-governmental organisations and civil society organisations, in line with agreed principles and in full respect of the EU’s autonomous decision-making.”<sup>40</sup>

The Committee for Civilian Aspects of Crisis Management (CIVCOM), after acknowledging that “a considerable number of NGOs have considerable expertise and knowledge in the field of civilian crisis management and conflict prevention,” points out that future efforts to improve cooperation with NGOs in this specific area should be based on experience accumulated by the European Commission, on experience within the CSDP, on the need to ensure an organic, transparent approach toward the EU’s main partners in crisis-management, in line with European security strategy.<sup>41</sup> Based on such formal recognition of roles, civil dialogue between the EU and NGOs has evolved along a double pathway: NGOs’ participation in defining EU foreign and external action policies, and implementation of projects co-financed by the European Commission.

### ***C. NGOs, Parliament and EESC***

NGOs tend to view the European Parliament as the institution the most accessible to their requests. The organisations’ representatives frequently contact single members of the Parliament, its commissions and political groups. NGOs also spur the creation of numerous inter-groups involving members of Parliament from differing party affiliations. Since 2007, in collaboration with the EESC, the European Parliament has sponsored the Citizens’ Agora, considered as an

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<sup>39</sup> Council of the European Union, *Action Plan for Civilian Aspects of ESDP*, 17-18 June 2004, p. 10.

<sup>40</sup> Council of the European Union, *Civilian Headline Goal 2010*, approved by the ministerial Civilian Capabilities Improvement Conference and noted by the General Affairs and External Relations Council on 19 November 2007, doc. 14823/07, p. 5.

<sup>41</sup> Council of the European Union, *Recommendations for Enhancing Co-operation with Non-Governmental Organisations (NGOs) and Civil Society Organisations (CSOs) in the Framework of EU Civilian Crisis Management and Conflict Prevention*, doc. 15741/06, Brussels, 23 November 2006, p. 2.

instrument for dialogue with civil society organisations on issues relative to the Parliament's legislative programme. The goal is to combine the best practices of participatory democracy with the most advanced expression of supranational representative democracy, as embodied in the European Parliament, by mobilising representatives of European civil society. In other words, the Agora means to become a "pre-legislative" instrument operating during the phase in which parliamentary commissions are discussing and proposing amendments regarding a legislative proposal by the Commission itself; one objective is to help raise consensus. In short, the Agora is a forum of governors and governed electors and the elected, for the discussion of issues most central to the European political agenda.

In its latest resolution concerning such aspects, the European Parliament reiterates that we must create structured, permanent dialogue, and that civil society must play an important role in the European integration process, since it aggregates the "popular" political demand and submits it to European institutions. The Parliament also points out that the Treaty of Lisbon has assigned civil dialogue the status of an "overriding principle across all spheres of EU activity" and, in virtue of this recognition, it urges the European institutions and national, regional and local authorities of member states to utilise the current juridical framework in order to increase dialogue with citizens and civil society organisations.<sup>42</sup>

The EESC clearly manifests its will to represent, as well, the horizontal interests of organised civil society, to the extent of defining itself "*maison de la société civile organisée*." The Treaty of Lisbon itself, in proceeding along the path drawn out by the Treaty of Nice, extends the EESC's composition to new strata of civil society: "The Economic and Social Committee shall consist of representatives of organisations of employers, of the employed, and of other parties representative of civil society, notably in socio-economic, civic, professional and cultural areas" (art. 300 TFEU). Referring to the appointment of EESC members by the Council – which merely adopts the member list drawn up according to proposals presented by each member state – the TFEU states that the Council itself "may obtain the opinion of European bodies which are representative of the various economic and social sectors and of civil society to which the Union's activities are of concern" (art 302).

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<sup>42</sup> European Parliament, Resolution on the Perspectives for Developing Civil Dialogue Under the Treaty of Lisbon, 13 January 2009, doc. P6\_TA(2009)0007.

However, it is the CSOs themselves which express doubt over whether the EESC can really act as the exclusive representative of civil society interests. Their doubt stems from two lines of reasoning. The first: the designation of EESC members is the privilege of member state governments, and therefore Committee membership cannot help but be “national.” The second concerns the internal structure of the EESC: none of the three Groups making up the Committee – i.e., Group I (Employers), Group II (Workers), and Group III (Various Interests) – can coherently represent CSOs. CSOs declare that the EESC should promote internal structural reform aiming to assign to Group III only representatives of NGOs, whether national or European, designated not by governments, but by NGOs themselves.<sup>43</sup>

On its part, the powerful European Trade Union Confederation defends the EESC’s original structure and specific mandate, pointing out that the multiplication of actors in the social dialogue might harm the dialogue’s very efficacy. According to Union leaders, we need to reinforce the autonomy of social dialogue in order to build bridges with civil dialogue, avoiding any confusion regarding actors and roles.<sup>44</sup> However, this controversy has been at least partly resolved since several representatives of “national” NGOs have become members of Group III of the EESC.<sup>45</sup>

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<sup>43</sup> Oosting, D., *Dialogue Civil: Situation Actuelle et Evolution Récente: le Dialogue Civil Devient-il une Partie Intégrante de la Consultation au Niveau de l’UE?*, speech delivered at the conference “Dialogue social européen et dialogue civil. Différences et complémentarités,” organised in Brussels the 10 June 2003 by the European Economic and Social Council and “Notre Europe,” in <http://www.eesc.europa.eu/>.

<sup>44</sup> Lapeyre, J., *Dialogue Social: Evaluation et Perspectives. Le Dialogue Social Entret-il dans une Nouvelle Phase de Développement*, speech delivered at the conference “Dialogue social européen et dialogue civil. Différences et complémentarités,” organised in Brussels the 10 June 2003 by the European Economic and Social Council and “Notre Europe,” in <http://www.eesc.europa.eu/>.

<sup>45</sup> Among others: Disabled Peoples Organisations (Denmark), National Council of Women (Malta), Working Community of Associations of Social Organisations (Poland), France Nature Environnement (France), Environmental Pillar (Ireland), National Council for Voluntary Organisations (United Kingdom), European Movement (Latvia), National Union of Family Associations (France), Network of Estonian Non-profit Organisations (Estonia), Christian associations of Italian workers (Italy), Wales Council for voluntary action (United Kingdom), National Union of Students (Hungary), Estonian Chamber of Disabled People (Estonia), Women’s Council (Denmark), National Federation of Polish NGOs (Poland), Polish Women’s Lobby (Poland), Romanian NGOs Federation for International Development and Humanitarian Aid (Romania), Children’s Rights Alliance (Ireland), National Confederation of Disabled People of Greece (Greece).

The prevailing opinion today, both among “social partners” and among CSOs, is that social dialogue and civil dialogue constitute two levels or segments of “social governance:” they are distinct but complementary. Distinct, because social dialogue represents corporative interests and is carried out in highly specific sectors of intervention, such as industrial or labour relations, where civil dialogue aggregates a political demand expressing general interests; the nature of social dialogue is essentially public. The competencies of civil dialogue can foreseeably spread to multiple sectors – to virtually all EU policies – which risks making them overly generic. Civil dialogue belongs to a governance system which, given the wide scope of its objectives and its intervention sectors, naturally tends to address all EU institutions. As regards the formal and legal identity underlying it, social dialogue finds its “legal basis” in articles 154 and 155 of the TFEU (formerly art. 138 and 139 TCE), which establish a true and proper obligation to consult with social partners, whereas, as mentioned earlier, civil dialogue has been recognised only recently, with the coming into force of the Treaty of Lisbon.

Another issue hinges on “complementarity.” Somebody believes it hinges on the fact that civil dialogue has the task to counterbalance the predominant influence of economic lobbies. Others say that civil dialogue and social dialogue are complementary in that both are rooted at the same pole: the functional one of subsidiarity. Fruitful examples of interaction between social dialogue and civil dialogue concern the struggle against social exclusion, equal treatment in employment and working conditions, social protection, sustainable growth, environment protection, etc. We may predict that this “dialogue” between and among “dialogues” cannot help but improve European governance as a whole, since it should increase EU institutions’ receptivity, and help to increase the visibility of civil dialogue actors.

## **V. The Treaty of Lisbon for the Constitutionalisation of Civil Dialogue**

In “Title II, Provisions on democratic principles,” art. 11 of the Treaty of Lisbon states:

1. The institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action.
2. The institutions shall maintain an open, transparent and regular dialogue with representative associations and civil society.

3. The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent.

4. Not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties. The procedures and conditions required for such a citizens' initiative shall be determined in accordance with the first paragraph of Article 24 of the Treaty on the Functioning of the European Union.

The text of this article is the outcome from an effective lobbying campaign carried out by CSOs during work sessions on the "Convention on the Future of Europe" which, given their varied membership, ensured a strongly democratic dynamics.<sup>46</sup> It also derives from a cultural maturation on the part of political elites from various member states of the EU, which occurred partly thanks to the constructive discussion promoted, first of all, by the European Commission and by the European Economic and Social Committee, EESC, particularly beginning with the second half of the 1990s.<sup>47</sup>

With the Treaty of Lisbon, the European model of democracy, formerly supported by the pillar of representative democracy (art. 10 TEU), was strengthened by two other pillars: that of participatory democracy (art. 11, para. 1, 2, 3) and that of direct democracy (art. 11, para. 4). In February 2011, while referring to direct democracy and after

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<sup>46</sup> Venables, T., "The EU's relationship with NGOs and the issue of 'participatory democracy'," in *Transnational Association*, no. 2, 2004, pp.156-158.

<sup>47</sup> See, among others, the following Communications of the European Commission: *Communication on Promoting the Role of Voluntary Organisations and Foundations in Europe*, doc. COM/97/0241 final, Brussels, 6 June 1997; Discussion paper *The Commission and Non-Governmental Organisations: Building a Stronger Partnership*, *op. cit.*; *European Governance. A White Paper*, *op. cit.*; *Towards a Reinforced Culture of Consultation and Dialogue*, *op. cit.* See also the following documents of the European Economic and Social Committee: opinion on *The role and Contribution of Civil Society Organisations in the Building of Europe*, *op. cit.*; opinion on *The Commission and Non-governmental Organisations: Building a Stronger Partnership*, doc. EESC 811/2000, Brussels, 13 July 2000; opinion on *Organised Civil Society and European Governance: the Committee's Contribution to the Drafting of the White Paper*, doc. EESC 535/2001, Brussels, 25 April 2001; opinion on *European Governance. A White Paper*, doc. EESC 357/2002, Brussels, 20 March 2002; Final Report of the ad hoc group on *Structured Cooperation with European Civil Society Organisations and Networks*, doc. EESC 1498/2003, Brussels, 17 February 2004.



wide consultation promoted by the Commission and publicised in a Green Paper,<sup>48</sup> the Council and the Parliament adopted a regulation on the “Citizens’ Initiative”<sup>49</sup> as foreseen by art. 11 TEU and art. 24 TFEU.

Given limits of space, we cannot present a detailed account of the complex procedure involved. We need to note, first of all, that the European Citizens’ Initiative is in no way comparable to the traditional “popular initiative” foreseen in most member states, preliminary to a referendum. Instead, it means to give European citizens a chance to help lay out a political agenda for the EU by way of a request addressed to the European Commission, to present a legislative proposal concerning a given subject. Clearly, the right to take a legislative initiative remains an exclusive competency of the Commission, and the procedure for adopting a legislative act is the one defined by the treaties. We also note that this new democratic instrument is distinct from the right to petition: the former is addressed directly to the Commission, urging it to act, while petitions are addressed to the European Parliament. In short, from a formal viewpoint, the Citizens’ Initiative can have only the outcome of having a given issue considered in the Commission’s plan of action. If, instead, we consider substance, it may become an effective means for enacting transnational deliberative processes helpful in developing a European consciousness and public opinion, and therefore, greater identification of citizens with EU institutions. The outcome will necessarily be a strengthening of the integration system in terms of democratic qualification. In the framework of the current democratisation process affecting international relations, the citizens’ initiative represents an unprecedented innovation, on the world level as well: for the first time, citizens of different countries have together been assigned a transnational right of participation.<sup>50</sup>

The provisions concerning participatory democracy embrace “horizontal” civil dialogue (art. 11, par. 1), “vertical” civil dialogue (art. 11, par. 2) and consultation of parties concerned by initiative of the Commission (art. 11, par. 3).

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<sup>48</sup> European Commission, Green Paper on a European Citizens’ Initiative, doc. COM/2009/0622 final, Brussels, 11 November 2009; id., Proposal for a Regulation of the European Parliament and of the Council on the Citizens’ Initiative, doc. COM/2010/0119 final, Brussels, 31 March 2010.

<sup>49</sup> European Union, Regulation (EU) no. 211/2011 of the European Parliament and of the Council on the citizens’ initiative, Brussels, 16 February 2011.

<sup>50</sup> European Economic and Social Committee, opinion on *The Implementation of the Lisbon Treaty: Participatory Democracy and the Citizens’ Initiative* (Article 11), doc. EESC 465/2010, Brussels, 17 March 2010.

Horizontal civil dialogue seeks to foster dialogue among CSOs within the European public space, by way of “appropriate means” offered by supranational institutions. It will be the duty of the European legislator to indicate measures necessary for satisfying the requisite of “appropriate channels.” If we recall the experience accumulated in systems of consultative status present in most intergovernmental organisations, we clearly perceive that we are not building up from utopianism. For example, the Council of Europe, along with more than four hundred NGOs enjoying consultative status, have created efficient coordination methods and structures: in particular, permanent working groups; the plenary NGOs Conference, whose task is to choose strategies and general lines of action; the Liaison Committee, which maintains relations with the Council of Europe Secretariat, monitors meetings in various NGO sectors, prepares the plenary Conference and the annual work programme and encourages NGOs to cooperate with the Council of Europe in enacting its programmes. Since 2002 the “Civil Society Contact Group” has been active in the EU; the principle European civil society platforms belong to it. We are still seeing an embryonic form of coordination, which the European legislator could make permanent by institutionalising it.

Vertical dialogue proceeds in a transparent, regular manner between EU institutions and CSOs. As is well known, there already exists a consolidated practice with this type of dialogue, particular on initiative by the Commission, which organises formal and informal meetings with CSOs, stipulates partnership agreements with them, and urges them to participate in panels of experts and consultative committees; on initiative by the European Parliament, which has promoted the “Citizens’ Agora” with the goal to active dialogue between members of the European Parliament and CSOs regarding the main issues on the European political agenda; and on initiative by the EESC which, as we have seen, has developed the most highly structured system of dialogue with CSOs.

As regards consultation, we have already mentioned the texts of the 2002 Communication of the European Commission on General principles and minimum standards for consultation of interested parties by the Commission. In the experience of the EU, consultation is made mainly by way of online investigation; it is understood as a “top-down” measure which promotes a civil society action only indirectly. Such consultation is certainly necessary; indeed, it should be improved, e.g. by giving greater transparency to the Commission’s assessment process of received data, and through the involvement of CSOs in setting up

priorities proposable by the nation currently exercising presidency over the Council.<sup>51</sup>

However, this form of consultancy is not sufficient to ensure a correct “political development” of the EU system. In the framework of the new participatory dimension of European democratic governance opened up by art. 11 of the Treaty of Lisbon and the EU Charter of Fundamental Rights, “consultation,” being a unilateral initiative taken by European institutions, must be differentiated from “participation,” which has become a fundamental right of European citizens and, hopefully, of third-country citizens residing on Union territory as well.<sup>52</sup> In its *White Paper on European Governance*, the European Commission itself stresses that the civil society’s participation in setting up and enacting EU policies represents one of the pillars of good governance, and one of the primary spaces for reforming the Communitarian method and the democratisation of the European decision-making process.

On its part, the EESC has often reiterated its commitment to operate actively toward developing participatory democracy, but it has also pointed out that citizens’ participation in managing public items by way of CSO action is an instrument capable of nourishing and improving representative democracy, thereby reinforcing the democratic legitimacy of the EU. According to the EESC, consultation is an instrument open, on principle, to all CSOs. It must include the viewpoints of civil society components and highlight the value of their specific competencies; instead, participation implies “the possibility for an organisation to intervene formally and actively in a process for determining the collective will, in the general interest of the Union and its citizens.”<sup>53</sup>

The European Parliament has urged EU institutions to make civil dialogue a task transversal to all the Commission’s Directorates-General, to all working groups of the Council and to all European Parliament committees, using transparent procedures and maintaining a true balance between the public and private sectors; it has asked the Commission to present a new proposal for European associations

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<sup>51</sup> European Economic and Social Committee, *Opinion on Civil Society Organisations and the EU Council Presidency*, doc. EESC 464/2010, Brussels, 17 March 2010.

<sup>52</sup> Trenz, H.J., “European Civil Society: Between Participation, Representation and Discourse,” in *Policy and Society*, no. 28, 2009, pp. 35-46.

<sup>53</sup> European Economic and Social Committee, *Opinion on the Representativeness of European Civil Society Organisations in Civil Dialogue*, doc. EESC 240/2006, Brussels, 14 February 2006.

allowing for the creation of a common legal basis for European civil society organisations.<sup>54</sup>

In a document of February 2010, a coalition of 13 European civil society networks<sup>55</sup> made specific proposals to EU institutions regarding ways to promote permanent structured civil dialogue on the European level, in light of the provisions in art. 11 of the Treaty of Lisbon. The document suggests designating “reference points” for civil dialogue within the European institutions in general, and in particular, within each European Commission Directorate-General. It recommends the creation of structured vertical civil dialogue groups linking each European Commission DG to European civil society networks: such dialogue groups would discuss the work of Parliamentary Committees and the European Union Council. The same document suggests organising an annual civil society conference involving EU institutions, with the aim of furthering the European political agenda; setting up a permanent inter-institutional body for transversal civil dialogue, with appropriate funding, in order to consult CSOs on issues relating to the future of the European Union; and preparing a green paper laying out a structured framework for European civil dialogue: a fundamental element in implementing article 11.

## **VI. The Issue of Representativeness for European Civil Society Organisations**

The emergence – indeed, eruption – of civil society organisations in the EU system raises the issue of their representativeness, and therefore, of their real possession of democratic requisites, both in their structure and in their decision-making. While the problem does exist, it may be solved through collaboration among NGOs, in their superior interest.

Generally speaking, the expressions of greatest diffidence regarding NGOs come from national governments which, used to acting without being disturbed by anyone in the international political arena, consider the NGOs increasingly active, competent and project-oriented presence as an obstacle for normal intergovernmental practices. In the face of an increased capacity for learning and adaptation on the part of NGOs, accompanied by their clear will for accepting pluralism in the international system as a resource instead of a problem, governments

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<sup>54</sup> European Parliament, Resolution on the Perspectives for Developing Civil Dialogue under the Treaty of Lisbon, 13 January 2009, doc. P6\_TA(2009)0007.

<sup>55</sup> Towards a Structured Framework for European Civil Dialogue, Brussels, 15 February 2010.

react by accusing NGOs of not being representative or sufficiently accountable. In other words, many governments – though aware of the fact that in an era of planetary interdependence and multi-level governance, their autonomy in decision-making is steadily shrinking – refuse to recognise NGOs as reliable partners in solving European and global problems.

NGOs have expressed their own views concerning representativity.<sup>56</sup> They have no desire to substitute parliamentary institutions; in a democratic system, whether national or supranational, the actors of representative democracy and those of participatory democracy have equal citizenship status; they complement each other and are both integral components of the governance process. To this debate we might add a further element: in a moment of acute crisis among traditional systems of political representation, the development of transnational forms of democracy not only ensures greater substantive legitimacy for international decision-making processes, but also produces higher civic awareness among people, benefitting the representation processes themselves: in particular, the electoral processes.

NGOs respond to accusations of scarce representativeness by creating networks which represent general interests and aggregate a political demand shared by large swaths of public opinion on a European and world level. In light of the diversity of their functions, the various European NGOs have repeatedly pointed out to European institutions that it is impossible to create a single standard of representativeness based on which we quantify the representativeness of all NGOs; and that this term must imply both a qualitative and quantitative assessment of the manner and scope with which NGOs carry out their respective mandate. In other words, the representativeness of NGOs should be measured not only according to the number of members, but also, and above all, by taking into account such variables as the transparency, accountability, efficiency and efficacy with which they pursue their statutory goals.

However, there is one aspect which seemingly makes European NGOs vulnerable to criticism, both by EU institutions and by the academic world. I refer here to the involvement in decision-making of citizens and local supporters formally represented by NGOs on the European level; and to the difficulty NGOs have in acting as “agents of political socialisation” within the member states.

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<sup>56</sup> Platform of European Social NGOs, *Democracy, Governance and European NGOs. Building a Stronger Structured Civil Dialogue*, Brussels, Platform of European Social NGOs, March 2001, in [www.socialplatform.org](http://www.socialplatform.org).

The Commission points out that the European dimension of representativeness must be one criterion for selecting the CSOs to be involved in the consultation process; but it is not the only criterion. In many cases, in fact, the Commission attributes importance to the opinions of regional and national CSOs, in respect for the democratic principle of acting “bottom up.”<sup>57</sup>

On its part, in its opinion on European governance,<sup>58</sup> the EESC defines nine requisites which CSOs must possess in order to be considered representative. They must:

exist permanently at Community level; provide direct access to expertise; represent general concerns that tally with the interests of European society; comprise bodies that are recognised at member State level as representative of particular interests; have member organisations in most of the EU member States; provide for accountability of its members; have authority to represent and act at European level; be independent, not bound by instructions from outside bodies; be transparent, especially financially and in its decision-making structures.

The EESC also stresses that the representativeness of NGOs cannot be measured exclusively according to quantitative indicators, but must also satisfy criteria of a qualitative nature which must be agreed on by a three-part consultancy made up of the Commission, the EESC and NGOs.

In a later opinion,<sup>59</sup> the EESC stated that the procedure for assessing the representativeness of CSOs must be based on principles of the openness, objectivity, non-discrimination, verifiability and participation of European organisations; and it must include three assessment factors: the provisions in the organisation’s statute and their implementation; the organisation’s support base in the member states; and qualitative criteria. The first two factors allow for a relatively reliable, objective assessment of a CSO’s representativeness. The third one, instead, is more complex.

In connection with the first factor, the EESC supports the idea of a European statute for CSOs, analogous to the one for European political parties which came into force in November 2003. The statute’s

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<sup>57</sup> European Commission, *Towards a Reinforced Culture of Consultation and Dialogue – General Principles and Minimum Standards for Consultation of Interested Parties* by the Commission, COM(2002) 704 final, Brussels, 11 December 2002.

<sup>58</sup> European Economic and Social Committee, *Opinion on European Governance – a White Paper*, *op. cit.*

<sup>59</sup> European Economic and Social Committee, *Opinion on the Representativeness of European Civil Society Organisations in Civil Dialogue*, *op. cit.*

provisions should centre on the association's areas of activity and goals; on membership criteria; on its operating procedures, which must be democratic and transparent, and ensure accountability by the board toward the organisation's members; on the financial obligations of member organisations. The statute should require an annual economic audit and activity report, made available to the public.<sup>60</sup> Interestingly, European civil society platforms have expressed a favourable opinion on this point. Some of them have already written up a statute for themselves: e.g., Social Platform and Concord.

As regards the second assessment factor, the EESC believes that in order to be considered representative, a CSO must be present in over half of the EU member states, and must publish a list of their affiliated organisations which, like the European organisation to which they belong, should publish a statute, an annual report on their activity, and the number of single affiliated members.

The third factor, hinging on qualitative criteria of representativeness, is more difficult to apply. According to the EESC, it should assess both a CSO's capacity to contribute toward promoting citizens' interest in European institutions and to gain trust and respect from European institutions and other components of organised European civil society. In other words, a CSO's contributive capacity, i.e. its qualitative representativeness, should be ascertained according to the CSO's degree of commitment in consultative processes conducted by European institutions. The EESC proposes using "benchmarks" analogous to those used in the academic sphere and in scientific research; they would be defined in conjunction with European civil society organisations.<sup>61</sup>

As indicators of qualitative performance, we might include the number of position papers presented by the CSO to European institutions concerning specific legislative proposals; the acceptance of a code of conduct; the channels of communication used by the CSO to provide information to affiliated associations (websites, newsletters, annual reports, publications, etc.); and its capacity to manage Communitarian projects.

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<sup>60</sup> *Ibidem*, p. 11.

<sup>61</sup> *Ibidem*, p. 13.

## **VII. The Issue of Accountability for European Civil Society Organisations**

A further indicator of performance is accountability.<sup>62</sup> R. O. Keohane and J. S. Nye mention two traditional accountability mechanisms which are not applicable to civil society networks: “electoral accountability” and “hierarchical accountability.”<sup>63</sup> Such networks, of course, cannot be treated as we would treat a democratic political system functioning on the basis of free elections and the separation of powers which, in turn, are organised according to a hierarchic scale.

No single accountability mechanism can exist isolatedly in civil society networks; instead, we must consider a “multidimensional system of accountability.”<sup>64</sup> In this perspective, a number of mechanisms have been defined for enhancing the accountability of networks’ governance forms: professional/peer accountability, public reputational accountability, market accountability, fiscal/financial accountability, legal accountability. Such accountability indicators permit a critical appraisal of CSO networks while considering three different dimensions: actors, processes and outcomes.<sup>65</sup>

Accountability pertains both to the single actor as collective subject, and to the single individual participating in the network. It can be measured referring, in particular, to the processes of professional/peer accountability and public reputational accountability, and hinges on the level of transparency characterising the network’s functioning. The more coherently a network is organised according to certification systems and self-regulation or codes of conduct, the higher is its accountability level. The accountability of the “process” is equally important if we consider the networks as “process-oriented” forms of governance. In this case as well, transparency is an essential requisite of accountability, in reference to the selection of participants, resources, and the network’s use of funds. Finally, the accountability of outcomes can be measured according to networks’ capacity to draw up technically correct, political persuasive proposals; to involve legislators; to monitor

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<sup>62</sup> Scholte, J.A. (ed.), *Building Global Democracy? Civil Society and Accountable Global Governance*, Cambridge, Cambridge University Press, 2011.

<sup>63</sup> Keohane, R.O., Nye, J.S., *Democracy, Accountability and Global Governance*, Cambridge, MA, Kennedy School of Government, 2001, p. 5.

<sup>64</sup> Benner, T., Reinicke, W.H., Witte, J.M., “Multisectoral Networks in Global Governance: Towards a Pluralistic System of Accountability,” in *Government and Opposition*, 39, 2, 2004, pp. 191-210.

<sup>65</sup> *Ibidem*, pp. 199-200.



all the phases of a decision-making process; to monitor public opinion, etc.

One instrument which might prove useful in measuring the degree of a CSO's representativeness and accountability is the "transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation." This registry sprang from an inter-institutional agreement between the European Parliament and the Commission in June 2011, pursuant to paragraphs 1 and 2 of the Treaty on the European Union. The registry is applicable to all activities carried out with the aim of influencing the definition or enactment of the European Union's policies and decision-making processes. The Register is subdivided into six categories: I – Specialised consultancies, legal studios and independent consultants; II – Internal lobby groups and sectorial or professional associations; III – Non-governmental organisations; IV – Study centres, academic and research institutes; V – Organisations representing churches and religious communities; VI – Organisations representing local, regional and municipal administrations, other public or mixed-regime agencies, etc. As of 6 January 2012, 3,123 subjects are registered, 919 of which belong to category III – Non-governmental organisations, platforms and networks.

In the Register, each NGO must indicate the person legally responsible, the person managing relations with the EU, goals and tasks, activities, spheres of interest, the number of organisations affiliated with the association, countries in which the association has members, membership in networks and financial data. At the moment of registration, the association signs the Register's transparency code of conduct.

As we shall see in the following paragraph, the European civil society platforms have accepted the challenge of representativeness and accountability<sup>66</sup> with reference to the indicators mentioned above. To the question "For whom do you speak?" which European governments and institutions have insistently asked NGOs, they can respond by providing precise data, both quantitative and qualitative in nature. Paradoxically, but not very, we can perceive a certain tardiness among the European institutions themselves in complying with the minimum accountability requisites.

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<sup>66</sup> Kohler-Koch, B., "How to Put Matters Rights? Assessing the Role of Civil Society in EU Accountability," in *West European Politics*, no. 5, 2010, pp. 1117-1141; *id.*, *If participation does not do the job, will accountability make a difference? The potential of Civil Society Organizations in democratizing the EU*, Working Papers 2011-05, Bielefeld/St. Petersburg, Centre for German and European Studies, 2011.

## VIII. The Living Reality of CSOs' Platforms

According to M. E. Keck and K. Sikkink, the networks, defined as groups structured in light of the efficacy of civil society transnational advocacy, “are forms of organisation characterised by voluntary, reciprocal, and horizontal patterns of communication and exchange,” and by “fluid and open relations among committed and knowledgeable actors working in specialised issue areas.”<sup>67</sup> They are communicative structures aiming to bring about change in states’ and international institutions’ conduct, and to influence the creation of global policies and agendas. They should be considered as “political spaces in which differently situated actors negotiate, formally or informally, the social, cultural, and political meanings of their joint enterprise.” The actors involved share the premise based on values and law, and act according to sophisticated political strategies, in the awareness that the individuals and organised groups of civil society “can make a difference.”<sup>68</sup>

The political action of networks proceeds along four pathways, synergic with one another:<sup>69</sup> *information politics*, i.e. the capacity to produce in a short time correct information to be used politically in areas where it might have significant impact; *symbolic politics*, understood as the capacity to recur to symbols, images or stories in order to explain and illuminate situations which, for part of the public, initially seem remote or unimaginable; *leverage politics*, i.e. the ability to use powerful actors who can influence a situation where the weakest members of the network would not succeed; *accountability politics*, as an effort aiming to make the powerful actors – i.e., the decision-makers – fulfil their commitments.

Networking has now become a firmly-rooted practice in the sphere of global civil society. Beginning with the early 1990s, we have seen the growth of an exemplary process of network-building, both along thematic lines (in the sector of human rights, development cooperation and aid, humanitarian aid, environment protection, women’s condition, etc.) and along geographic ones. NGO networks have been formed at various levels of political activity: national and regional, continental and global. On a global level, eminent examples of their capacity are the Coalition for the International Criminal Court, the International Campaign to Ban Landmines, the Coalition against Poverty; on the

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<sup>67</sup> Keck, M.E., Sikkink, K., *Activists beyond Borders. Advocacy Networks in International Politics*, Ithaca and London, Cornell University Press, 1998, p. 8.

<sup>68</sup> *Ibidem*, p. 3.

<sup>69</sup> *Ibidem*, p. 16.

regional European level, the Platform of European Social NGOs, the European NGO Confederation for Relief and Development, Green Ten, the Human Rights and Democracy Network, the European Women's Lobby.

In the pages which follow we shall focus on several European civil society networks and examine the way they operate in order to satisfy not only their end goals, but also the qualitative criteria of representativeness.

The *Platform of European Social NGOs*, created in 1995, now groups together forty-two pan-European networks. It represents thousands of organisations, associations and volunteer groups active at the local, regional or national level, in defence of women's rights, the rights of the elderly, of persons with disabilities, of children, youth, the unemployed, etc. The Platform's purpose is to promote within the EU the principles of equality, solidarity, non-discrimination; and respect for human rights and democratic participation. It acts by presenting "position papers" to the European institutions; by organising campaigns; by participating in conferences and seminars; by organising regular meetings with the principal actors of European social policy. Its internal decisions are made by the Steering Committee, by the Platform Management Committee and, of course, by the General Assembly, according to a wide-reaching consultation process organised by working groups and encounters with representatives from all the member organisations. The Platform's functioning is ensured to a high degree by European Commission funding, by membership fees and by single-project financing. The Commission's Directorate-General for Employment, Social Affairs and Inclusion has stipulated an agreement with Platform members establishing two consultation meetings per year, arranged according to an agreed agenda. Of course, this consultation system is supplemented and strengthened by an informal communication process ensuring a nearly daily exchange of data concerning the main issues of social policy. Consultation with the social Platform has become standard practise, as well, for Council configurations dealing with employment, social policy, health and consumer affairs, and for the European Parliament.

The *European NGO Confederation for Relief and Development* (Concord) was formally created in January 2003. It includes eighteen international networks and twenty-two national platforms, together representing more than 1,600 NGOs for development. As is well known, "development NGOs" were the first NGOs to coordinate on a permanent basis: their networking began in the mid-1970s. The year 1976 saw the creation of the Comité de Liaison des ONG de Développement, with a wide range of goals: to protect the autonomy of

NGOs and promote collaboration among NGOs, and between NGOs and the EU, in the area of development; to encourage the birth and development of NGOs in developing countries, so as to guarantee direct forms of collaboration among non-state subjects; to inform and mobilise European public opinion concerning the causes of underdevelopment and specific solidarity projects; to promote sustainable human development policies and, at the same time, to help accelerate Europe's process of political unification. Since 1982, in Brussels, a permanent secretariat has been dedicated to organising Committee, General Assembly and working group meetings; to ratifying and enacting decisions made; to providing NGOs with information and documentation. As years have passed, the Committee has become the main representative of civil society organisations at the European level, as regards development policies.

After twenty-five years of activity, the numerous development NGOs "accredited" in Brussels by way of the Comité de Liaison-created Concord. Only two types of member can belong to this Confederation: national platforms and networks. Its functioning is ensured by a democratic structure subdivided into bodies such as the General Assembly, the Directorate, the Scientific Council and the Secretariat. Its goals include coordinating the activities of European development NGOs so as to influence the creation of EU development cooperation policies and aid policies, reinforce the legitimacy and promote the political interests of European NGOs as strategic partners of the EU and its member states, accede in a continuous manner to European Commission funding, and promote the quality of NGO work, by developing, in particular, "capacity-building."

As regards its dialogue with the EU Council, Concord is regularly invited to the meetings of Council Working Parties, in particular with the *Council Development Working Party* and the *Africa Working Group*, in order to discuss informally with representatives from EU member states. Concord also holds regular meetings with the European Commission, in particular with the Directorate-General for Development and Cooperation, the DG Justice, DG Enlargement and DG Budget. The year 2007 saw the creation of a Stakeholders' Advisory Group within the DG Development and Cooperation; it aims to promote greater transparency and inclusiveness in dialogue between the European Commission and CSOs. There are also frequent meetings with EuropeAid, in order to discuss the quality and efficacy of aid programmes. In addition, the dialogue experience accumulated by Concord in the framework of relations between the EU and the African, Caribbean and Pacific group of states. In the area of humanitarian aid, Concord liaisons with the European Commission DG ECHO, which

organises humanitarian aid for victims of war or natural disaster in third countries. Concord also participates in informative meetings and hearings, together with the European Parliament, especially as regards development, budgets and constitutional affairs.

Green Ten includes the ten largest European environmental organisations, representing over twenty million associates, and is the most important interlocutor for European decision-makers in environmental matters. The environmentalist NGOs are considered by those committed to such issues, as some of the most advanced civil society organisations in conducting civil dialogue with EU institutions. Consultation proceeds on a regular basis, both at the top level, with the European Commissioner for the Environment; with officials from the DG Environment; and with the ad hoc Parliamentary Committee. Green Ten interacts with the minister for the environment in the country due to assume EU presidency; to the minister it presents a memorandum setting out priorities and initiatives which environment NGOs hope to further during the six months of the presidency. The environment NGOs are also those most active NGOs within the Commission Committees of Experts consulting them, and numbering over fifty. Each year, Green Ten presents the European Commission with a detailed report on EU environment policies; it assesses the work carried out during the preceding year by the Commission as a whole, and by the Commissioner specifically responsible; it provides a detailed critical appraisal of the activities and legislative measures proposed by the Commission, and indicates its priorities.

The Human Rights and Democracy Network (HRDN), composed of thirty-eight European and national organisations, is not yet fully structured. However, it is highly visible and efficacious in its dialogue with EU institutions. The lobbying capacity and power resources available to associations such as Amnesty International and Human Rights Watch, which guide dialogue with EU institutions in the area of human rights, are universally recognised. These associations meet periodically with members of COHOM (the Council Working Party on Human Rights), responsible for shaping the EU's human rights policy in its external relations, in order to discuss themes on the agenda of the United Nations Human Rights Council. The practise of so-called "debriefing meetings" with NGOs before and after COHOM meetings is now well established.

Each year, starting in 1999, the current presidency of the EU, in collaboration with the European Commission, has organised the "European Union Human Rights Forum," conceived as an instrument for developing dialogue between EU institutions and CSOs in the area

of human rights. The forum has steadily gained in visibility and political importance within the EU system.

A special interlocutor of the European Commission in the area of human rights is the network of forty-one European universities which, since 1997, has organised the European Master in Human Rights and Democratisation; in 2002 the network created its formal structure, the Inter-University Centre for Human Rights and Democratisation, with headquarters in Venice.<sup>70</sup>

One noteworthy example of NGO-EU dialogue hinges on international criminal law. By way of the European Instrument for Democracy and Human Rights (EIDHR), the European Commission has brought considerable funding to NGOs' activities in the area of international criminal justice, especially in supporting information and awareness-raising campaigns concerning the International Criminal Court (ICC); in performing actions aimed at ratifying the Rome Statute in all regions of the world; and in sustaining the efforts of juridical experts in enacting national legislation compliant with the Rome Statute. Dialogue and cooperation with NGOs are expressly foreseen in most Council acts relating to the ICC, and have proceeded thanks, above all, to the active participation of NGOs in meetings of the International Criminal Court sub-area known as the Working Party on Public International Law (COJUR), starting with its first meetings, in June 2002.

In the sphere of human rights, one politically incisive chapter in civil dialogue proceeds within the framework of "EU Guidelines." They go under the title of Death penalty, Human rights dialogues with third countries, Torture and other cruel, inhuman or degrading treatment or punishment, Children and armed conflict, Promotion and protection of the rights of the child, Human rights defenders, Violence against women and girls and combating all forms of discrimination against them. The Guidelines function as a solid regional framework for the EU's efforts aimed at promoting and protecting human rights in its global, external policy, and are a practical instrument in EU human rights policy as a whole. The Guidelines offer various actors elements allowing incisive action in various critical sectors. In applying the Guidelines, the COHOM and the European Commission exchange opinions on an informal level with NGOs and international organisations; support the activity of civil society organisations; and promote the development of

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<sup>70</sup> Papisca, A. (ed.), *European Master's Degree in Human Rights and Democratisation. Six years of E.MA Activities and Beyond*, Padua/Venice, University of Padua, 2003.

partnerships and the reinforcement of coordination with international actors, including those of civil society.

The *European Women's Lobby* (EWL) was created in 1990 with the aim to promote women's participation at the highest levels of European and international politics, the furthering of gender equality in all public policies of the EU, the systematic monitoring of communitarian legislative activity and non-discrimination against women. The EWL also aims to ensure full access for women to human rights through their active participation in society; to defend the interests of women living in the EU member states, including migrants, ethnic minorities and the most vulnerable social groups; to promote European social policies based on the internationally recognised human rights, and to ensure women's participation in processes of cooperation between the EU and third countries.

The EWL's role is to represent the interests of network member organisations in European institutions. It promotes campaigns for the empowerment of all women, and for the development and implementation of "gender mainstreaming." EWL membership includes thirty-four national NGO affiliations present in all EU member states, and twenty-two European networks. The governing bodies of the EWL are the General Assembly, the Board of Directors, and the Executive Committee, assisted in their work by a secretary's office and by numerous working groups and *ad hoc* committees.

The EWL expresses opinions on all gender issues included in the European agenda, by presenting "position papers," proposals for amending EU legislative acts, and constant lobbying. Considering that the policy of gender equality is now transversal to all EU public policy, the EWL interacts directly with all European institutions, beginning with those most specifically committed to gender issues, such as the European Parliament Commission for the Rights of the Woman and Gender Equality, informal meetings of ministers on gender equality (like that first occurring in May 2004), the competent European Commission bureaus, and the Council Committee on employment, social policy, health and consumers.

The *Civil Society Contact Group* was created in February 2002 on initiative by the Platform of European Social NGOs, the European NGO Confederation for Relief and Development, Green Ten (then known as "Green Eight") and the Human Rights and Democracy Network, with the goal of furthering collaboration among the most representative sectors of organised European civil society, and of aggregating the

political demand addressed to the Convention on the Future of Europe.<sup>71</sup> The main requests made by the contact group in the “Common Declaration” presented to the members of the European Convention during the preliminary informative hearing of 24 June 2002 found response in the Treaty project adopting a constitution for Europe, and later, in the Treaty of Lisbon. The group is dedicated to promoting sustainable growth capable of guaranteeing proper balance between the social dimension and economic development. It assigns the EU Charter of Fundamental Rights the same juridical value as the treaties. It advocates civil dialogue based on respect for human rights principles, including gender equality and non-discrimination. The Contact Group has become a permanent structure, and is expanding as new networks join it, including the European Women’s Lobby, the European Forum for Arts and Cultural Heritage, the European Public Health Alliance and the European Civil Society Platform on Lifelong Learning. The European Trade Union Confederation adheres to the Group with observer status.

For European civil society networks, civil dialogue has important political significance, since it helps reduce the gap in the EU between governors and the governed, and strengthens citizens’ participation in political processes and choices directly affecting their lives. It helps to ensure the growth and implementation of communitarian policies by providing knowledge to political decision-makers and by indicating new needs demanding protection at the EU level. It helps represent public interests, ideas and values in the political life of the Union, spread “European thinking” to citizens, and promote solidarity and social responsibility.

In short, the European civil society networks make up as many “political spaces” meant to influence the planning of EU institutions’ and member states’ political agendas. CSOs’ European-scale organisation has meant the Europeanisation of personnel within their ranks, tending to influence their culture and make their recruitment more selective. The new groups of European leaders in CSOs comprise persons who have acquired knowledge and skills similar to those of communitarian officials, representatives of member states, or expert lobbyists for economic interest groups. This new European *élite* of civil society knows how to perform in the EU political system and, therefore, to dialogue with all the actors who play politically important roles in it.

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<sup>71</sup> Alhadeff, G., Wilson, S., *European Civil Society Coming of Age*, [www.globalpolicy.org](http://www.globalpolicy.org).



In the EU system, then, a complex, widely diffuse “civil society infrastructure” is becoming more and more consolidated, in harmony with the traits of autonomy and initiative inherent in spontaneous social groups. Moreover, the urgent need is being met to find a balance between for-profit and not-for-profit actors. Finally, that part of the Treaty of Lisbon referring to participation by civil society has now appeared on the horizon, offering sanction and institutional recognition to channels which had already been deeply excavated.

Let us now ponder the filling of the EU’s persistent democracy gap. We find ourselves facing an independent variable as important as it is unknown, in its real potential as a transformer. Concerning this topic, people’s attention usually focuses only on two problems: the traditional lack of specific European commitment on the part of political parties, and the absence of full legislative power in the European Parliament. Tiredly, we continue to argue only in terms of electoral competition, and in terms of the powers enjoyed by the representative institutions. A politically significant factor for the EU system – an eminently positive one – is that civil society organisations have become Europeanised, integrated into the EU context, in a wide-ranging, courageous process of European civil society network building.

## **IX. The Role of CSOs in the European Model of Multi-level Governance**

Somebody insists that essentially non-representative organisations such as intergovernmental organisations, and non-accountable ones, such as NGOs, are incapable of contributing to the legitimacy of European and global governance.<sup>72</sup> Still others paint a dark picture for the future, in which globalisation is leading to a world whose governance structures clash and overlap, taking on more and more private, oligarchic forms, and thus hitting democracy below the belt.<sup>73</sup>

Cybernetics explores homeostatic systems, characterised by a constant search for balance in the complex context of variables and interactions. We believe that the approach to multi-level governance (MLG) presents strong analogies to this reality. Empirical evidence provided, for example, by EU policies concerning the promotion of human rights and non-discrimination, development cooperation,

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<sup>72</sup> Ottaway, M., “Corporatism Goes Global: International Organisations, NGO Networks and Transnational Business,” in *Global Governance*, no. 3, 2001, p. 245.

<sup>73</sup> Cerny, P.G., “Globalization and the Erosion of Democracy,” in *European Journal of Political Research*, no. 2, 1999, p. 2.

humanitarian aid, environment protection, etc., demonstrates that the transnational actors most directly concerned – i.e., civil society organisations – have a high capacity to adapt to Europeanisation processes, and can react pragmatically to the challenges of multi-level politics.<sup>74</sup> In fact, their level of coordination is rising; their channels of participation and representation are becoming more diversified; their negotiating capacities are growing and becoming more acute; and above all, the bonds between them are becoming stronger through communication. The greater visibility of the transnational dimension in the EU system fuels a three-part, dynamic structuring process: it creates independent arenas for negotiation, it intensifies communication, and it stimulates learning. In short, the differentiation of arenas reduces the problem of complexity inherent in a system of multi-level governance.<sup>75</sup>

Cross-border transactions generate a new political demand directly addressing supranational institutions, which are urged to give rapid, efficacious response by way of EU legislative instruments. In other words, the rise in levels of cross-border transaction and communication by initiative of non-governmental actors raises awareness of the need for rules, coordination and norms at the European level. The process sparks off a mechanism of functional “spillover,” by which an increase in requests addressed to the EU system corresponds to a reinforcement of the role of governance by supranational institutions and bodies. The process of institutionalisation which results, in turn, stimulates development in the integration process.

MLG approach focuses on the expansion of transnational relations and on the capacities of supranational institutions to respond to needs emerging from those relations. At the same time it emphasises the role of supranational rules in determining further integration. The interests of CSOs, precisely because they are transnational, find in European governance a higher level of receptiveness. We may argue that the relative intensity of transnational activity, measured over time and in various political sectors, causes a variation in the dependent variable: i.e., in European governance; and that transnational activity is the true

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<sup>74</sup> Greenwood, J., “Transnational Institutions and Civil Society Organisations in the EU’s Multilevel System,” in J. Joachim and B. Locher (eds.), *Transnational Activism in the UN and the EU – A Comparative Study*, London, Routledge, 2009, pp. 93-102; della Porta, D., Caiani, M., *Social Movements and Europeanization*, Oxford, Oxford University Press, 2009; Harlow, C., Rawlings, R., “Promoting Accountability in Multi-Level Governance: A Network Approach,” in *European Law Journal* (Special Issue), no. 4, 2007, pp. 542-562.

<sup>75</sup> Benz, A., Eberlein, B., “The Europeanization of Regional Policies: Patterns of Multi-level Governance,” in *Journal of European Public Policy*, no. 2, 1999, pp. 329-348.

“catalyst” of European integration.<sup>76</sup> An increase in such activity, in one or more EU policies, will immediately bring about a rise in costs deriving from the maintenance of a high number of national normative systems, often differing from one another. Clearly, in the face of a rise in costs, national governments are strongly motivated to transfer new powers and competencies to European institutions. We see an analogy here with the “sectoral spillover” theorised by the neo-functional school. According to this model, governments not only are towed by the integration process, but find themselves entangled within processes caused and sustained by non-state actors, and regulated by supranational entities. This virtuous circle conditions the behaviour of national governments and reduces their capacity to control outcomes at the European supranational level.

It is wholly evident that the more the condition of world interdependence is reinforcing, the more CSOs will want to play a political role, directly in the European context and internationally. The European process of integration offers them a chance to play this role: that is, it favours a growth in CSOs’ power by offering them channels of institutional access.

The current reasons for European integration spring from three needs: to strengthen institutions’ capacities on several governance levels; to ensure adequate space for satisfying human rights and democratic values; and to guarantee adequate channels for participation by civil society organisations. A crisis in governing, a crisis of the “state form,” and a crisis in democratic practise uphold one another. I believe that the contribution of multi-level governance theory is useful not only because it strengthens our analytic framework concerning the European integration process, but also – and above all – because it helps explain the complexity of scenarios and the variety of state and non-state actors operating on stage.<sup>77</sup> The rationality of the European integration system’s functioning is not wholly due to intergovernmental factors, but is mixed in nature: intergovernmental, supranational, and transnational. The EU political system has been gradually absorbing genuinely human ethical values: the Charter of Fundamental Rights and the Treaty of Lisbon officially reflect this fact. The principles of subsidiarity formally absorbed into the EU system, and the human rights paradigm legally

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<sup>76</sup> Stone Sweet, A., Sandholtz, W., “European Integration and Supranational Governance,” in *Journal of European Public Policy*, no. 3, 1997, pp. 297-317.

<sup>77</sup> Papisca, A., “Droits de l’Homme et Démocratie dans l’Espace Glocal de la Gouvernance Multi niveaux,” in S. Gandolfi, P. Meyer-Bisch, J. Bouchard (eds.), *La Démocratisation des Relations Internationales*, Paris, L’Harmattan, 2009.

recognised on the international level, together form a constant *Leitmotiv* in the political development of the European Union.

In conclusion, democracy is urged to expand beyond national boundaries; governance is urged to branch out on a plurality of levels; the law is urged to further universalise itself, in harmony with the human rights fundamental principles; citizenship is urged to become multiple.<sup>78</sup> In the EU system we already see tangible response to such urgings, sometimes embryonic, sometimes more evolved: from transnational democracy to multi-level governance; from *ius commune* to multiple citizenship.

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<sup>78</sup> Id., “Citizenship and Citizenships Ad Omnes Includendos: A Human Rights Approach,” in L. Bekemans *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and Their Partners*, Venezia, Marsilio, 2007, pp. 457-480.

# Cultural Organisations and Intercultural Dialogue

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## I. “Intercultural Dialogue” and its Discontents

Nowadays we talk of “intercultural dialogue” in many different and rather loose ways, but running through all these usages is the conviction that cultural organisations are key protagonists in the processes involved. Cultural organisations – whether they are state-supported or not – are also considered to belong to “civil society” (another capacious and over-used category). The present contribution is a brief foray into this particular cultural patch of the civil society terrain. Before embarking upon it, however, it is necessary to highlight some of the ambiguities and discontents of the very notion of “intercultural dialogue,” as well as some of its major stakes. Because these stakes are so important, we should expect better from the terms we use and that end up using us.

“Intercultural dialogue” is a variegated discursive formation. It can be aspired to and practiced between nations or geo-cultural regions, or within them. The point of departure is the increasing heterogeneity of our societies, many of which are experiencing ethnic diversification on a scale for which their histories little prepared them. These transformations have generated anxieties and tensions of many different kinds that in turn raise a range of issues. How to optimise heterogeneity as a positive resource for society? How to prevent it from becoming a source of tension, if not conflict, particularly in societies which have been – or have represented themselves as – homogeneous?

Speaking of tension, immigration is increasingly portrayed as a key factor of cultural “conflict” in Europe. This construction is perhaps something of a straw man and merits a short digression. To be sure, with today’s mixing of peoples, different creeds, lifestyles and interests come into contradiction with each other, leading to frequent misunderstandings and miscommunications. But sustained confrontations that

manifest themselves in concrete and/or violent forms are relatively infrequent. More importantly, they occur only in some settings. Only certain immigrant groups become targets of native opposition in forms such as racist violence and hate crimes (here we could speak of immigrant-native conflict), while others are more often engaged in conflicts with the state that includes rioting and destructive activity (a form of immigrant-state conflict).

Recent research increasingly shows that *cultural* (or ethnic) difference is not a causal factor in these instances. Rather, as Rafaela Dancygier concludes in her recent book “*Immigration and Conflict in Europe*”,<sup>1</sup> the interaction of two key variables – *economic scarcity* and *immigrant electoral power* – accounts for the incidence of immigrant-native and immigrant-state conflict. Immigrants and natives increasingly compete for goods and services whose supply is relatively fixed in the short term. When immigrants can back up their claims with pivotal votes, local politicians will allocate these resources to this new constituency. Natives are in turn likely to protest such distribution by turning against immigrants, producing immigrant-native conflicts. Conversely, in the absence of political leverage, immigrants may have little recourse to it during times of economic shortage. This state of affairs may leave locals content, forestalling immigrant-native conflict, but it is more likely to cause immigrants to engage in conflictual relations with state actors, producing immigrant-state conflict.

It is important, therefore, to be more careful when we assert that cultural difference has an inherent conflict-creating potential. It is necessary also to bear this in mind when deploying the very notion of the “intercultural” that, particularly when it is parsed as “inter-cultural dialogue,” has become an indiscriminately used catch word. Having acquired an excessively broad range of meanings, as I have written elsewhere, the term has come to be almost as protean as the notion of “culture” itself.<sup>2</sup> It is often deployed as an “is,” that is as a descriptor of actually existing cultural diversity, rather than as an “ought,” in other words how individuals and societies, individuals in societies, should address cultural heterogeneity in our societies. And even when the term is used appropriately in the latter sense, it often refers in current usage to three rather different things: 1) principles and stances of political

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<sup>1</sup> Dancygier, R.M., *Immigration and Conflict in Europe*, Cambridge, Cambridge University Press, 2010.

<sup>2</sup> Y. R. Isar, “Tropes of the ‘Intercultural’: Multiple Perspectives,” in N. Aalto and E. Reuter (eds.), *Aspects of Intercultural Dialogue. Theory. Research. Applications*, Cologne, SAXA Verlag, 2006.

philosophy that are appropriate to new patterns of heterogeneity; 2) real-life intercultural encounters “on the ground” and 3) processes of deliberation that aim to elaborate a kind of intercultural deontology. No doubt there is a need for us to attend carefully to all three levels, but there doesn’t seem to be enough differentiation or, even more importantly, enough “joining up” taking place between them.

“Intercultural dialogue,” it must be said, is a notion that tends to be deployed in rather rarefied spheres, in circles somewhat distant from the on the ground realities it is supposed to address. Are the right people talking about and practicing it? Is it not a cause whose champions are preaching to the converted, in a closed conversation among decent, liberally inspired intellectuals and cultural activists, whose lifeworlds are vastly different from those who have to live in difficult socio-economic conditions, of quotidian insecurity, economic vulnerability and the like? Deliberation is at the heart of all dialogue, but is only justified when the participants are truly motivated to engage upon it, and when there is a conflict which normal governing procedures have failed to resolve.

Finally, as far as “joining up” is concerned, how risky it is to speak of the “cultural” in isolation from the “social” the “political” and the “economic.” We see this in very striking ways today, as the scale of migratory follows accompanied by growing economic scarcities and, in this spring of 2011, the real or imagined (and feared) sequels to the popular revolutions in the Arab world, have generated a climate, as Phil Wood observes, in which politicians feel impelled to act publicly and robustly in defence of “national identities” which, only a few years earlier, they were content to leave implicit and vague, but which today they must reassert. Recent initiatives and pronouncements by French President Sarkozy and his colleagues, or remarks of David Cameron and Angela Merkel with respect to the failure of “multiculturalism” are cases in point.

But behind the political opportunism that motivates such public position-taking stand real questions. How to reconcile the imperatives of difference with the imperatives of commonality? How to conceptualise the nation as a civic community whose values and symbols can be recognised and appropriated by all? As Bhikhu Parekh has put it:<sup>3</sup> “We cannot integrate ‘them’ as long as ‘we’ remain ‘we’; ‘we’ must be loosened up to create a new common space in which ‘they’ can be accommodated and become part of a newly constituted ‘we’.” The

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<sup>3</sup> Parekh, B., *Rethinking Multiculturalism: Cultural Diversity and Political Theory*, Basingstoke, Macmillan, 2000.

challenge is how to reconstitute any collective “we” within a public space that cherishes both plural identities and the shared identity of common citizenship.

## **II. Getting to Conviviality**

But it is not that simple. The political philosophies that can be and are being adopted in the face of the anxieties and issues thrown up by cultural heterogeneity all seem to be wanting in some degree. Coping with that heterogeneity, living with it well, must ultimately be the fostered by a specific deontology, one that requires certain public attitudes, measures and mechanisms. Yet there is a paradox here in that, by its very nature, the intercultural project is rooted in person to person contacts, in creative and intellectual practice, not in official policy and action. It is a freely willed stance, taken for by individuals who choose to cross existential boundaries. It is grounded, therefore, in practice, not in official declarations, symbolic gestures or performative discourse. But the agent of such desired practice can of course be guided, influenced and facilitated. For ultimately, as Alain Touraine once observed, intercultural communication cannot be reduced to interpersonal relations; it leads to the “construction of general forms of social and cultural life.”<sup>4</sup> Hence how the intercultural challenge is defined and acted upon by governments and by social custom – and often the politicians who govern us act or speak in relation to diversity because of what they think social custom wants or is – determines whether diversity leads to greater societal creativity and innovation or, on the contrary to conflict, violence or exclusion.

Yet on the ground, in our cities for example, it is generally a matter of daily – and largely banal – interactions, conflicts or avoidances of people and these issues of daily living require a new kind of urban conviviality.<sup>5</sup> This is essentially a local governance challenge, one that requires a new spirit of local, city-based interculturalism. All too often cities are organised into ethnic enclaves that rarely interact and, as Phil Wood observes,<sup>6</sup> “often city authorities seem most comfortable dealing with migration and diversity simply as an instrumental and legalistic

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<sup>4</sup> Touraine, A., *Pourrons-nous Vivre ensemble? Egalité et Différence*, Paris, Fayard, 1997, p. 210.

<sup>5</sup> Amin, A., “Ethnicity and the Multicultural City: Living with Diversity,” in *Environment and Planning A*, 34(6), 2002, pp. 959-980.

<sup>6</sup> Wood, P., “Challenges of Governance in Multi-Ethnic Cities,” in H. K. Anheier and Y. R. Isar (eds.), “*Cities, Cultural Policy and Governance*,” *The Cultures and Globalization*, Series 5, London, SAGE Publications, 2012.



process whereby outsiders are either rejected, or moved along a conveyor belt to acceptance, by the machinery of state.” They seem to want to avoid the messier and more ambiguous social and cultural and political-economy issues that diversity and migration throw up. They need to realign their mindsets, “from one which delivers a ‘one-size-fits-all’ service to a homogeneous citizenry, to coping with the needs and demands of a super-diverse population.”

There are two areas of city management in which such concerns are key. One of these is the organisation of public space, a matter too complex to be entered into here. The other is the role played by cultural institutions, a matter that is germane to the present discussion. As Wood also observes, museums, galleries, theatres and libraries may have been created in very different times for very different audiences than the ones they now must serve. Most were created explicitly for and by a dominant or monolithic culture, or as part of the nation-building process. Or they may simply be repositories of artefacts and symbols with meaning for an educated elite but largely illegible to others. Elena Delgado of Madrid’s *Museo de América* is in no doubt about the ways in which her institution must embrace the challenge:

The significance of a museum lies not only in its collections, but also in the reflections and insights it is able to trigger around the objects, the knowledge it provides and the multiple visions and interpretations it offers on the heritage in its care [...]. As metaphorical “free zones,” museums must strive to take their place at the intersections, in those spaces where individuals and distinct cultural identities can act and interact, transform and be transformed [...]. In order to become a space for negotiation, museums must disown those homogenising and discriminating values which are still very closely connected to their role in legitimising historic identity. [...] one task for cultural and educational institutions should be the development of strategies to help citizens learn to live with conflict, with the other and with difference, by promoting attitudes which lead to the intersection of cultures and of knowledge.<sup>7</sup>

Maximising cultural learning opportunities at those intersections, are key responsibilities for all cultural organisations in the intercultural moment we are living through today. Hence in the next section I shall present the work of the *Platform for Intercultural Europe* established precisely for this purpose. Conceived as a European civil society initiative – of and for independent non-governmental cultural organisations – it was launched in April 2006 at the “Europe for Intercultural Dialogue” conference organised by the Spanish Ministry of

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<sup>7</sup> See Delgado, E., 2009, cited in P. Wood, *op. cit.*

Culture in Granada, Spain, at the joint instigation of the European Cultural Foundation and the Europe-wide arts and culture association called *Culture Action Europe*.

### **III. The Platform for Intercultural Europe**

In the spring of 2006, cultural organisations and networks involved in the work of the European institutions were planning their contributions to the “*European Year of Intercultural Dialogue*” (2008) that had been decided upon by the European Union a few months earlier. The then director of the European Cultural Foundation, which had established itself as a promoter of different forms of Europe-wide cultural advocacy, proposed the “*Culture Action Europe*” (which was then called the European Forum for the Arts and of which I was then the president), to launch a process of deliberation and agenda-setting around the issues of intercultural dialogue. For this purpose, the two organisations decided to establish, with the support of the Network of European Foundations (NEF) the “Civil Society Platform for Intercultural Dialogue.” We were concerned with the compartmentalisation of the socio-cultural field, broadly speaking, in which “arts and culture” organisations work in relative autarchy, in a closed conversation among themselves, clearly bereft of those cross-sectoral linkages that the sector itself ardently advocates.<sup>8</sup> We resolved therefore, from the outset, to bring into the process actors in other fields such as education, youth and social work, minority rights, anti-discrimination and human rights. Subsequently, once it was constituted, the Civil Society Platform set itself the goal of contributing to four domains of change: *attitudinal* – with a view to promoting a greater appreciation of diversity and the complexity of cultural identities, *social* – with a view to building democratic inclusion and greater equity, *structural* – so as to make organisations and their constituencies more diversely composed and governed and *policy* – with a view to setting out standards and frameworks to tackle exclusion, inequalities and breaches of human rights related to cultural diversity.

The principal outcome of a first phase of effort on the part of the Civil Society Platform was the intercultural manifesto released in 2008 as “*The Rainbow Paper. Intercultural Dialogue: From Practice to Policy and Back.*” This text has now been endorsed by 397 organisations in Europe.<sup>9</sup> Prepared on the basis of a multi-phase on-line

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<sup>8</sup> Cf. paragraph 4 of Article 151 of the Treaty of Amsterdam.

<sup>9</sup> This history is presented in detail on the website of the Platform for Intercultural Dialogue, at <http://intercultural-europe.org>.

and off-line consultation process, the “*Rainbow Paper*” (and follow-up to it) are not intended to supply a practical road map for action but rather a set of principles and steering ideas that organisations and individuals may adopt, a model path that they might choose to take. The “*Rainbow Paper*” itself focused on five major challenges. With regard to education, it underlined that intercultural learning needs to be promoted in every age group and across the entire spectrum of educational provision. With respect to organisational capacity-building, it stressed the need for organisations themselves, in their staff composition and governance structures, to reflect the plurality of the constituencies they serve through appropriate recruitment and human rights mechanisms. As regards the ongoing monitoring of policies to promote intercultural dialogue, it highlighted the challenge of constituting a robust evidence base, of deploying effectively and of connecting the knowledge to policy-making. As regards the cross-sectoral dimension, the document stressed how important it is to cross boundaries in order to perceive the broad picture of political, economic, social and cultural reasons for difference and in order to learn from the experience of many different players. Finally, in terms of fund-raising, it put forward concrete ideas regarding dedicated funding lines and benchmarking.

The slightly renamed *Platform for Intercultural Dialogue* that was created in the wake of the “*Rainbow Paper*” was designed, as its mission statement attests, to be an interlocutor between European institutions and civil society organisations committed to intercultural values and to the democratic, deliberative elaboration of a new cultural “we.” It achieves these purposes by: developing deeper understanding of the concepts behind intercultural dialogue and action; representing the experience, insight and needs of all those who act to promote these concepts and ideals; influencing Europe-wide and national policy to provide more and better support for the work of practitioners in the field and with a view to bringing issues of cultural diversity to the heart of public policies and providing a space for reflection, dialogue and learning in this field.

Follow-up has focussed on advocating changes to the European Union cultural and integration policy. It has necessarily involved the identification of new kinds of “spaces” for intercultural dialogue, as well as the transformation of established (cultural) institutions (especially if public funding), e.g. via examining the public service remit of organisations such as libraries and museums in the ways alluded to above. It has explored how other institutions such schools, the media, etc., can be cracked open interculturally and transformed accordingly. It has reflected upon changes to organisational cultures, personnel

structures and recruitment, governance rules and the distribution of resources. It has also promoted a series of intercultural dialogue focussed events and processes.<sup>10</sup>

Imbalances in social and cultural power make it difficult if not impossible, for example, to attain the basic conditions required for the democratic deliberation in which intercultural dialogue needs to be practiced. True dialogue can only take place between equals, but non-national residents and even citizens with a migration background tend to be of distinctly lower socio-economic status than the majority society individuals or the agents of the public authorities they find themselves in dialogue with. Furthermore, asymmetric power dynamics play out in who gets to dialogue in the first place, as many organisations lack the resources required to play this role, or are culturally and politically under-recognised.

Eliminating such hurdles requires legal and practical measures, yet access to these measures themselves is problematic. There are many barriers. Special provision might have to be made by convenors to fund the participation of immigrants in dialogue processes, to provide participants with baseline information and knowledge of the rules of the game and to factor in such measures as the provision of child-minding services, the coverage of transportation costs and the like.

Obtaining and retaining political sponsorship is another bottleneck. In the present political climate, this may be difficult to attain, and breaks in continuity after elections are common. The question is whether long-term safeguards against short-term changes in the political tides can be built into ICD initiatives.

The terms employed as categories and labels are also problematic. Is intercultural dialogue for multiple stakeholders or for certain “target groups?” The second term is trapped in a framework of one-way flow, it lacks mutuality, whereas the first, the notion of “stakeholder,” is far more suited to the challenges faced a social capital perspective, in which increasing diversity – with the “self-isolation” and “social distance” it often provokes – may be a cause of declining social capital. In very heterogeneous neighbourhoods, mutual knowledge and trust between neighbours and between residents and political institutions and leaders tend to be low, and so too political participation and confidence in being able to affect political decisions. In such situations, diversity is not

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<sup>10</sup> See for a critical analysis, S. Frank at the Expert Seminar on European Modules: *Active Participation of Immigrants in all Aspects of Collective Life*, Brussels, 7-8 April 2011, organised by Ramboll Management Consulting on behalf of the European Commission (DG HOME, Immigration and Integration Unit).

inherently positive, but offers a potential that has to be brought to fruition. Opportunities have to be created for meaningful interactions and relationship building and social and associational networks forged. Also, in the context of the need for framing issues in inclusive terms, the needs to be addressed through dialogue should be those that all can identify with and would like to see fulfilled in their society, e.g. religious freedom, social inclusion, good parent-teacher relationships. Thus the needs of a “target group” become the “stakes” of society as a whole and a much wider group than the “target group” become “stakeholders” in the dialogue process.

#### **IV. Conclusion**

Considerations such as these remind us that the goal we are pursuing together is a kind of intercultural deontology or ethos and that this still-to-be-inculcated spirit applies not solely to minority ethnic groups but concerns the nature of society as a whole, and thus needs to address changed conditions for everyone. These changed conditions are ones in which the relations between people belonging to different cultures need to be steered. They require the help of various forms of mutual translation and dialogic exchange that increase the mixing of cultures rather than merely celebrate a juxtaposition or mosaic of different and separate cultures. We need to shift from speaking of “different cultures” to a stress on “cultures in difference,” which suggests that cultural activities feed into processes of continuing production of difference and where there is both separate and shared space.

Of course we must admit that there could well be a utopian aspect to all this. It looks increasingly difficult for us to deal with the myriad fears, misconceptions and instrumentalisations that are being caused by increasingly dense migratory flows and the scale of fundamentalist Islamist terrorism. In the face of these trends (*tendances lourdes*) in our societies, our faith in the cosmopolitan virtues of interculturalism may well be destined to long remain a minoritarian one.



# **The Role of Religion in Civil Society and Intercultural Dialogue: a Cross-Cultural and Comparative Perspective**

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If the EU in the world is perceived as a model for peaceful integration and dialogue then we have to consider dialogue open to peoples within and outside Europe.<sup>1</sup> Therefore the question I wish to raise in this paper is what role religion should play in the new Europe.

There are a number of immediate problems such an undertaking faces. First by way of definition, among sociologists of religion there is a vigorous debate about how we should define religion. There is always a debate about how broadly we should define religion. Certainly, as Ninian Smart reminds us, religion contains many dimensions. Among them are the experiential, which involves the psychology of religious persons. This might include questions of conscience, belief, personal choice, etc. When thinking about the role of religion in society, should we talk about the many different ways in which persons experience transcendence in their lives apart from organised religion? Can we speak of the “do-it-yourself” ways in which persons construct religious meaning, often borrowing from different traditions? Or does all of that take us too far afield and leave us with only a confusion of individual approaches to religion?

The answer to those questions influences the way we think about the history of religion in the modern era and the future of religion in today’s world. However we come out on those important issues, for my purposes here, which are ultimately political, religion must include an institutional dimension. As interesting as it might be to speak about how

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<sup>1</sup> Bekemans, L., “Introduction,” in *Pace Diritti Umani/Peace Human Rights*, vol. 2, Venezia, Marsilio Editori, 2010, p. 7.

football might perform a religious function in the lives of its fans, I will argue that for political purposes, religion has to be essentially what people consciously and in society with one another claim to be religious. For similar reasons I also will argue when it comes to constitutional solicitude, religion must be different from individual belief, or rights of conscience.

By religion I mean here all religions but I do not mean simply spirituality or personal belief. I do not mean rights of conscience or a moral sense or an ethical norm. Of course religion contains all of these things but for our purposes, religion must mean that social force that organises itself around certain claims about ultimate meaning and the transcendent dimension of life. So we must be concerned not only with private rights of religious expression and religious freedom but with institutional rights of religious organisations.

The desire to make the EU a model for peaceful integration and dialogue among peoples and cultures strikes anyone familiar with the history of the 20<sup>th</sup> century as strange, given the horrible conflict and destruction that marred this continent for so long. Religion has often been part of that. If we think back before the liberal era, the role that religion played in exaggerating difference, defining it, vilifying the other and legitimating acts of inhumanity and violence against the other in the name of God is well known.

It was for that reason, among others, that beginning with the French Revolution at the end of the 18<sup>th</sup> century, European revolutionaries wished to replace religion with a new view of the human person that emphasised freedom, individual rights, and representative government. We all know that the churches, especially the Catholic Church, resisted liberalism consistently and vigorously. No wonder that a vehement anti-clericalism marked and continues to mark much of European liberalism.

The rise of communism only exacerbated the problems with Karl Marx's insistence on a materialism that saw religion as nothing more than a tool of oppression which for the sake of dialectical transformation had to be repressed.

Islam in Europe historically presented very serious problems for those interested in a civilisation based on peaceful integration and dialogue. No more tolerant than Christianity when it came to the other faiths. Islamic insistence on joining mosque and state resulted in ongoing conflict between non-Islamic regimes and their Christian or Jewish neighbours. The clash of civilisations that raged during the expansion of Islam was not ended until the battle of Lapanto in the 16<sup>th</sup> century and smouldered in the background until the beginning of the new millennium when it seemed to re-emerge with a vengeance. Even



now as the Arab world erupts in what seems to be calls for democracy and expansion of human rights, questions still exist about how compatible liberalism is with Islam.

The liberal alternative has been well expressed in the French conception of *laïcité*. In its simplest form, the citizen is asked to leave aside his/her religion as he/she moves into the sphere of the public. But as the Stasi Commission recognised in 2003, this idea of excluding religion from the public square simply does not meet the realities of today.<sup>2</sup> You cannot champion human rights, individual expression, and freedom of conscience, and then tell people they should leave their religion out of their public discourse. Religion for many is an integral part of their culture. The successes of liberalism in creating governments free from the oppression of organised religion has brought with it a new condition, which like many of the successes of liberalism, poses a problem for the very continuance of the system itself. Now that people are for the most part not worried that Rome will be running the political affairs of their own country or that a new caliphate will be dictating their business practices anytime soon, they ask: Why is it that my religious values cannot be reflected more in the public policies of my country? What is there about my religious values that make them different from my values about politics? About public values? How can I be respected as a human person if I must present a dis-integrated self in public, one that hides away what I really feel and who I really am simply to validate a political regime? There seems nothing more opposed to the spirit of liberalism than that.

Also there is the problem of the third-generation and social and cultural identities. In Great Britain, several of the perpetrators of the devastating terrorist attack were in fact third-generation Muslims who had been born and raised in the United Kingdom. Their adaptation of radical Islam represented a home-grown British model not dissimilar to that displayed by several young men in Northern Virginia who went off to Afghanistan to obtain military training as young jihadists.

Questions like this lead me as an American to think of my own homeland, a place birthed by Europeans committed to the liberal ideals that they had long ago fostered. But there, because of a confluence of historical and geographical forces, a new order of the ages arouse in

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<sup>2</sup> Rapport au Président de la République: *Commission de Réflexion sur l'application du Principe de Laïcité dans la République*, remis 11 Décembre 2003, at: [www.ladocumentationfrancaise.fr](http://www.ladocumentationfrancaise.fr). The report has also been published in book form as *Laïcité et République*, Commission présidée par Bernard Stasi, Paris, La Documentation française, 2004.

which religion could be welcomed and at the same time separated formally from the state. And despite the worries that many of my friends in Europe had, especially during the presidency of George W. Bush, that somehow religious leaders were whispering in the ears of our political leaders, hatching apocalyptic dreams that manifested themselves in unwise and in fact disastrous foreign-policy moves, I would suggest that has not been the case. Rather, a closer look at religion's role in America shows that it, on the whole, functions to promote dialogue, social integration, pluralism, and respect for others, while at the same time providing many of the traditional values that religions have always provided societies: common values, common purpose and solidarity.

This, of course, was noticed by that famous French observer of America, Alexis de Tocqueville, in the 1840s as he toured around the then still emerging country. Tocqueville was writing for the French and particularly for the French who had real misgivings about democracy and its future. He immediately noticed that religion rather than contribute to such social strife in the U.S. was in fact doing quite the opposite. Tocqueville's habits of the heart, chief among which was religion, worked to counterbalance the most threatening dynamic of a society based on freedom: individualism. Religion taught concern for others, for the common good, for association. It worked against partisanship. Religious associations in America were not like secret associations in his homeland, or like clandestine political lodges that needed to plot for political change sequestered from the public eye. Because the churches were free from state oppression, their activities were not monitored by the police and not seen as a threat to the regime. Because of the voluntarism and denominationalism, no one church dominated the culture or threatened the state. Religion was free to play a largely beneficial role in passing on social values essential to the health of the political society.<sup>3</sup>

Today I would suggest Europe more resembles the U.S. than it did in the 19<sup>th</sup> century. I raise this not to suggest that Europe could or should reproduce the American system, but rather to suggest that changes in European society have made new accommodations of religion in modern society possible. The following elements suggest this:

- Religious freedom is an established individual right that the individual may assert against the state. It is well-protected in

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<sup>3</sup> See de Tocqueville, A., *De la Démocratie en Amérique*, vol. 1, 1835 and vol. 2, 1840, Paris. An English translation by Henry Reeve was published in New York in 1838 with the title *Democracy in America*. See, in particular, vol. 2, Parts I and II for discussions about the role of religion.

state constitutions and in the UN Declaration of Universal Human Rights;

- Religious pluralism is recognised by European states;
- There is an increasing amount of religious diversity, often because of the presence of non-Christian immigrant groups;
- Religious organisations are for the most part not meddling in governmental affairs.

The way that religion plays an important ongoing role in European cultures is through mechanisms not unlike those Tocqueville observed in 19<sup>th</sup> century America. I would like to discuss three such ways, based on the research of three European thinkers: Danièle Hervieu-Léger, Maurice Halbwachs and Niklas Luhmann, via Peter Beyer.

Danièle Hervieu-Léger deals with the problem of the failure of the secularisation thesis. As she and many sociologists of religion have noticed, secularisation theories of last century simply do not explain the endurance of religion in contemporary society. She looked for new ways to explain the current situation. This led her to a study of social memory. She tried to outline the way in which religion functioned in the memory of a society. Unlike in the past, the elusive sacred is not easily limited to any one set of institutional symbols or policies, especially in so-called post-Christian Europe when the dominance of the church has been effectively challenged by competing ideologies, mostly the ideology of nonbelief put forth by liberalism or at least the ideology of the marginalisation of religion from the public square. Religion endures in the habits and the memories of the society. It takes on old forms and often new forms that do not self-identify as religious but that perform religious functions within the society. So hence we have the phenomena of believing without belonging or belonging without believing.<sup>4</sup>

The question of how society creates and sustains the pre-political values necessary for its own continued existence may also be seen as a function of how a society structures its social memory. As Maurice Halbwachs has shown, memory is fundamental to the creation of a culture. The process by which we remember is in turn affected by the society. A society has a “collective memory,” which uses “collective frameworks” to reconstruct an image of the past that comports with the

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<sup>4</sup> Hervieu-Léger, D., “The Role of Religion in Establishing Social Cohesion,” in K. Michalski (ed.), *Religion in the New Europe*, New York, Central European Press, 2006, pp. 43-63. See also Hervieu-Léger, D., *La Religion pour Mémoire*, Paris, Éditions du Cerf, 1993.

predominant thoughts of a society.<sup>5</sup> When a society changes, it must change its current memory. It can do this by de-emphasising some elements and emphasising others, perhaps those that had been neglected before.

Memory creates a fundamental difference between America and Europe. As Bernard-Henri Lévy claims in his book, “*American Vertigo: Traveling America in the Footsteps of Tocqueville*,” America is built not on a memory of the past, as he thinks is Europe, but a dream about the future.<sup>6</sup> However, the EU is certainly a dream about the future; and to dream it means reconstructing the past and ceasing to be controlled by it.

Part of reconstituting the past means reconstituting the memory about the role of religion in society. Even as Europe attempts to escape from a past of violence and mistrust, it for the most part is content to hold to the old notion of religion as being an anti-liberal force that must be controlled and limited in democratic society. I would suggest that notion is a relic of the modern age, a relic of the wars of religion and of revolutions. Being bound by it will hold back the new, multi-level, multi-cultural Europe.

As Peter Beyer has shown in his “*Religion and Globalization*,” religion functions to create subsystems of meaning within cultures.<sup>7</sup> In a functionally-based society, traditional religion, which was part of a status-based society, has diminished. But religion can also function well as a subset of functionally-based societies. This is essentially the insight of Niklas Luhman, Peter Beyer’s mentor.<sup>8</sup>

There are two approaches that religion might take in creating substructures within the new globalised societies. The conservative approach is to offer alternative identities that resist the new global identity and emphasise localism in particular.

The second progressive approach is to de-emphasise the difference between religious identity and new global social identity. In this model, religion encourages the breakdown of the old defining characteristics that marked particular religious identities in the past. The danger of the first approach is that it can be revanchist; the danger of the second is irrelevance.<sup>9</sup> There is a need to enter into the kind of double learning

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<sup>5</sup> Halbwachs, M., Corner, L.A. (translator), *On Collective Memory*, Chicago, University of Chicago Press, 1992.

<sup>6</sup> Lévy, B.-H., Mandell, C. (translator), *American Vertigo: Traveling America in the Footsteps of Tocqueville*, New York, Random House, 2006.

<sup>7</sup> Beyer, P., *Religion and Globalization*, London, Sage Publications, 1994.

<sup>8</sup> *Ibidem*, p. 67.

<sup>9</sup> *Ibidem*, Chapter 4, pp. 97-109.

that Habermas talks about.<sup>10</sup> A new dialogue between religion and liberalism must accept several changes.

Tony Blair in his recent “*Memoir*” talks about what he considers his greatest political achievement: brokering a peace deal in Northern Ireland. There the opposing sides were dug in, walled up in decades of prejudice, hatred, and mistrust. Fundamental in breaking down that stalemate was the realisation that each side could not achieve everything it wanted. Northern Ireland could not maintain its unity with the UK and ignore the claims of Catholics; the Republic of Ireland with its Catholic majority could not swallow up the North and disregard the claims of the Protestant minority. Both sides thought, probably still do think, that such one-sided outcomes would be more ideal. But neither could be part of the current political reality. Second, each side needed enlightened leaders that wanted to improve the situation and not maintain the *status quo*.<sup>11</sup>

Valuing the role of religion in a liberal society is not new and not illiberal. Several famous liberal thinkers saw the power of religion in society and wished to retain it in their new systems. It was common for them to talk about the necessity of religion while at the same time demanding that the current hold the religious powers and particularly Catholic Church had on society be broken. We think here of Rousseau who spoke about the religion of humanity in urgent terms. The problem of bringing freedom to man who was born free but everywhere in chains could not be solved without religion. But for him it was a religion of humanity, religion free from the political strife and machinations that had characterised Christianity in Europe ever since the time of Constantine.<sup>12</sup> It is fitting here that we remember Giuseppe Mazzini whose writings are filled with claims that without religion the new society he imaged could not come. At the same time he was a vehement critic of the Pope and the role that religion currently played in Italy and throughout Europe.<sup>13</sup>

Much has changed since the 18<sup>th</sup> and 19<sup>th</sup> centuries within religious organisations. Catholicism, for instance, has been brought, one might

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<sup>10</sup> See Habermas, J., Card. Ratzinger, McNeal, B. (translator), *The Dialectics of Secularization*, San Francisco, Ignatius Press, 2005.

<sup>11</sup> Blair, T., *A Journey: My Political Life*, New York, Alfred Knopf, 2010, pp. 153-199.

<sup>12</sup> Rousseau, J.-J., *Du Contrat Social ou Principes du Droit Politique*, Paris, 1762, Chapter 4.

<sup>13</sup> See for example, *Mazzini's Essays: Selected from the Writings, Literary, Political and Religious of Joseph Mazzini*, New York, Walter Scott Publishing Company, 1835, where Mazzini writes, “we abandoned the religious idea precisely when it was most necessary to put an end to discord existing in society,” p. 26.

say kicking and screaming, to accommodating liberalism. The transformation of the church's opinion on this has been nothing short of astonishing and while not perfect, has resulted in the church recasting itself as a force for freedom rather than as an impediment to it. Popes of the 20<sup>th</sup> century have been leaders in human rights, in opposition to war, and their insistence on the dignity of the human person.

A particularly interesting example of this new attitude is the work of Angelo Scola "*Una Nuova Laicità*" in which he argues for a new understanding of church-state relations that reflects a new, liberal understanding of the place of the church in society.<sup>14</sup>

What has not happened until very recently is a concomitant change in the attitudes of the state, more precisely European states toward religion. We can cite some exceptions. One would be France which under Mr Sarkozy has attempted to redefine *laïcité* to be faith friendly. One can also mention the United Kingdom under Tony Blair that stressed practical engagement with religious groups in matters of social welfare.

Yet there remains a need, especially when it comes to policy for the EU to affect the greater rapprochement between the state and religion. The EU, of course, has a great start with its magnificent charter of human rights. Those protections there for religion are among the strongest in the world; in fact considerably stronger than those we enjoy in the United States. Policies that look to civil society and the role of religion in civil society should be instituted.

In conclusion, a brief discussion of two recent attempts in American life to encourage the public role of religion may be noted.

The first concerned the ill-fated invasion of Iraq and the subsequent coalition occupation. Very marginal attempts were made to understand the role of religion in the insurgency, with the coalition sticking to the line that the insurgents and terrorists were simply "hijacking Islam." While in fact few would doubt that the insurgents and terrorists are possessed of a perverse view of Islam, it is not accurate to portray it as not religious. Religious sentiments are used by them to motivate, organise and symbolise their actions. Ignoring that means any real attempt to counter that use of religion with conflicting ideas will be replaced by bullets and bombs that make more martyrs than converts.

A second more positive experience involved the initiative, begun in 1996 under Clinton and expanded significantly under George W. Bush

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<sup>14</sup> Scola, A., *Una Nuova Laicità: Temi per una Società Plurale*, Venezia, Marsilio, 2007.

as Faith Based Initiatives. The idea behind this was that government needed to partner with religious organisations and with religiously-motivated NGOs in providing social services. Where a religious group could provide a social service with a clear secular purpose, often more effectively than non-religious competitors, it should be allowed to share in government funding for those services. So everything from the education of children, to providing of housing, to the rehabilitation of drug addicts might involve new partnerships with faith-based groups. President Bush formed the White House Office for Community and Faith-Based Initiatives that facilitates cooperation between religious groups on the federal government. President Obama has expanded the programme, muting its critics who had portrayed it as a right wing scheme to establish Christianity.





## **SUBSECTION II**

### **SECTORAL APPROACHES**



# **Euro-Med Intercultural Trends and Major Challenges for the Civil Society Dialogue**

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## **I. Introduction**

The Euro-Mediterranean current situation implies an understanding of the potential of its human and social developments. The Anna Lindh Foundation (ALF) has its international headquarters in Alexandria. I have the privilege to witness the historical events which have been taking place in Egypt since 25<sup>th</sup> January 2011. The civil society became the principal actor of the changes and, at the same time, these societies are the main actors for the ALF mission. The historic events that the South of the Mediterranean has experienced in the last months, in particular in Tunisia and in Egypt, represent an important challenge for the Anna Lindh Foundation as an institution for intercultural dialogue in the region. Founded as a network of networks, with more than 3,500 civil society organisations, the objective of the Foundation is directed to fundamentally help to understand and to act in favour of the situation in the area.

Our brief and *ad hoc* overview of the Euro-Med intercultural trends starts with the identification of the major challenges to intercultural and civil society dialogue in the Euro-Mediterranean region. In a second part, we summarise the major policy proposals of the Anna Lindh Report 2010 on Intercultural Trends.

## **II. Challenges for the Euro-Med Agenda for the Intercultural Dialogue**

Three major challenges for the Euro-Med agenda for the Intercultural Dialogue can be stressed:

### ***A. Values and Perceptions***

From a social and cultural point of view, what is happening in the region constitutes a milestone in the contemporary history of the Arab world. Much more than a series of revolts, these events are rooted in the socio-cultural transformations that are taking place in these societies since long. It is more a facing of a clash of ignorance and less a facing of a clash of civilisations. What happens is not new, but it is a current that has deeply worked during the last decades in the Southern Mediterranean societies. Moreover it challenges the long-term misunderstanding about perceptions of the other.

The report on intercultural trends published in 2010 underlined how much the improvement of perceptions in the region is important, demonstrating that cultural values on both shores are not so different. And, in a certain way, anticipating the convergence on the universal values which are now at the core of the social mobilisation in many of the Southern Mediterranean countries. At the same time, the irruption of the diversity became a challenge for both North and Southern societies. The central place of the religion in the region, the need for a dialogue between secular people and believers mainly in the public spaces, the migration and the crisis of the diversity management, but also the potential of the diversity for development suppose an important agenda that must be taken into consideration by the Foundation in terms to work valuing diversity and as an asset for the development and the cohesion of the Mediterranean societies.

Deeply rooted in the social and cultural transformation of the last decades, the Mediterranean is facing a historical and crucial moment. If the ALF report underlines how the Mediterranean is suffering more a clash of ignorance than a clash of civilisations, the recent events have more than confirmed these conclusions. Some of the most widely established stereotypes regarding the vision of the Mediterranean have been challenged. For an institution like the Anna Lindh Foundation that works for sharing values and improving perceptions in the Mediterranean, this situation offers an exceptional opportunity for favouring the capacity of societies to open to the others, to challenge diversity and to be involved in dialogue.

### ***B. Social Demands***

One of the most important ideas which emerge from this new situation is that the Foundation must take into account the new demands emerging mainly from the youth and understand the social demands to be incorporate in our intercultural dialogue. Being the most engaged actors of change, they should be also actors for intercultural dialogue.

The youth engaged in ALF projects and programmes are concerned by social and cultural challenges. They will bring to the ALF programmes and activities issues like human rights, gender equality and, in general, better and more sustainable conditions of living. ALF will incorporate the social dimension as a major point in the construction of an intercultural citizenship able to develop a cultural dialogue and the establishment of more democratic and viable societies.

We need to rebuild social trust through dialogue, facing the real questions that affect the individuals and their expectations as citizens. This dimension must be addressed in the framework of other strategies launched to support the democracy and civil society in the region such as the new European approaches in the framework of the Neighbourhood and Euro-Med partnership new programmes.

### ***C. Civil Society Support***

We need to be cautious about the future. Coming from Egypt, where it is still too early to anticipate political scenarios, the meaning of dialogue at the service of societies in democratic transition and at the service of exchanges (not lessons) between North and Southern Mediterranean needs to be fully understood. In this perspective, civil society does not emerge suddenly because it already exists in these countries. But a support to its organisation, exchanges and structure would be very relevant.

The transition to open societies will promote more regular interaction and more exchanges both at the institutional and social level. This new dynamics will be relevant for the role of the intercultural dialogue in the societies of transition where the dialogue will be a central part. Promoting the exchange of good practices and debate about citizenship, democracy and transitions among cultural operators, non-governmental organisations, media and young activists at Arab and Euro-Med level will be a one of the major objectives in the work of the Foundation. André Azoulay said in his intervention to the first Arab West Media Dialogue Forum: “Today the concepts of Justice, Democracy, and Dignity are written in Arabic. The history is asking Arabs and Europeans to deeply rethink about their relations.”<sup>1</sup>

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<sup>1</sup> Speech by André Azoulay, President of the Anna Lindh Foundation at the occasion of the inauguration of the first edition of the Arab West Media Dialogue Forum, Cairo, 2011.

### **III. Intercultural Dialogue: Main Challenges for the Civil Society. The Anna Lindh Report on Intercultural Trends<sup>2</sup>**

It is important to underline that the Anna Lindh Report has constituted an exercise of extensive intercultural participation which has effectively brought together leading experts, opinion-makers, civil society practitioners and political representatives. From the Anna Lindh Foundation's Board of Governors, composed of senior officials from the forty-three Union of the Mediterranean countries, to the Foundation's Advisory Council and National Civil Society Networks, the exercise has engaged key stakeholders throughout the process. Moreover the supervision by the Scientific Committee in preparing and analysing the work on the Survey has been crucial.

In this regard, the Anna Lindh Report has been based on a threefold methodology that combines the quantitative approach (the Anna Lindh/Gallup Poll) with the qualitative approach (the Expert Analysis) and the social experience (Good Practices from the Networks). In addition to pioneering for the very first time an opinion poll with Gallup among thirteen thousand people of thirteen Euro-Mediterranean countries, the Report process has engaged forty renowned experts and opinion-leaders, and identified good practices from across the Anna Lindh Networks. In short, this approach forms a good basis for the formulation of significant conclusions.

Through the analysis of values, perceptions and behaviours, the Report is in a position to establish the necessary relations between knowledge and stereotypes or attitudes and values. It provides an insight into active trends, obstacles, contradictions and common assets, all of utmost interest and importance for the definition of appropriate strategies of intercultural dialogue. The originality of the exercise comes principally from its orientation and scope, deeply rooted in the constitution and experience of the Anna Lindh Foundation as a leading institution for intercultural dialogue working within and across the societies of the Euro-Mediterranean area. In this respect, the Report goes beyond the "North-South" or "West-Islam" traditional divides, revealing the existence of a region with shared Mediterranean values and demonstrating that it is possible to draw interesting comparisons and connections across its countries, thanks to the interaction of the various similarities and differences which characterise this space.

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<sup>2</sup> For all articles, findings and conclusion, please refer to, *Euro-Med Intercultural Trends 2010. The Anna Lindh Report*, 2010, available at: <http://www.euromedalex.org>.

The major conclusions of the Report underline these points: – a sense of belonging to the Euro-Mediterranean region; the quality of human relations makes dialogue happen; – misperceptions persist despite mutual interest; – religion as a significant element for intercultural debate; – cities as main spaces of interaction and human intercultural experience; – media faces the challenge of cultural complexity; and – people’s expectations towards the Euro-Mediterranean project.

Building on the reflections and analysis of the Anna Lindh Report 2010 the following proposals have been consolidated with a view to implement actions through the programme of the Anna Lindh Foundation and to influence the intercultural policies of the countries of the Union for the Mediterranean.

### ***A. Developing Tools for an Improved Quality of Interaction***

Ensuring the quality, more than the quantity and numbers of intercultural exchanges, is one of the overarching needs that results from the Report analysis. To promote an attitude of openness towards the other, as well as to enable people to interact within different cultural contexts and with people of different countries, the Anna Lindh Foundation needs to invest in innovative tools to improve the intercultural skills of people.

### ***B. Conveying Key Images and Values Associated to the Region***

As underlined in the qualitative analysis of the Report, the transmission of positive images that people associate with the Mediterranean can form the basis for the improvement of mutual perceptions and the promotion of a feeling of emotional co-ownership towards the common Euro-Mediterranean project.

### ***C. Investing in Education for Intercultural Learning***

As a result of the Report conclusions concerning intercultural interest and awareness among young people, education represents a priority instrument for intercultural learning.

The Anna Lindh Foundation will, as a consequence, support the design of innovative intercultural approaches within the school curriculum and through non-formal educational programmes, with the purpose of developing and stimulating critical thinking, empathy and curiosity. Moreover it will take into full consideration the results of the family value approach provided by the Report, which demonstrates the importance of the active involvement of the parents in this process.

***D. Supporting the Intercultural Dimension  
within the Urban Space***

Due to the fact that the Report results set out the comparatively increased opportunities for encounter, as well as higher interest and awareness among urban populations, the importance of supporting intercultural exchange and transnational approaches is considered essential for the development of cultural openness within the urban setting.

***E. Empowering Individuals with Migrant Background  
as Agents for Change***

Taking into consideration the number of people who confirmed having links with other countries of the region, and the open attitude shown by people with an immigrant background throughout the questions of the opinion poll, the Report confirms that the “human dimension” must be at the core of Euro-Mediterranean relations.

***F. Raising Intercultural Awareness of the Artistic Community***

In line with the overall objective of the Anna Lindh Report as a scientific exercise aimed at impacting on the diverse populations of the region, the Foundation supports cultural creativity as a central instrument to express emotions and interpret the complexity of human reality in the region. In this respect, culture should be used as an immediate tool to raise the interest of large audiences of people towards other communities in the region and to offer concrete examples of dialogue through artistic expressions.

***G. Encouraging Research  
on the Euro-Mediterranean Cultural Dimension***

To build on the content and output of the Anna Lindh Report, it is necessary to encourage university cooperation and research around the main intercultural trends in the Euro-Mediterranean region as identified by the Report. Using the Report results as a basis, academic study and research on the Euro-Mediterranean social-cultural dimension should also be supported, as a way to present the potential of the similarities and differences of its societies, and to further explore the meaning and impact of these trends on the future of the Mediterranean society, respecting the particular national contexts.



## ***H. Promoting the Cultural Dimension of Economic Exchanges and Tourism***

The Report highlights the centrality of the cultural dimension in any kind of Euro-Mediterranean exchange in order to ensure the understanding of the other and the sustainability of the relationship. The Anna Lindh Foundation therefore aims at promoting the cultural and human dimension of mobility, whether by means of networking, youth exchanges, economic relations or tourism.

## ***I. Enhancing the Role of Youth and Women as Main Actors of the Union for the Mediterranean***

As demonstrated by the quantitative and qualitative analysis in the Report, the younger generations are the driving forces for the promotion of intercultural dialogue across the Region. Therefore the Anna Lindh Foundation's continued investment in their capacity as intercultural leaders and active promoters of shared values is crucial.

The promotion of transnational youth encounters and support for youth-led local initiatives with an intercultural dimension should be assured, while maximising the use of virtual platforms and online media in the launch and coordination of region-wide dialogue campaigns, in light of the broad use that young people declare along the Report to make of them.

## ***J. Fostering Dialogue between People with Different Religious Belief and Conviction***

One of the key findings of the Report is the historical and actual centrality of religion in the Euro-Mediterranean region and the various perceptions towards religious values shown by different societies. In search of common ground, an effort must therefore be reinforced to facilitate an open dialogue and an understanding of the basic human values and aspirations of people with their different views on religious practices and beliefs.

## ***K. Developing the Potential of Media for Improving Knowledge and Respect***

The significant qualitative approach presented in the media thematic focus of the Report allows the Foundation to identify a wide range of measures to be developed for the promotion of the positive benefit from the media role in shaping public perceptions and attitudes in the Euro-Mediterranean region. The good practices presented in the country media chapters of the Report show that an important aspect of the

Foundation's action in the field of media can be the promotion of existing tools such as cross-border media institutions and treaties.

As emphasised in the qualitative analyses of promoting the production of new media formats and entertainment media, the Report confirms the need of facilitating stable spaces of encounter for journalists of the region, dealing with cross-cultural issues and crisis reporting, in order to avoid the "culturalisation" of the media approach. Providing them with regular information and skills about Euro-Mediterranean intercultural issues is the best way to avoid media polarisation and promoting a better capacity to face the complexity of most of the issues and to rely on a variety of perspectives.

# **Intercultural Dialogue as a Means for Building Mutual Trust: the Role of Civil Society**

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## **I. Introduction**

This contribution is to be read in the framework of a broader and ongoing research on the impact of intercultural dialogue policies on trust building activities throughout the Euro-Mediterranean region. In this context, the essay introduces and discusses some hypotheses regarding the causal relation between intercultural dialogue (ICD), mutual trust building and the active participation of civil society organisations in this process.

In particular, focussing on the activities of a specific group of Israeli and Palestinian non-governmental organisations – the so called “joint NGOs,” the essay suggests that the actual practice of intercultural dialogue by civil society organisations should be observed as a crucial element for building trust between people in deep distrusting situations and, accordingly, as a resource for developing successful long term ICD regional policies.

## **II. EU’s Intercultural Dialogue and its Preconditions: an Outline**

Broadly speaking, intercultural dialogue is yet a widespread, fuzzy and sometimes contested notion which has assumed, over years, different meanings and fields of application according to the approach

followed by the actors involved in the process.<sup>1</sup> However, in the specific analytical framework provided for this contribution – i.e., intercultural dialogue and trust building dynamics in the Euro-Mediterranean region – ICD is addressed mainly as a policy- and action-oriented process, gradually adopted by EU's institutions<sup>2</sup> as a tool to improve the quality of daily exchanges between culturally diverse people and to manage related tensions, both within European multicultural societies and among peoples and nations with different backgrounds and world views.<sup>3</sup> In this framework, intercultural dialogue is conceived as a continual series of exchanges between individuals and groups of people, based on equality, common values and the respect of the diversity of each participant's cultural expression, driven by civil society actors and promoted, supported and facilitated by authorities at all levels of governance, through policies and multi-stakeholder initiatives and projects.<sup>4</sup>

According to this reading, the prior goal of ICD is not just dialogue *per se*. Indeed, it moves well beyond the complex efforts needed to foster mutual borrowing and understanding and aims at achieving the much more demanding objective of incentivising people in the same life environment “to share universal values by/for doing together.”<sup>5</sup> In other words, this process aims at making culturally diverse people work together to share the common achievements of their joint effort. In line with the EU's policy-oriented approach and normative scholars' theoretical reflection, therefore, intercultural dialogue is to be considered as a dynamic instrument towards concrete ends rather than the desired outcome of a self-fulfilling process.

Once briefly considered the complexity and the ambitious goals this process is expected to achieve, it is comprehensible that some critical thoughts may arise around the feasibility of the project, shifting the

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<sup>1</sup> A range of meanings embedded within this notion is offered in Isar, R., “Tropes of the ‘Intercultural’: Multiple Perspectives,” in N. Aalto, E. Reuter (eds.), *Aspects of Intercultural Dialogue. Theory Research Applications*, Köln, Saxa Verlag, 2006.

<sup>2</sup> Although the focus of this contribution is on EU's intercultural dialogue in the Euro-Mediterranean region, the same geopolitical area of reference is addressed, in this context, by the Council of Europe, via its North South Centre.

<sup>3</sup> A rich academic reflection on this approach is provided in Bekemans, L. *et al.* (eds.), *Intercultural Dialogue and Citizenship. Translating Values into Actions. A Common Project for Europeans and their Partners*, Venezia, Marsilio, 2007.

<sup>4</sup> This conception is partly carved out on the definition provided in the Council of Europe's White Paper on Intercultural Dialogue *Living together in Dignity*, 2008, which is probably the most comprehensive and thorough policy- and action-oriented reflection on intercultural dialogue.

<sup>5</sup> Bekemans, L., “General Conclusions,” in L. Bekemans *et al.*, *op. cit.*, 2007, p. 656.

attention from the sometimes rhetoric objectives to the practical foundations and concrete prerequisites to enforce it.<sup>6</sup> Partly in agreement with this body of criticism, the apparently trivial assumption at the basis of the present reflection lies in the consideration that, broadly speaking, a constructive dialogic process of this kind is not possible at all, if the parties involved do not share a minimum radius of mutual trust and, accordingly, any will to take part in forms of constructive exchanges. With a focus on Euro-Mediterranean relations and, in particular, on Israeli-Palestinian dynamics, the relation between intercultural dialogue and interpersonal trust building efforts visibly acquires further significance.

According to social psychology literature, trust can be conceived as the social cement that allows peaceful and constructive relations to be built and sustained in the long term, even in times of crisis, and holds its actors together by organic solidarity;<sup>7</sup> it is, therefore, a fundamental condition of the advancement of the parties' interests. However, when it is not present, even if the expected outcome of a process can be rationally understood as opportune for all the participants involved, it is unlikely that an interaction will take place. In the Israeli-Palestinian context – a crucial case study for Euro-Mediterranean dynamics – the outcome of years of conflict, military and civil occupation, terrorism, unfairness in negotiations, as well as of continual stereotyped messages of hatred, fear and suspicion by political and religious leaders and the media, has been the creation of a situation of particularly deep mutual distrust, which seems almost impossible to be reversed.

As anticipated above, however, trust is not the only precondition for a fruitful intercultural dialogue to take place and flourish. The intellectual work at the basis of several major initiatives launched and promoted by international organisations identify, in fact, several other prerequisites for its promotion, which are normally overlapping despite slight differences.

Two examples may be of help in understanding this central debate. The renowned 2003 *Report of the High-level Advisory Group on*

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<sup>6</sup> See, among others, Pace, M., "Imagining Co-presence in Euro-Mediterranean Relations: The Role of 'Dialogue'," in M. Pace, T. Schumacher (eds.), *Conceptualising Cultural and Social Dialogue in the Euro-Mediterranean Area. A European Perspective*, Oxon, Routledge, 2007, pp. 13-34; Xuereb, P.G., "Intercultural Dialogue in Europe and the Mediterranean in the Context of the Euro-Mediterranean Partnership," in L. Bekemans *et al.*, *op. cit.*, 2007, pp. 231-243.

<sup>7</sup> Cromwell, M., Vogele, B., "Nonviolent Action, Trust and Building a Culture of Peace," in J. de Rivera (ed.), *Handbook on Building Cultures of Peace*, New York, Springer, 2009, pp. 231-244.

*Dialogue between Peoples and Cultures in the Euro-Mediterranean Area* (also known as the Report of the *Groupe des Sages* or of the *Prodi's Group*)<sup>8</sup> observes that only a dialogue based on “the respect for cultural diversity and freedom of conscience, and on fostering the active neutrality of the public realm, will keep in check the forces of exclusion” present in both the North and the South of the *Mare nostrum*.<sup>9</sup>

Another set of preconditions can be encountered, for instance, in a second report drafted in 2008 by the ERICarts, which is particularly focussed on the EU's member states commitment towards ICD. According to this document, dialogue can only take place “in an environment where a person is guaranteed safety and dignity, equality of opportunity and participation, where different views can be voiced openly without fear, where there are shared spaces for exchanges between different cultures to take place.”<sup>10</sup>

Summarising the contents of these and other practitioners and scholars' contributions,<sup>11</sup> equality among participants, openness and respect for cultural diversity and dignity, an anchorage to the universal human rights paradigm<sup>12</sup> and the creation and maintenance of a proper environment where intercultural encounters can be facilitated and sustained are, among the others, deemed necessary for a proper intercultural dialogue to take place.

Passing from theory to the real field of application, it is evident that, both in Europe and particularly in the Euro-Mediterranean region, most of these preconditions are not necessarily met. In other words, achieving those solid foundations on which dialogue processes should be based is a necessary and demanding effort *per se*. By referring to the incremental

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<sup>8</sup> The group of experts was summoned in 2002 under the auspices of the then President of the European Commission, Romano Prodi.

<sup>9</sup> Report by the High-Level Advisory Group, *Dialogue between People and Cultures in the Euro-Mediterranean Area*, Brussels, October 2003. This Report (see, in particular, pp. 17-20) provides the intellectual basis of the recent strategy for intercultural dialogue in the Euro-Mediterranean region and the mandate for the Anna Lindh Foundation.

<sup>10</sup> ERICarts (European Institute for Comparative Cultural Research), *Sharing Diversity. National Approaches to Intercultural Dialogue in Europe*; Study for the European Commission, March 2008, p. 62.

<sup>11</sup> For instance: the 2006 Report on the Alliance of Civilisations; the 2008 Council of Europe's *White Paper on Intercultural Dialogue*, or the 2002 UNESCO's *White Paper on Dialogue between Civilisations*.

<sup>12</sup> See on this issue, Papisca, A., “Citizenship and Citizenships Ad Omnes Includendos: A Human Rights Approach,” in L. Bekemans *et al.*, *op. cit.*, 2007, pp. 457-480.

and dynamic nature of the ICD process,<sup>13</sup> however, the short and medium term policy strategies promoted by organisations and institutions (the European Commission *in primis*) can be understood as precisely directed toward the essential implementation of those preconditions. According to this reading, programmes and policies dedicated to intercultural and human rights education (formal and informal), youth and student exchanges from primary schools to the post-graduate level, projects and initiatives to make conventional and new media more reliable, inclusive and respectful of human dignity and cultural diversity, appear to be aimed at gradually improving the conditions to allow the intercultural dialogue process achieving its long term ambitious goals.

The latter vary according to the cultural fragmentation of the geopolitical area of reference, and range among fostering peaceful inclusion and active, plural participation in the life on a given community (inside multicultural societies such as within European Union's borders) and the creation of a sense of a common destiny<sup>14</sup> among different cultural, ethnic, religious groups and peoples (such as in the EU's "borderlands"<sup>15</sup> and, particularly, among Mediterranean peoples).

However, while on the one hand the respect of cultural diversity or the creation of a safe environment are conditions that can and should be practically promoted through policies – since it is in the institutions' duties to provide a normative framework by which dialogue participants should abide willingly – interpersonal trust, on the other hand, seems to be much more resistant and difficult to be built.

### **III. On Interpersonal Trust Building and Intercultural Dialogue: a Paradoxical Relation**

As anticipated, trust adds peculiar elements to the already complex conditions dealing with social and cultural hindrances. Beyond diffuse stereotyped ignorance, lack of interest and scarcity of information

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<sup>13</sup> Bokern, F. *et al.*, "From Dialogue to Peacebuilding? Perspectives for the Engagement of Religious Actors by the European Union and the European People's Party," *Research Paper*, Centre for European Studies (CES), April 2009.

<sup>14</sup> The idea of a common destiny for Euro-Mediterranean peoples is proposed in the Report of the *Groupe des Sages*, *op. cit.*

<sup>15</sup> This term is proposed in Del Sarto, R., "Borderlands: The Middle East and North Africa as the EU's Southern Buffer Zone (Chapter VIII)," in D. Bechev, K. Nicolaidis (eds.), *Mediterranean Frontiers. Borders Conflict and Memory in a Transnational World*, London, Tauris Academic Studies, 2010, pp.149-176.

channels regarding the other, practical differences both in the access to resources, services and in the protection of human and citizenship rights, the roots of trust are often historically and politically determined by the collective memories of the peoples involved.<sup>16</sup> In this framework, both the Palestinians and the Israelis have many well-grounded motivations to distrust the other and it is not conceivable that this situation might be reversed from the top down, even if such an ambitious achievement was pursued together by both leaderships.

Trust differs from the other prerequisites identified above for being a very special psychological variable with at least two unique characteristics. First of all, it is involuntary;<sup>17</sup> secondly, it is easier to be created than to be restored when it is lost.<sup>18</sup> Accordingly, its antonym – mutual distrust – marks a steady condition that is difficult to escape, partly because the latter has a self-perpetuating quality that keeps the parties away from engaging in the kind of interactions that could potentially help them develop trust in the other's readiness to make peace.<sup>19</sup>

It is not crucial for this analysis to define what kind of distrust characterises people and civil societies' relations in the situation addressed. However, if one accepted considering the "Oslo's follow-ups" as a season of general trust building efforts between Israeli and Palestinian civil societies,<sup>20</sup> the dramatic situation derived by the definitive failure of the broader peace process in the years 2000/2001<sup>21</sup> would embody quite perfectly the almost irreversible condition of

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<sup>16</sup> Rothstein, B., *Social Traps and the Problem of Trust*, Cambridge, Cambridge University Press, 2005, p. 13.

<sup>17</sup> Kohn, M., *Trust, Self Interest and the Common Good*, Oxford, Oxford University Press, 2008, p. 9.

<sup>18</sup> Baron, R.M., "Reconciliation, Trust, and Cooperation: Using Bottom-Up and Top-Down Strategies to Achieve Peace in the Israeli-Palestinian Conflict," in A. Nadler, T. E. Malloy, J. D. Fisher (eds.), *The Social Psychology of Intergroup Reconciliation*, Oxford, Oxford University Press, 2008, pp. 275-298.

<sup>19</sup> Kelman, H.C., "Building Trust among Enemies: The Central Challenge for International Conflict Resolution," in *International Journal of Intercultural Relations*, no. 29, 2005, pp. 639-650.

<sup>20</sup> The reference here goes to the "so-called" people-to-people (P2P) approach which was widely pursued in those years in the framework of the 1993 Declaration of principles; a comprehensive analysis of these activities and their failure is provided in "People-to-People What Went Wrong & How to Fix It?" in *Palestine-Israel Journal of Politics, Economics and Culture*, vol. 12, no. 4 & vol. 13, no. 1, 2005/2006.

<sup>21</sup> Enderlin, C., *Shattered Dreams: the Failure of the Peace Process in the Middle East, 1995-2002*, New York, Other Press, 2003.



distrust after a trust loss. Is intercultural dialogue expected to play any role in these particularly complex situations?

According to dedicated European bodies, ICD should be a very suitable tool to work with these conditions on the ground. The Council of Europe's *White Paper*, for instance, claims that intercultural dialogue contributes, among other things, to facilitating coalition-building across diverse cultural and religious communities, and can thereby "help to prevent or de-escalate conflicts – including in situations of post conflict and 'frozen conflicts'."<sup>22</sup> The Anna Lindh Foundation, the civil society networking body tasked by the EU and its partners to foster intercultural dialogue throughout the Euro-Mediterranean area, has developed a specific "peace and coexistence" field of action aimed in particular at revitalizing human and cultural confidence within difficult contexts and contributing to sustaining a culture of peace. A more practice-oriented attention to ICD as a trust building/reconciliation tool is addressed in the already quoted *Sharing Diversity* report, through references to "intercultural mediation techniques" as instruments to restore dialogue where relationships between groups and individuals with different cultural backgrounds "have been cut, are imbalanced or tense."<sup>23</sup> Moving the attention to other geopolitical areas, it is possible to find further similar assumptions regarding the role of intercultural dialogue in similar contexts.<sup>24</sup>

However, if these stances on the prospective healing virtues of ICD are recognised and supported, it must be also recognised that the act of accepting them results, in essence, in a paradox: on the one hand, intercultural dialogue is expected to help producing trust among people in critical mutual relations and, on the other hand, people in a situation of deep distrust, as seen above, are not going to actively participate in any form of dialogic confrontation.

Even considering the dynamic nature of ICD processes, the difficulty in overcoming this *impasse* lies in reflecting on how it might be possible to create a sparkle that puts dialogue in the condition of producing, or helping producing, trust among two or more distrusting groups of people and, at the same time, to benefit from the development of the trust built, in a sort of perpetual incremental cycle. In this framework, the central hypothesis of the present piece of research is that this sparkle

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<sup>22</sup> Council of Europe, *op. cit.*, 2008, pp. 16-17.

<sup>23</sup> ERICarts, *op. cit.*, 2008, p. 144.

<sup>24</sup> See, for instance, the Report on the Alliance of Civilisations, 2006, at: <http://www.unaoc.org>.

can be created through continual and spontaneous civil society participation in concrete intercultural dialogue action.

#### **IV. Some Reflections on Israeli-Palestinian Trust Building: the Significance of Joint Civil Society Organisations**

Because of trust's psychological properties, it is difficult to expect that people can rationally abandon their positions even if governmental or international policies and actors encourage them to do so. With Israeli-Palestinian relations as a case study, it is further difficult to imagine that prospective leaderships might plausibly show enough mutual respect and confidence to convince their peoples to take part in such a delicate involuntary process, at least in the short or medium term.

The most immediate response at hand to the need of creating a sparkle of trust among the two peoples involves inevitably an external support and is, therefore, in line with the idea of "intercultural mediation techniques" stressed above. It regards the organisation and promotion of special meeting opportunities among representatives of the groups who do not relate with each other. These practices are expected to build a small amount of trust among them to be then spread to their own communities in a sort of spillover effect.

This path has been indeed largely followed, also in the context of Israeli-Palestinian relations. The "problem solving workshops" carried out by Herbert C. Kelman<sup>25</sup> for many years and other third party-mediated activities, such as peace campuses, games and simulations for youth, have demonstrated that the effects of these encounters can be indeed significant, but, at the same time, have shown difficulties. One for all is a time transfer problem: data collected years after these workshops demonstrate that the major long term result achieved is that the participants have stopped considering the "other" as a homogeneous group, which is undoubtedly a remarkable achievement. On the other hand, however, noticeable spillover effects have not been registered.<sup>26</sup>

A reason may be that, when taking part in these initiatives, participants are "extrapolated" from their daily conflicting context and

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<sup>25</sup> Kelman, H.C. *op. cit.*, 2005; Kelman, H.C., "Conflict Resolution and Reconciliation: A Social-Psychological Perspective on Ending Violent Conflict Between Identity Groups," in *Landscapes of Violence*, vol. 1, no. 1, article 5, 2010.

<sup>26</sup> See, for instance: Steinberg, S., "Discourse Categories in Encounters Between Palestinians and Israelis," in *International Journal of Politics, Culture and Society*, vol. 17, no. 3, Spring 2004, pp. 471-489; Worchel, S., "Culture's Role in Conflict and Conflict Management: Some Suggestions, Many Questions," in *International Journal of Intercultural Relations*, no. 29, 2005, pp. 739-757.

put in a sort of experimental situation, generally mediated by a third neutral actor or moderator, who significantly contributes in the creation of environments prompting exchanges and dialogue. However, when the participants return to their daily lives, the effects start faltering. Moreover, these activities are subject to the availability of resources (human and financial) and to organisational issues (such as finding the impartial environment where these encounters may take place) and necessarily involve only a very small sample of the required population. In other words, they do succeed in producing trust among participants, but as a sort of “working trust:”<sup>27</sup> suitable to participate constructively to the initiative and not deep enough to be sustained and spread out of that specific context.

What is pursued here, on the contrary, is more similar to a “thick trust,” that is “the one that grows from personal familiarity when one has observed overtime that another’s actions are competently performed and consistently meet accepted moral standards.”<sup>28</sup> In order to build this qualitative relation, there is a need of continuous and grounded effects for these encounters, as well as of a permanent environment where meetings can take place in real life scenarios. As anticipated, the suggestion is to focus on continual everyday exchanges embodied and favoured by civil society interaction. Differently from workshops and similar initiatives, this dynamic is spontaneous, not necessarily participated by external actors and happens in the daily (conflicting) life routine.

Indeed, efforts to make Israeli and Palestinian civil societies interact have marked another path followed in the specific context under analysis. As underlined above, in the framework of the 1993 “Oslo process,” plenty of group dialogue activities, as well as a number of cooperation projects between Israeli and Palestinian NGOs, have been launched and supported mainly from the top, particularly in the form of people to people programmes (P2P). Most of them, however, have not survived the watershed generated by the failure of the peace process in Camp David and the outbreak of the second Intifada in September 2000.

This brief contribution is not the place to discuss the reasons causing their collapse or the thorough criticism directed to that set of activities.<sup>29</sup>

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<sup>27</sup> Kelman, H.C., *op. cit.*, 2010.

<sup>28</sup> Kohn, M., *Trust, Self Interest and the Common Good*, Oxford, Oxford University Press, 2008, pp. 89-90.

<sup>29</sup> The “so-called” people-to-people (P2P) approach was widely pursued in the framework of the 1993 Declaration of principles. A comprehensive analysis of activities and their failure is provided in “People-to-People What Went Wrong &

On the contrary, it is worth noticing that among the very few initiatives which have survived so far, it is possible to find interesting commonalities, in particular focussing on those movements that have been the result of a shared effort. Although there is not yet a very developed body of literature on this specific sector of civil society agency, the terms “joint NGOs” or “joint civil society associations” are generally accepted to make reference to these non-governmental actors.<sup>30</sup>

Thus, using “jointness” as a general parameter for classification, it is possible to populate this fuzzy and not yet systematically defined group with a number of organisations and movements, such as: the Alternative Information Centre (AIC)<sup>31</sup> created in 1984, the Israeli-Palestinian Centre for Research and Information (IPCRI)<sup>32</sup> created in 1988, ECOPEACE/Friend of the Earth-Middle East<sup>33</sup> (which includes also Jordanian activists) created in 1994, the Parents’ Circle-Family Forum<sup>34</sup> established in 1995, the Peace and Research Institute in the Middle East, PRIME,<sup>35</sup> set in 1998 (with the help of the Peace Research Institute in Frankfurt). Beyond this “first generation” of Israeli-Palestinian joint NGOs, new movements have been built on their successful idea, such as the Combatants for Peace, who had their first meetings in 2005.<sup>36</sup>

The fact that these initiatives have actively survived many critical peaks allows considering that their founders and members have not only succeeded in building some trust to cooperate and dialogue – some “working trust” – but, more importantly, that the confidence they have generated is solid enough to have come through where different approaches to civil society cooperation have suddenly disappeared. In other words, they have jointly demonstrated – not without enormous difficulties, though – that the sense of familiarity deemed necessary to build “thick trust” can be actually created among long time conflicting people.

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How to Fix It?” in *Palestine-Israel Journal of Politics, Economics and Culture*, vol. 12, no. 4 & vol. 13, no. 1, 2005/2006.

<sup>30</sup> One of the few books where the issue of joint Israeli-Palestinian civil society is addressed extensively is Kaufman, E., Salem, W., Verhoven, J. (eds.), *Bridging the Divide. Peace building in the Israeli-Palestinian Conflict*, Boulder, Lynne Rienner Publishers, 2006.

<sup>31</sup> <http://www.alternativenews.org/english/>.

<sup>32</sup> <http://www.ipcri.org/IPCRI/Home.html>.

<sup>33</sup> <http://www.foeme.org/>.

<sup>34</sup> <http://www.theparentscircle.org/>.

<sup>35</sup> <http://vispo.com/PRIME/>.

<sup>36</sup> <http://cfpeace.org/>.

These “joint NGOs” are indeed quite different in aims and structure and not very connected with each other.<sup>37</sup> They do not necessarily work on the same fields of action and differ in terms of membership, resources and methods. For instance, the AIC is a media activity disseminating information and analyses about Palestinian and Israeli societies to and about the other; IPCRI is a public policy think-tank mainly focused on research and political lobbying, although it has major initiatives in the fields of environment and media; PRIME is a research institute which has worked on historical Israeli and Palestinian narratives in the field of formal education; ECOPEACE is an environmental movement; the Parents’ Circle and the Combatants for Peace are fora of confrontation and dialogue, the former, among people who lost immediate family members due to the violence in the region; the latter, between former Israeli soldiers and Palestinian combatants who have decided to end the “blood cycle.”

As stated above, however, despite substantial differences, there is also a number of common features that are determinant to substantiate the hypothesis proposed in this essay.

Firstly, as anticipated above, these organisations have been created spontaneously, from the bottom up, on initiative of Israeli and Palestinian activists, without external pressures (often, however, the first step has been made by the Israeli counterpart) and they are independent from any political party or public body.

Secondly, their membership is equally shared between the parties. Equality does not mean that the participants are perfectly split into two groups (although normally there are two co-directors, one Israeli and one Palestinian), but rather that the participants have equal rights, roles and responsibilities and that serious efforts are undertaken to avoid situations of substantial inequality (for instance, because of the evident lack of freedom of movement, or of logistic resources, for the Palestinians).

Thirdly, the members of these associations have built their relationship on mutual respect and openness to listen to and to understand the personal stories, motivations and views of the other with respect of his/her backgrounds and aspirations. In this framework, it is necessary to underline that a crucial determinant of “joint NGOs” is the rejection by all members of any form of occupation and violence.

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<sup>37</sup> Kaufman, E., *op. cit.*, 2006 provides also a first rudimentary database on paper of all the existing joint movements, their composition and activities (updated at 2005).

Finally, they do not interact just for having a sterile exchange of views or to establish a mere contact between the two parties; what is really making the difference, in the view of this analysis, is that they have set long term goals to be achieved by working together. The specific objectives vary depending on each organisation while, in general, they all aim at creating “the relational infrastructure necessary to advance and increase support for a peace process to be negotiated at the political level.”<sup>38</sup>

When these common elements are read with reference to the conception of intercultural dialogue discussed above, the type of permanent conditions these movements create internally for their action, as well as the long term shared goals set for their activities, make these NGOs appear as a textbook example of what intercultural dialogue is meant to be in practice. In other words, these joint initiatives, consciously or not – since many of them had been established years before the debate on ICD political implications started – put theoretical intercultural dialogue in real action. In concretely and spontaneously practising openness, equality, respect, mutuality and refusing any form of violence and occupation, they motivate people with different backgrounds and world views (their Israeli and Palestinian members and supporters) to work together to share the common good (i.e., prospectively, the outcome of a just and viable peace accord supported and promoted by the bottom-up).

## **V. On the Prospective Role of Transnational Civil Society Networks**

The implications of the causal relationship among civil society, mutual trust and intercultural dialogue are not limited to what has been addressed so far. Even if the hypothesis above is confirmed by further empirical analysis on the ground, it is to be noticed that these joint initiatives succeed in creating “thick” trust mainly among their members who, however, constitute a very small sample of the population to be hopefully involved in the process. Therefore, that kind of trust is a solid basis to develop intercultural dialogue policies, however, at the same time, it must be progressively expanded if these policies are expected to be effectively promoted in the long term.

As for ICD policies, in order to have a significant spread of joint NGOs’ remarkable achievements, an environment conducive to

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<sup>38</sup> Dajani, M., Baskin, G., “Israeli-Palestinian Joint Activities: Problematic Endeavor, but Necessary Challenge,” in E. Kaufman *et al.*, *op. cit.*, 2006, p. 88.

enriching mutual encounters on a daily basis needs to be built and sustained. In some parts of the region, local authorities, national governments and regional organisations – as documented for some European cities such as Graz (Austria)<sup>39</sup> – have contributed thoroughly to ensure the normative conditions to promote and sustain intercultural dialogue processes, with noteworthy results. In fact, as anticipated in the first part of this contribution, the role of authorities is that of prompting and supporting the process mainly by providing the suitable framework with specific policies and initiatives. However, it must be recognised that the former are rare models of a correct and inclusive division of work which, as repeatedly highlighted, is not the general rule elsewhere.

In the context of Israeli-Palestinian relations, a support of this kind would probably help diffusing the solid trust achieved by joint organisations to the broader populations, with positive outcomes on their mutual relations and maybe – optimistically speaking – to the whole peace process. However, as argued above, an institutional support of this kind is not present at all, nor it is to be expected soon, both at the local or national level. It seems, therefore, that the conditions to spread and sustain both intercultural dialogue policies and trust building between the two peoples have to be found elsewhere.

The main problem at this point is that, even if one looks for trust suppliers in universal and impartial political institutions, as Bo Rothstein argues in his precious analysis on trust building and social capital,<sup>40</sup> the only organisations that might be considered as such in this geopolitical framework – the United Nations, the European Union or even the hybrid Union for the Mediterranean – do not possess the conditions of either effectiveness, positive popular perception or trustworthiness to exert the necessary influence.

An open hypothesis proposed in this context is that when political authorities do not, or cannot, abide by their responsibility of creating the conditions for a fruitful intercultural dialogue to take place, this task may be performed by specialised transnational networks of civil society. In the case study discussed in this essay, the Anna Lindh Foundation seems a particularly suitable and effective institution in this sense, since it is a political project (established on EU's initiative) that promotes ICD both coordinating national and transnational networks of civil society

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<sup>39</sup> See, for instance: Starl, K., “Do We (Again) Make the Bill without the People? Human Security for the Inclusive City and the Political Dimension of Intercultural Dialogue,” in L. Bekemans *et al.*, *op. cit.*, 2007, pp. 545-553; Council of Europe, *Gods in the city – Intercultural and inter-religious dialogue at local level*, 2008.

<sup>40</sup> Rothstein, B., *op. cit.*, 2005, p. 205.

and mediating with European institutions and their partners (who sit in its board of governors), in a regional dynamic that includes both the Israelis and the Palestinians.

By supporting joint Israeli-Palestinian NGOs financially, giving visibility and circulation to their projects and vision, broadening the popular support for them locally and regionally and organising high level activities with influential political leaders, cultural actors and experts, these networks of civil society may thus compensate for the lack of normative and practical institutional support experienced by these organisations locally. In other words, specialised and resourced bodies, such as the mentioned Foundation, but also other cohesive regional or sub-regional civil fora, may temporarily contribute in filling the vacuum left by political leaders and institutions in both Israel and Palestine, creating that safe environment necessary to make intercultural dialogue policies take place and flourish. In a certain sense, if one observes recent regional developments, this process is already under way.

Significantly, the more than 3,500 civil society members of the Foundation have voted for assigning two recent editions of the annual ICD award to two of the movements included in the case study (the Combatants for Peace in 2009 and ECOPEACE in 2010). With high visibility initiatives like those and several other transnational projects in many cultural, religious and social fields, this network has been giving a significant contribution to the realisation of the function identified above for impartial political institutions in supplying trust, and accordingly ICD. However, it is plain that these remarks constitute just the base reflection of an open hypothesis and more time and research are needed to study this relation properly.

## **VI. Conclusions**

Closing the circle and contextualising the hypotheses discussed in this contribution, joint Israeli-Palestinian NGOs, by actively applying the principles of intercultural dialogue in their everyday action, are assumed to create that mutual trust essential to embark in any dialogic activity (first half of the “ICD-trust paradox”: intercultural dialogue produces trust). Only when this is achieved, specific intercultural dialogue policies can be realistically sustainable and effective in the long term (second half of the paradox: trust is a crucial precondition to develop ICD policies). However, both the radius of trust among the participants and the development of intercultural dialogue policies need to be incrementally expanded through the active commitment of transnational civil society networks, that can substitute political



institutions in constructing a favourable environment for dialogic activities.

The proposed solution of the “ICD-trust paradox,” therefore, lies on an analytical distinction between two complementary (and generally blurred) applications of the notion of intercultural dialogue: the one that supplies “thick” trust is a spontaneous, bottom-up everyday joint process, as that embodied by joint Israeli-Palestinian NGOs; the second is a top-down process that builds on ongoing dialogic activities between people and civil societies supporting their development and intensification throughout the whole region for strategic utility, as the ICD policies promoted by the EU in the Euro-Mediterranean region.

In the proposed framework, mutual trust works as a connection ring between the complementary top-down and bottom-up approaches to intercultural dialogue, while civil society organisations and networks keep on playing the central, driving role in both contexts.



# Participatory Democracy and the Role of Local Authorities and Civil Society

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## **I. Decentralisation and Civil Society are the Basis for Sustainable Development and Social Stability**

There are no evidences, in these last decades, that sustainable development and social stability can be obtained without the implementation of decentralisation and a strong civil society. Decentralisation of powers, competences and consequent resources are the core of the administrative reforms in the countries in transition (from the former Soviet Union block) but also in the Mediterranean area. Any form of centralism and management of competences and resources only directly from organs of the state, which are delocalised to the provinces, come soon at their limit and request even sooner a real development of forms of autonomy and self organisation. The examples are numerous and administrative reforms in this sense are currently implemented, for instance, in all the countries of Western Balkans,<sup>1</sup> or in Turkey, consequent to the Constitutional reform.<sup>2</sup> Here are two examples: Ukraine, chairing the Council of Europe from May 2011 (for six months) set “local democracy” among its priorities. Morocco, after the appointment of the young and more Western oriented King Mohamed VI, is promoting a process of decentralisation and strengthening of the

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<sup>1</sup> Regular Progress reports of the Enlargement countries are presented annually by the European Commission.

<sup>2</sup> The referendum on constitutional reform was held in September 2010. “We welcome the success of the referendum,” Westerwelle said in a foreign ministry statement. He added that the Merkel government was “confident that the reform process in Turkey, in the sense of greater openness in society, will be continued.”

regional competences.<sup>3</sup> It is expected to be a challenge of the next months when the regions will have more resources and responsibilities.

On the other hand, certainly, decentralisation contains in itself the fear of fragmentation and separatism. In many countries, which are still undergoing political turmoil and uncertainty at the borders (like Georgia for instance with the question of Abkhazia),<sup>4</sup> the frightening ghost is strongly present, looking at the unilateral declaration of independence of Kosovo, from Serbia,<sup>5</sup> for instance. However, despite the understandable concerns, often decentralisation and its different forms contain more solutions than problems. This was the case of Georgia, again, when a form of autonomy was conceived from Tbilisi to Adjara and therefore it

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<sup>3</sup> Speech of Mohamed VI. Morocco will launch a large-scale decentralisation process that will cover all parts of the country, including the Sahara, announced HM King Mohammed VI in a speech on the occasion of the 33<sup>rd</sup> anniversary of the Green March, 7<sup>th</sup> of November 2008. The ultimate objective of this project is “to enable good local governance to take a firm hold, respond more closely to the citizens’ needs and boost integrated, regional economic, social and cultural development.” To guarantee its success, the government will be asked to devise a national devolution charter that would lay down an effective system for the management of devolved powers, the king said, stressing that this system will “usher in a complete change from rigid centralised management.”

<sup>4</sup> Since the end of USSR, Abkhazia (in the Northwest of Georgia) is claiming its independence. It brought to a conflict in 1993 which produced thousands of refugees who are still settled in the territory of Georgia. Abkhazia formally declared independence in 1999, resulting in an international economic embargo that is still in force. During the conflict, which opposed Russia and Georgia in 2008, Abkhazia was used by the Russian troops to deploy part of their army.

<sup>5</sup> After the war in 1999, the Security Council of the United Nations proposed a solution through the Council resolution 1244, which led to the initiation of a Kosovo status process in 2005. Different processes were initiated to solve the status. The most important was the one proposed by the diplomat Martti Ahtisaari. The plan was accepted by local authorities, European Union and United States but since it introduced a concept of independence, it was fiercely refused by Serbia and Russia, as allies. Through a reference in February 2008, Kosovo declared unilaterally its independence from Serbia. Kosovo’s current political status is uncertain; while the United States, Canada, Australia, Japan and most of the European Union have recognised its independence, the majority of UN member states have not. Of the international organisations, Kosovo is a part of only the World Bank and the International Monetary Fund. At the Parliamentary Assembly of the Council of Europe, in its session on January 2011, was presented the Dick Marty Report on allegation of organ-trafficking and disappearances in Kosovo and Albania, under the order of the higher officials of the present Kosovo State. In June 2010, the International Court of Justice expressed its opinion confirming that “the declaration of independence of the 17th of February 2008 did not violate general international law because international law contains no ‘prohibition on declarations of independence.’”

managed to keep a political stand in the Southern part of the territory, bordering with Turkey.<sup>6</sup>

Though, the process of decentralisation in its institutional forms (namely legislative steps instituting local authorities with relevant competences and resources), can not be sufficient to support sustainable development and social peace. The institutional path must be strongly accompanied by the flourishing of a strong civil society, which is able to create participatory mechanisms together with the authorities. Especially at the local level, the combination of independent and functioning local authorities (providing services and fostering the collection of its own resources)<sup>7</sup> and the development of associations of citizens for different interests can set the basis for a long lasting and democratic process. This is indeed absolutely the way followed by the European Commission in its programmes for enlargement in Western Balkans and in Turkey, where, since for more than a decade, the financial facilities are supporting capacity building, existence and networking of civil society.<sup>8</sup> The CSOs play their role of advocacy for the interests of citizens together with a strong role of watchdog towards the power in place.

Good governance, and *local* good governance, in the neighbouring policies of the European Union, is and should be, even more promoted in the near future. The ENPI review issued in May 2011 put in evidence the need to strengthen civil society in cooperation with authorities for development, prosperity and stability. They put in evidence a strong need to develop, in all the countries of the Neighbourhood, local

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<sup>6</sup> The situation here differs a lot from the situation in Abkhazia where the support of Russia is stronger and more visible than the role of Turkey in Adjara.

<sup>7</sup> The essential features of local authorities are described in the European Charter on Local Self Government, which is a masterpiece among the legal Charters promoted by the Council of Europe. Opened for signature on 15<sup>th</sup> October 1985, the European Charter of Local Self-Government entered into force in 1988. On 1<sup>st</sup> January 2010 the Charter has been ratified by 42 out of the 47 Member States of the Council of Europe. It's the first internationally binding treaty that guarantees the rights of communities and their elected authorities.

<sup>8</sup> The European Commission supports with relevant resources the programme of Technical assistance for Civil Society Organisations Project (TACSO) ([www.tacso.org](http://www.tacso.org)). Recently studies and analyses have correctly identified also shortcomings in the modality of support to civil society, often non continuous and anchored to a national programme. In particular, the programme TACSO intervenes with delay and often out of date programmes of training based on overcome needs assessment.

authorities and decentralisation together with civil society groups<sup>9</sup> and citizens' participation.

### ***A. Supporting Participatory Democracy in Stabilisation and Development Policies***

The Forum for the Future of Democracy, which took place in Yerevan in October 2010, organised by the Council of Europe highlighted the need to revise the essential concept of democratic participation.<sup>10</sup> So far, the doors of the Council of Europe were hosting the people with a slogan "The House of Democracy." Very likely, in order to adapt to global challenges, the only way to address the problems will be to talk about "Participatory Democracy." Even in the countries which are aiming to join the EU or only which have established an articulate connection with its institutions (like the Union for the Mediterranean or the Eastern Partnership), the concept of democracy will need to be articulated soon and now with its different participatory elements. Only through institutions, which will be able to engage in an innovative and constant relationship with citizens, shared, equal and sustainable development will be possible. Indeed, democracy, can not be considered a process that first needs to be achieved through representative democracy and political parties. It is not possible to think that only when this process is over and well articulated, it would be considered to tempt a participatory approach. Unfortunately, or fortunately, none of the processes regarding development are regular

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<sup>9</sup> "Our Neighbourhood Policy provides us with a coherent approach that ensures that the whole of the EU is committed to deeper relations with all our neighbours. At the same time, it allows us to develop tailor-made relations with each country." Štefan Füle, Commissioner for Enlargement and European Neighbourhood Policy. The Neighbourhood Policy includes Algeria, Armenia, Azerbaijan, Belarus, Egypt, Georgia, Israel, Jordan, Lebanon, Libya, Moldova, Occupied Palestinian Territory, Syria, Tunisia and Ukraine.

<sup>10</sup> The Council of Europe's Forum for the Future of Democracy is a multi-partner process that promotes the strengthening and development of democracy in Europe and beyond. Basing itself on common principles deriving, in particular, from the European Convention on Human Rights and the Council of Europe's *acquis* in the field of democracy, the Forum anticipates global and European trends and examines the performance of democratic institutions, processes and practices in Europe as they respond to contemporary challenges in the context of an evolving environment. By involving governments, parliaments, local and regional authorities, academics and civil society, the Forum aims to provide an inclusive framework within which innovative ideas and thinking on democratic governance are shaped and debated through a broad and cross-cutting approach. Its outcomes seek to contribute to the formulation of priorities and policies at all levels, thereby contributing to the enhancement of the Council of Europe's democracy pillar (Mission Statement).

lines but they are rather messy processes, which are benefitting from the experiences held somewhere else and in different times.

The challenges for development and stabilisation have embedded many revolutionary changes that can not be not taken into consideration like a capacity of citizens to be informed though technology and wide education. The global markets are unifying the people and today – more than in any other times in history – each of us is connected with what happens on the others' courtyard. Even the most repressive regimes can't block this globalisation of experiences and information. And therefore, politicians – even the dictatorial ones – are now at stake and have to be confronted with a constant interaction and evaluation by citizens.

New forms of consultations and dialogue must be identified today and should be based on the local approach, through a strong support to local authorities and civil society.

## ***B. Examples of Strong Support to Participative Democracy at the Borders of Europe***

### *1) Eastern Europe and Western Balkans in Transition*

The long transition from former USSR in Eastern Europe has now reached certain results and many of the important countries of the former block are now even part of the European Union. However, for historical reasons, some of them are still engaged in a neighbourhood relation in order to approach the European standards. We will not go into the details here of the enlargement policy of the European Union, which often results to be more opportunist than coherent and it follows – often – more the internal political agenda of the European member states than the real goals of stability and peace at its borders. The European dilemma on the enlargement towards Turkey is an example of this uncertainty.

However, numbers of examples of improvement of dialogue between authorities and citizens, and the focus given by the European institutions to it, are visible in Western Balkans in line for the next enlargement. Many experiences have supported this participatory approach for democracy like the Local Democracy Agencies,<sup>11</sup> a programme

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<sup>11</sup> The Local Democracy Agencies are initially a programme of the Council of Europe and the Congress of Local and Regional Authorities to support democracy and interethnic dialogue in former Yugoslavia, torn by the devastating war. Today, with the Association of Local Democracy Agencies (ALDA) [www.alda-europe.eu](http://www.alda-europe.eu), it represents one of the first programmes in promoting local governance and citizens'

launched by the Council of Europe and today run and coordinated by the Association of the Local Democracy Agencies. The eleven agencies in Croatia, Serbia, Bosnia and Herzegovina, Albania, Kosovo and Former Yugoslav Republic of Macedonia are based on a common work of municipalities and civil society to promote a common dialogue for development and peace. The LDAs are at the basis of many successes, which brought back refugees in difficult towns (like in Prijedor in Bosnia and Herzegovina) or assisted the deadlock administrative situation like in Mostar (which remained without a mayor for dispute between the different parties for four hundred days). The support to active citizenship and the role of citizens and sister cities (twinning of cities) are also underlined by the programme Europe for Citizens of the European Union, which is promoting a shared view on the future European identity. The programme is currently open to Albania, former Yugoslav Republic of Macedonia and Croatia.

The Eastern Partnership, including the six countries Moldova, Ukraine, Belarus, Azerbaijan, Armenia and Georgia, set up in Prague in 2009, is now accompanied by a Civil Society Forum.<sup>12</sup> The CSF is acting with the support of thematic working groups on democracy, economy, environment and people to people, who are supposed to provide expertise and inputs to the official process. The CSF national platforms present today in all the six countries are supporting the engagement of civil society in the Eastern Partnership and raising issues and contribution to the process. The Civil Society Forum is included among the multilateral track approach of the Eastern Partnership and gives a strong emphasis to the need to establish dialogue with citizens for the success of the initiative. In the Belarusian case, after the violent consequences of the election December 19, 2010, the Civil Society Forum and the Belarusian national platform responded to the issues and is now an element in the stabilisation and future steps promoted by the European Union and the Council of Europe.<sup>13</sup> In this same path, the strengthening of the entire programme Non State Actors, funded by the

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participation in Europe, in the Western Balkans and in the Neighbouring areas of the EU. It focuses on decentralised cooperation and the cooperation of citizens' and local authorities.

<sup>12</sup> The Civil Society Forum for Eastern Partnership gathered in 2009 (Brussels) and 2010 (Berlin) by more than 250 NGOs from EaP countries and from Europe. The mission is to influence the official Eastern Partnership process with the recommendations and perspective of the civil society. It works between the meetings with a steering committee and working groups and national platforms.

<sup>13</sup> At the International Donors Conference in Warsaw, 2<sup>nd</sup> of February 2011, the Commissioner for Enlargement and Neighbourhood confirmed the support to Civil Society in Belarus up to 15 million Euro.



European Commission, which saw the cooperation between Civil Society and Local Authorities, supported by the European Union, are a clear example of the role attributed to this approach.

As for the support to local authorities, important steps need to be undertaken in this part of the world and in the recent political development. The Committee of the Regions responded to the European Commission and established the Conference of Local Authorities from Eastern Partnership countries, in Poznan, in September 2011. The conference – called Corleap – has the main aim to support and assist the development of local authorities in the Eastern Partnership countries, as an essential element of democratisation. The Civil Society Forum has been granted a permanent observatory statute to the Corleap.<sup>14</sup>

However, at the moment, many countries have difficulties to have independent and functioning local authorities and that prevent a full implementation of a so essential and important local democracy. On the other hand, the Council of Europe – which already includes for years now all the countries of the Eastern Partnership (except Belarus) – through the activities of the Congress of Local and Regional Authorities, have developed numbers of capacity building initiatives. They also follow the monitoring process of the European Charter on Local Self Government. In particular, they initiated the process of establishment and support of the Association of Local authorities of Georgia (NALAG) and also a first attempt to improve local democracy in Azerbaijan, through a programme for a national association. With the support of ALDA, a process engaging an open dialogue between civil society and local governments and their association has been initiated since 2009.<sup>15</sup>

## *2) The Southern Policy of the European Union*

Certainly in these days, citizens are at the core of the attention in the Southern borders of Mediterranean and they seemed to have taken in their hands their destiny. They proved to all of us that active citizenship and participatory processes can't be delayed forever and that mobilisation of citizens is a strong asset in a democratic reform. Seen from the perspective of local and participatory democracy, this process

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<sup>14</sup> See the website of CORLEAP at:  
<http://web.cor.europa.eu/EPP/ATWORK/COMMISSIONS/Pages/CORLEAP.aspx>.

<sup>15</sup> The programme engages the three associations of municipalities of Azerbaijan, the Union of Municipalities of Armenia and the Association of Local Authorities of Georgia. It is one of the very few regional cooperation activities launched in these years in Southern Caucasus.

should be immediately accompanied by the support of the European policies.

The support of decentralised cooperation activities, which puts at the centre of the attention and work the role of local authorities and civil society, are common and important in all the area here described. In particular, networks and framework programmes are already present like the work of the Anna Lindh Foundation, for civil society, as well as the institutional work of ARLEM,<sup>16</sup> which is, however, slowed down by difficulties among its participants. A relevant work in this area, in particular in the Israel/Palestine context, has been realised by the network of *Enti Locali per la Pace* which gathered the attention and mobilisation of local authorities and civil society on the question.

### ***C. Decentralised Cooperation as a Tool to Promote Cooperation and Citizens' Engagement***

International cooperation – in general terms – implies the action of stakeholders like governments, local authorities, non-governmental organisations (NGOs), development agencies, multilateral organisations, etc., which provide help to support development policies or emergency initiatives and programmes in another state. It is usually responding to national guidelines or international multilateral commitments.<sup>17</sup> The guidelines and frameworks are set as a branch of the ministry of foreign affairs (or a part of the ministry of economy or foreign trade, etc.).

Cooperation can either be bilateral (between similar stakeholders or between only two states) and it is the most common way to understand the concept. The widest part of diplomacy or foreign affairs is bilateral through the network of the embassies. It can also be a multilateral, like it is the case – for example – of the United Nations, the European Union programmes and institutions and the Council of Europe. In that case, the single state operates in a general concept for an agreed goal.

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<sup>16</sup> The Euro-Mediterranean Regional and Local Assembly (ARLEM) is a consultative assembly, which aims at bringing a regional and local dimension to the Euro-Mediterranean partnership. It gathers 84 members from the EU and its 16 Mediterranean partners who are representatives of regions and local bodies holding a regional or local authority mandate. The aim of ARLEM is: to give the Union for the Mediterranean a territorial dimension; to involve local and regional authorities in further development; to demonstrate cooperation between local and regional authorities despite major political or institutional barriers; to set up projects that contribute to make Euro-Mediterranean relations concrete and tangible for the citizens. It falls under the coordination and responsibility of the Committee of the Regions.

<sup>17</sup> A possible reference are the Millennium Goals by the United Nations.

The cooperation for development – again in its general assumption – is the one addressed to support basic needs in the so-called Cooperation Countries (food, sanitation, infrastructure, education, water, etc.). The list of *Cooperation Countries* are often decided at the governmental level and correspond to a certain political target, while they include some and exclude others.<sup>18</sup>

The present time is particularly interesting as for the changes that underwent in the field of international cooperation. The end of the 20<sup>th</sup> century corresponded to a period of re-designing of the systems of democracies with the end of the bilateral confrontation between East and West. The area included in the former USSR and the CIS<sup>19</sup> went through a transition period, where democracy and rules of society were strongly at stake. The process is still undergoing.

A reconsideration and valorisation of the term *governance* is currently still undergoing and it has its impact in the international cooperation. In this framework issues like support to public administration, institution building, policies for management at the public and private level, are addressed. The “transitional countries” needed (and still do) a lot of support from the political, social and economic points of view. The democratic transitional period paved the way to new forms of cooperation focussing on systemic and long-term changes. The international decentralised cooperation, based on local actors offered advantages because it adapted better to the new requests by the new players as well as to the possibilities and themes of actions.

We also had other specific and more “localised” factors that brought and created new possibilities to decentralised cooperation. As far as for Italy, for instance, the system of international cooperation was badly hit in the 1980s by waves of scandals, mismanagement and abuses. The Ministry of Foreign Affairs and its section dedicated to international cooperation is hardly able to manage and monitor all the activities going on in the large decentralised cooperation (despite some good initiatives, like the *Atlante della Cooperazione Decentrata*). Often we see regional and thematic platforms (like the Intiativa Ionico Adriatica, Il Forum delle Città dell’Adriatico, the Association of the Local Democracy Agencies, the programme Balcani Cooperazione dell’Osservatorio per i Balcani or the EuroAdriatic Region). But all of them, as a matter of fact, remain partial. A few larger initiatives consolidated these networks, like the initiatives of the Law 84/2001 for the reconstruction of the

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<sup>18</sup> A possible reference is the list of the Cooperation Countries of Italy, Ministry of Foreign Affairs.

<sup>19</sup> [http://en.wikipedia.org/wiki/Lists\\_of\\_former\\_Soviet\\_Republics](http://en.wikipedia.org/wiki/Lists_of_former_Soviet_Republics).

Balkans,<sup>20</sup> which was developed in 2001 and financed later. The initiative, however, was not anchored to any systemic programme of Italy and all the actions are a sequence of – more or less – isolated performances.

Another boost for the decentralised international cooperation is given, unluckily in Europe, by the war in the former Yugoslavia. This tragedy engendered many exchanges and contacts from both sides of the Adriatic Sea. This process regarded not only the Adriatic area but the whole Europe, in particular in this last decade where the process of integration of South Eastern Europe has been launched.<sup>21</sup> During the war and shortly after, the governments of former Yugoslav states were blocked – entangled in post-war and ethnic issues – while the NGOs and the local authorities were more dynamic and could bring relief, help and support, which were all the basis for a long lasting decentralised cooperation. All of these were also a first platform where methodologies were learned for the future.

A form of strong and visible impetus to decentralised cooperation comes from the policies of the European Union, which gave a major role to local authorities in these last decades in policies and programmes such as the Interreg programmes, the enlargement programmes and the non-state actors programmes (i.e. local authorities, NGOs, associations, etc.). The programmes of the European Commission gave strength and structure to decentralised cooperation in general and we could hardly conceive today the NGOs and local authorities active in international cooperation without the EU programmes.

The international decentralised cooperation can be described with some elements which distinguish the phenomena:

- The activity should be based and shared by a multiplicity of stakeholders (associations and NGOs, civil society and community, local authorities, economic actors, etc.). They all must/could be engaged in a vast and participatory process of consultation, from the need assessment to drafting, implementing and monitoring;
- Decentralised cooperation is based on a thematic approach on institution building and civil society through a support to a bottom approach;

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<sup>20</sup> See further description in the part on Italian decentralised cooperation.

<sup>21</sup> See the European Summit in Thessaloniki (2003), launching the idea of the Balkans in European Union.

- The resources are considered both human and financial. It gives strength to local resources and know-how;
- The actions focus on reciprocity between actors of the cooperation in a long term perspective of common growth;
- Decentralised cooperation should and could operate mostly in areas and countries where institutions exist (it is difficult to work in countries where there are very limited possibilities of democratic processes or pure emergency situation).

It is a need of these years to approach the development of democratic processes in a citizens' participation perspective. The complexity of democratic consultation and nowadays of the decision-making process go well beyond the mechanisms of representative democracy. Elections and political parties are today one of the elements of the spectrum of actors influencing the policy-making in Europe. Others are certainly the economic interest groups but also the influential groups of citizens. To this aim, a large community of associations and citizens' representations are oriented to influence (with expertise, via consultations and papers) the agenda setting and the policy-making in the European institutions. This approach – where modern communication and virtual networks are more “real” and efficient than the usual politics of the parties – is also a part of the experience to share and to discuss in the decentralised cooperation. Citizens' participation is now a cross-cutting feature of the international matters.

## **II. Conclusion**

Participative democracy and the engagement in new forms of dialogue with citizens will not be an option in the future neighbouring policies of the European Union, but certainly a must.

In these days, Europe is still looking for its core identity and the process of enlargement is often raising the hot issue. In particular, the issue is often mentioned while we are talking about accession of Turkey, but not only then. What are the common values of Europe and its vision of the common living together? Probably, in the participative democracy and in the respect of the common work between citizens, civil society and authorities and local authorities, we may find one of the values, which we are all sharing. And therefore, these common values should be at the core of what we expect from neighbourhoods with whom we intend to build a safe and fruitful relationship.



## **SUBSECTION III**

### **CASE STUDIES**





# Community-based and Context-driven Architecture for Educating Deaf Children in Burundi

Laurens BEKEMANS and Ken DE COOMAN

*Architects, partners at Brussels Cooperation*

## I. Introduction<sup>1</sup>

Four years ago, *Brussels Cooperation*, an architectural office, was commissioned by the Benedictine “Abbey of Zevenkerken” and the Belgian based NGO “Volens” to develop a design strategy for architecture in development projects. At the same time we were asked by “*Open Structures*” (an open source design project) to research the possibility of translating the open source principle from its software-related connotations to the physical “hardware” of architectural design. We immediately saw the potential of oscillating between Western open source concepts and the reality of architecture in developing countries.

It seems that open source design implies a community, designing together in a horizontal, non-hierarchical way. At the same time in a different context, one can consider the history of Western aid to

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<sup>1</sup> References for this chapter: Anderson, C., *Long Tail, The Revised and Updated Edition: Why the Future of Business is Selling Less of More*, New York, Hyperion (revised 2008); Bateman, M., *Why Doesn't Microfinance work?: The Destructive Rise of Local Neoliberalism*, London, Zed Books, 2010; Bell, B. (ed.), *Good Deeds, Good Design: Community Service through Architecture*, New York, Princeton Architectural Press, 2004; Duval, J., *Next Generation Democracy: What the Open-Source Revolution Means for Power, Politics, and Change*, New York, Bloomsbury, 2010; Mason, M. *The Pirate's Dilemma: How Youth Culture Is Reinventing Capitalism*, London, Free Press, 2008; O'Neil, M., *Cyberchiefs: Autonomy and Authority in Online Tribes*, London, Pluto Press, 2009; Ruby, I. and A. (eds.), *Reinventing Construction*, Berlin, Ruby Press, 2010; Papanek, V., *Design for the Real World*, London, Thames & Hudson, 2006 (1984); *Idem*, *The Green Imperative*, London, 2003 (1995).

developing countries as a too top-down exchange, perhaps inherently so is the logic of aid itself.<sup>2</sup>

As to the application of architectural projects in developing countries, a new model of architect and client emerges, whereby every hierarchy is lost. An architect is more a community conceiver, and an architectural project is designed within this community. In short, there is a lot in common between Western open source concepts and possibilities of contemporary architectural practice in developing countries. Our focal issue is to investigate how these two worlds can melt together.

## **II. Conceptual Context**

### ***A. What is Open Source?***

Online services and products like Wikipedia, Mozilla Firefox, Linux and some smartphone applications already use the open source methodology. In fact, today's software community is mainly based on a broad and firm community, working with the open source principle. In this way of thinking, it is not one person who delivers a finished design. It is in fact a whole community who contributes to an ever-changing process of design, whereby the evolution of the design is open for everyone to see, understand, use and adjust. Of course, there are starting axioms or languages that have to be used, for example the rules and grammar of a certain programming language. From these abstract premises, the development of the open source content can begin. Thus, the evolution of an open source product happens through community design, in a non-hierarchical, never-ending way, based on certain systems or languages.

Also, there is a tendency to conceive and create upon the efforts of predecessors, and to share experiences within a very interested and active community. The community has strong social bonds through the process of creating together. This social aspect leads directly to an economic aspect (not financial aspect): you give to the community and you take from the community. This can be defined as an economy of trading knowledge, experience, ideas or designs. However, it does not necessarily involve money. These economies cross borders of countries and disciplines, of prices and work hours, as they are extremely reachable and dynamic for people, and therefore non-accessible and fluid for existing big-scale economic structures. Given a certain

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<sup>2</sup> Dambisa, M., *Dead Aid: Why Aid Is Not Working and How There is Another Way for Africa*, New York, Farrar, Straus and Giroux, 2009.

presence of infrastructure, open source economies exist next to the capitalist and protectionist economies, without being incorporated by these.

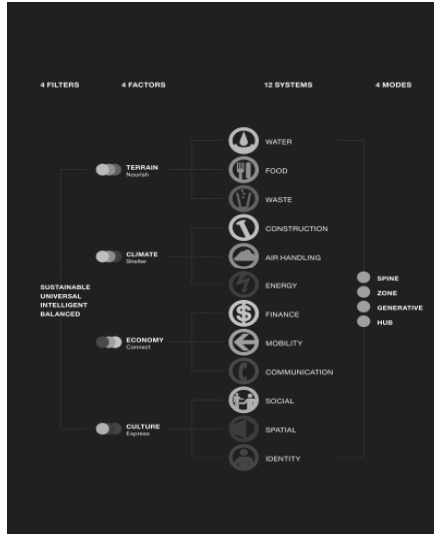
A last element of understanding the open source principle refers to the fact that these communities are not mandatory: they do not oblige you to take on an identity as a member of this or that community. There is no act of joining an open source community, as you can remain anonymous. Someone can be a contributor to very different communities and can choose how to construct his identity by different open source and closed communities: he/she can be a parent, a government employee, a software programmer, and a do-it-yourself-constructor at the same time, sharing and creating in different communities, maybe even bridging them. An open source community has a virtual identity and does not necessarily involve an individual as a whole: anyone can participate, for as long or as short as needed.

It is easy to understand that the emergence of open source communities is changing the face and nature of contemporary society. The challenge now is to take the principle of open source products and communities out of the digital context, bring it into “the real world” and use its power for designing our society. To go from open source software to open source hardware: this is exactly the working field of “Open Architecture.”

### ***B. The Methodology of the Institute without Boundaries***

To start the research on how to bring open source concepts to the field of architecture (“Open Architecture”), we used a design methodology developed by the Canadian *Institute without Boundaries*, called the “World House Project Matrix.” This matrix approaches the built environment as a whole of systems, striving for a contextualised holistic view of design in architecture. The matrix consists of twelve systems divided into four themes (i.e. terrain, climate, economy and culture). Its main intent is to provide an analysing tool to be used in housing and shelter situations all around the world. It is a tool for architects to work the world.

**Figure 1 – World House Matrix**



Source: the World House Project<sup>3</sup>

A first step of the investigation on how to melt open source concepts with real-life architecture in developing countries consisted of mapping our brainstorm sessions and researches according to the World House Project Matrix. Secondly, we elaborated at a theoretical level how architecture can become open source driven.

### ***C. Open Source Applied to Architecture***

As was said before, open source is based upon a non-hierarchical system of designing. The virtual community, whereby people are free to enter, pass by or quit shares knowledge openly in order to achieve a goal as a community. The idea behind open source is attractive and seems easily transposed to architecture. But while the community in open source has a virtual identity and no bounding character, the community related to architecture has an economic reality, expresses basic human needs and exhibits a cultural and political identity that has to be dealt with.

<sup>3</sup> The World House Project is an initiative by the Institute without Boundaries, Toronto, Canada. It works towards collaborative design action and seeks to achieve social, ecological and economic innovation. All information is available at <http://worldhouse.ca>

In short, the inherent logic of architecture forces “open source” to get out of the anonymous virtual world and to be real. Therefore, the translation from open source concepts to architecture for developing countries needs to be based on a vision which shapes architecture for today’s world.

#### ***D. Our Vision***

The vision of building *Case Studies* can be defined with the following characteristics:

– *Informal architecture*: Many 20<sup>th</sup> century housing, especially in Western society, are incomprehensible, both for people and their culture. The dysfunction of modern neighbourhoods comes from the fact that they abstract the relation between inhabitants and habitat and impose regulated lifestyles that are cut off from basic human practices. This prevents people from taking control of their own habitat, which we consider the first incentive towards mental and economic wellbeing. Consequently, we are very inspired by informal architecture, i.e. an architecture produced by people’s lives around buildings and characterised by the spontaneity of *bric-à-brac* lodging with their chaotic but lively public areas, street stores and informal economies. They show an activity and the power of a community to make an architecture that is infinite, undefined, and responding directly and in a unregulated way to community’s needs.

– *A focus on materiality, identity and future*: Materials in Western society have already a strong history of industrialization. It has become a tradition to invest in research and development of new materials. This can be a merit, but it should not always be like that. In the desire for creating a better future and achieving progress lays the opportunity for tradition to revitalise itself. We believe in the use of materials that is linked with the traditions of a place and its identity, but that also takes into account a more global context. A wooden house can be built if there is wood in the village, but considering the extensive logging of wood in the respective country, it may not be the right option. Choosing materials, according to local and global contexts as well as according to an inherent logic of the architectural case study, seems the way to go forward.

– *Sustainability includes human sustainability*: Mainstream green sustainability today, especially in the Western world, seems to be about high-tech products that create green energy and about state-of-the-art performing new materials. Like an olympic discipline, zero-energy buildings strive to be as less energy-consuming as possible, trying to achieve the highest rankings and energy labels. It is important to conceive sustainability, i.e. the ability to sustain, as a holistic and

inherent logic of an architectural project in relation to human beings and humanity. A building should not only have a comfortable indoor climate; a building also should be beautiful in its relation to real people who use it. This would allow them to connect with the building and to use it in ways an architect could never imagine.

– *Architects are space translators for the community* (“*in version based designs*”): The architect can play a decisive role in interpreting a community in its living habits and in its habitat. He or she can be the translator of a specific architectural project, speaking an understandable language of architecture to the living community. The actual context needs therefore thoroughly and constantly felt. A design in architecture is never a finished product. It needs to be constantly adapted to the changing context and the community it is embedded in. This is why we design in “versions,” like software: we update the design while comprising the real-life experience. A constant going back and forth from and to reality is taken place.

– *Open source meets the South*: We are young architects; we have been raised during the information revolution of Internet. It is exactly what formed us. The monopoly of information doesn’t belong anymore to “a few good men” (i.e. architects, masons, doctors, nurses, etc.), but to everyone: the information is freely accessible. The relation between architect and client blurs to the point that the client knows more than the architect. So it is up to the architect, not to design for, but to work with the client, or wider, with the community. An architect does not create anymore; he translates architecture into collaborative building projects. This is what we have learnt from living in the West. On the other hand, we still can much learn from the life patters in the South compared to those of the West as well as from the implications these have on the (built) environment. In the South, architecture still has possibilities to really connect to the community and to link with micro-economies and identities, without being swallowed by mass market trends and individualistic logics. It is exactly where we stand and where we are researching on both theoretical and practical level, i.e. in between North and South. That is the place we are building case studies.

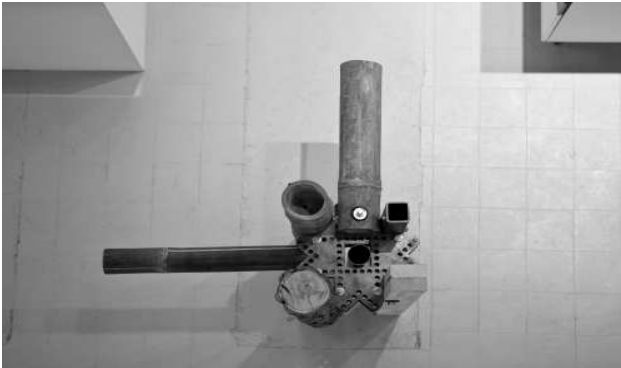
### **III. Case Studies**

In the second part of the paper, the approach and vision of *Building Case Studies* is illustrated with concrete and applied case studies we have been involved in.

### ***A. Case Study 1***

The first project we worked on was the design of a village for two hundred families in the province of Katanga, Congo. We developed a technical construction knot, which could be used for all kinds of purposes and with all kinds of materials. It was conceived as a universal “mecanoo” system, adaptable to all situations. The all-round use of the knot was meant to facilitate construction for everyone, thus making design possible for everyone, like open source architecture. This gave the freedom to the community to adjust or build its own traditional constructions to the main modular structures.

**Figure 2 – Modular construction knot by Building Case Studies**



Picture by Kristof Vrancken / Z33

**Figure 3 – Modular construction knot by Building Case Studies**



Picture by Kristof Vrancken / Z33

**Figure 4 – Master plan model for Katanga, Congo**



Picture by Kristof Vrancken / Z33

### ***B. Case Study 2***

It is an extension of Case Study 1 but relocated in Burundi. The aim was to create a mobile water catchment and organise a workshop for a village in the North. The small design was to be adapted and repeated locally, working with the indigenous communities. It proposed a local solution that was repeatable and adaptable by other neighbouring communities, to form a decentralised network of ateliers, providing water, public space and workroom in search of empowering the community. Cost for the first atelier was five hundred dollars. With this design we did a first “reality check” by interviewing Burundians living in Belgium.

The first two case studies developed a universal construction language, usable in all contexts. A building method was created as a tool to construct, not as a finished building with a decisive design. The community we had in mind was rather abstract and not necessarily place bounded. Frames were designed in which communities could draw their own identity. However, this was all based on a conceptual design! It was conceived while working in Belgium. A first prospection trip into sub-Saharan Africa confronted the design with a rooted community and context.

### ***C. Case Study 3: the School for Deaf Children in Muyinga***

#### *1) The Initial Development Phase*

At the end of 2010 we went on a prospection trip to Burundi to start to work on Case Study 3, i.e. the school for deaf children in Muyinga. The goal of this explorative mission was to study cultural and traditional building methods, to meet the community and to orient us within the local society. We followed four consecutive phases:



– *Studying the local tradition:* The first weeks we elaborated a document, called “Catalogue of Impressions.” We travelled around, interviewed people, went to people’s homes, visited workers, and studied their traditional construction methods, social relations, etc. These observations and encounters formed the content of the document. It presents a very broad overview of the Burundian culture and society, according to the twelve systems of the IWB-matrix. With the analysis of this information we identified and positioned ourselves in relation to the specific community in Burundi.

A number of important conclusions could be drawn from this applied analysis: – earth, bamboo and sometimes wood is used as construction material for cheap housing; – brick, steel and concrete are the materials to be used for public and community buildings; – two-storey buildings have high status; – there is an enormous deforestation problem; and – there is a lack of organised public space.

– *Meeting the community:* During this prospection trip we met with the community. The community consists of the Christian diocese with the bishop as its head, the construction team of the diocese, the deaf children and their teachers, and the future local workers who will build the school. We noticed during the first meetings that the fieldwork we previously undertook helped a lot in gaining their trust. Just the mere fact that we tried to speak Kirundi, i.e. the national language of Burundi, and knew about their traditional housing, helped to build up a trust relation. Our eagerness to learn their way of thinking and culture meant we were in Burundi for mutual learning. In short, in our vision of architects as translators for community, we are convinced of the necessity to create an immediate dialogue with the community.

– *Studying the earth:* In a third phase we studied the earth and researched ways to improve their local building methods by searching local solutions in a global perspective. People were often sceptic about our work with earth because of the negative perception of it as a construction material for the poor. We came to the conclusion that the available earth is a very good construction material, condition to some minor adaptations to its use and composition.

– *Measuring the site:* We measured and digitalised the site where the school will be built.

## 2) *Preliminary Assessments on the School as an Architectural Community Project*

The school is perceived as a signal by and for the community. It illustrates various integrative and cohesive characteristics of the building project. It can show that, besides brick, concrete or other industrial materials, local earth construction methods are perfect for creating

community buildings. It provides pride and self-esteem to the community by creating a two-storey building with local material. It provides economically relevant skills to local workers in improving traditional construction methods. It integrates a vision of use of public space, created by the design of the school on the site. It integrates a solution for waste management. It shows solutions of how to take into account the supra-local or national deforestation problem. It shows the vital importance of trust-building methods and dialogue with the local community. It aims at connecting the newly skilled workers with small and medium enterprises (SME), in order to connect their knowledge to economically relevant partners.

We were also confronted with the first challenges to the project. The local community was often sceptic about our work with earth because of the negative perception of it as a construction material for the poor. The local craftsmen had insufficient knowledge of the use of possible new techniques that were too far from their traditional ways. A realistic organisation of participatory design, where micro-economies of the smallest scale can connect to economic partners (as SMEs, architects, etc.) was lacking. Finally, crucial to the success of the project was the conception of space for a school for *deaf* children.

#### ***D. Case Study 4: the Playground in Gitega, Burundi***

In order to respond to the challenges met in Case Study 3, a decision was made to build together with the community a small playground and washing room using several adapted earth construction techniques at the existing school for deaf children in Gitega, Burundi. The following trajectory has been identified to give answers to these challenges:

– *Adapting a test case using all the new techniques:* A modular hexagonal design gives the opportunity to use several techniques of construction. One modular system allows showing to the community different styles of building methods adapted from their own traditional construction materials. This test case proposes a clear illustration of the advantages of the new uses of their traditional materials.

– *Instructing the older students of the professional courses at the school.* As for the insufficient knowledge of the local craftsmen, courses are planned for the students and local craftsmen. The playground and washing room will be constructed together with the community. The building process will be organised as a course in new techniques. Currently we are preparing the course material which is structured as a comics book to facilitate communication of adapted construction techniques. This course, at the end, will provide the possibility to engage them in the construction of the future school in Muyinga.

– *Developing a design which helps in organising participatory design.* The modularity of the design gives the possibility to the community and the architect to adapt and complement the proposal at place. The basic system is drawn, but the function, content, scale and material are open for discussion with the community. A group of teachers and students will finalize the project during the first days of arrival.

– *Undertaking continuous research and participatory design to translate the conception of space for deaf people in the school.* During the fieldtrip interviews about “deaf space” were made with teachers and students of the school. Together with the participatory way of designing we try to create the best educational spaces for deaf people.

In short, Case Study 4 is a test case for the school for deaf children in Muyinga and can serve as a convincing example to strengthen bonds and facilitate dialogue between architect and community, between North and South. We are aware that we are in an ongoing process of change, because of the nature of the project, which is perceived as an intercultural dialogue between two different cultures. To be trustworthy to our own vision and approach in this never-ending dialogue with the community makes the constant questioning of our position as architects an absolute must. We are convinced that building architecture on the borderline between North and South starts from a human-centric (global) and context-driven (local) approach.

#### **IV. Conclusive Thoughts**

*Building Case Studies* aims at doing architecture in community. We started out from Western open source principles to find ourselves involved in architecture in developing countries. We believe this has a reason. Contemporary open source virtual communities share the same dynamics as architectural projects within the informal and vernacular context of developing countries. What is nowadays a hype in Western countries is actually a *rooted* way of cooperation: rooted within human tendencies itself. We see projects in developing countries therefore not as *aid*, but as mutual learning in an intercultural dialogue based on human-centric approach. The understanding of local construction culture (materials, techniques and its social implications) is crucial to start such a project. The availability of earth, and its performance and ease of use as a construction material, might just empower indigenous communities, giving them the hardware and unpatented knowledge, together with pride and self-esteem, to enter the existing construction sector.

In short, the vision, approach and activities of *Building Case Studies* are based on human-centric sustainable development for the built environment as well as for the people involved. It is set within an ongoing dialogic framework for the Southern world as well as for the North.

# Dialogue-building of Rural Development in Somalia: the Proposals of the International Somali Forum for Rural Development

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## I. Introduction<sup>1</sup>

The Somali state-failure in the last twenty years has facilitated new systems of governance at territorial level, financially sustained, among other factors, by the Somali diaspora and by local and international civil society organisations.<sup>2</sup> The need to involve the Somali Diaspora in the reconstruction and development process, settled by the Djibouti Peace Conference in 2004, has led to the promotion of the *International Forum for Rural Development in Somalia* financed by IFAD and promoted by the Representative of the Somali Government at the UN Agencies in Rome, with the technical support of the Faculty of Agriculture of the University of Padova.

The Forum has organised two international meetings, in November 2010 and in March 2011, with the active participation of Somali intellectuals and experts on rural development who still keep a strong commitment and intense connections with their local communities in

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<sup>1</sup> References for this chapter: Cook, J.B., *Community Development Theory*, at <http://extension.missouri.edu>; EU, *Somalia Joint Strategy Paper for the period 2008-2013*, at [www.ec.europa.eu](http://www.ec.europa.eu); FSNAU, *Nutrition Update*, November-December, 2010, Food Security and Nutrition Analysis Unit – Somalia, FAO, at <http://www.fsnau.org>; FSNAU, *Market Data Update. Monthly Market Analysis*, 2011, Food Security and Nutrition Analysis Unit-Somalia, FAO, at <http://www.fsnau.org>; FSNAU, *Livestock exports through all Somalia ports (1994-2010)*, at <http://www.fsnau.org>; Mubatsi, A.H., *The Independent (Kampala), Museveni's Hand Pushes Somalia to the Edge*, at <http://allafrica.com>.

<sup>2</sup> Munzele Maimbo, S., *Remittances and Economic Development in Somalia. An overview*, Washington DC, The World Bank, Social Development Department, 2006.

Somalia. The other main Forum participants were the representatives of UN family organisations, civil society organisations working in Somalia and Italian researchers on rural development.

The paper presents part of the analysis and recommendations offered during the meetings in relation to the sole agricultural sector. Other sectoral analyses have been performed during the Forum activities in relation to “rural no farm activities” and to “health” and “primary education” in rural areas, discussing also the main differences in Somalia’s three main geopolitical contexts (Central-South Somalia, Puntland and Somaliland). Special attention has been given to specific cross-cutting issues such as “territory and environment” and “institution and governance.”

In the first part of the paper a brief introduction of the Somali socio-political context has been proposed, presenting also the recent dynamics in the political arena and the current aspects of the social insecurity exacerbated by the recent and harsh famine. The development cooperation activities and policies for the reconstruction are described in the second part, underlining the pivotal role that the primary sector should perform in the Somalia’s development. Consequently a specific attention has been paid to the agricultural sector (third part), presenting the key problems that still keep the sector in a persistent subsistence economy, mainly determined by the enduring war economy. Finally, the paper presents some recommendations proposed by the Forum participants, trying to identify the key aspects that, from the point of the Somalis, should be considered by the International Community in order to promote a sustainable rural development.

## **II. Somalia: Socio-political Situation**

Since the fall of Siad Barre’s government in 1991, Somalia has been experiencing continuous political instability as well as manifested and latent conflicts. In performing geopolitical analyses of the country, international analysts have progressively shifted their focus from investigating the causes of conflict to the factors that perpetuate Somalia’s incessant instability, defined by some scholars as an “*enduring war economy*.”<sup>3</sup> According to the same line of thought, this

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<sup>3</sup> “Theories about war economies point to the perpetuating mechanisms and mutual relations between war and economy. According to the World Bank Research Development Group headed by Paul Collier, war and violence are economically motivated and individuals or groups use them to maximise profit.” Grosse-Kettler, S., *External Actors in Stateless Somalia. A War Economy and its Promoters*, Bonn, International Center for Conversion, 2004, p. 39 citing P. Collier, “Doing Well out of

economy is related to specific internal and external interests which, implicitly and explicitly, exploit economic opportunities deriving from the absence of government.

In such a complex geopolitical and economic situation, international intervention has been ineffective due to opposed and polyhedral local interests.<sup>4</sup> Somalia can be counted as the first case where the international community has considered the conflict within the nation-state as a main issue of international security, not complying with the principle of “*sovereign equality of states*” and disregarding the principle of “*people’s self-determination*.” More specifically, the foremost interest on its part relates to humanitarian assistance, recognising a new interpretation of international law including also the right of interference for humanitarian purposes. In this framework, Resolution 751 of the United Nations Security Council initiated UNOSOM operations in August 1992, later renamed UNITAF (under US leadership) and UNOSOM 2 (1993-1995).

Grosse-Kettler believes military intervention from the international community has not reached its set objectives and has unintentionally sustained economic structures favouring a war economy. Most international aid, meant for military and civilian purposes, has ended up in the hands of opposed clans and their militias, fuelling a lucrative business.<sup>5</sup> Since the 1990s, there has been a progressive stabilisation of such an economy, lacking a central government, yet extremely active in favouring polyhedral, informal and criminal economic activities along with governance systems based on clan relations.

In 2005-2006 an additional component entered the Somali struggle: the Supreme Council of Islamic Courts (SCIC). It spurred new conflicts especially in Southern and Central Somalia. In 2007, after harsh battles, the Transitional Federal Government in a joint action with AMISON – peacekeeping corps under guidance of the African Union – obtained legitimacy in Mogadishu. In 2008, a new peace conference at Djibouti established an agreement between the TFG and the Alliance for Re-liberation of Somalia (ARS), the latter is the moderate wing of Islamic

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War: An Economic Perspective,” in Mats Berdal, David M. Malone, (eds.), *Greed and Grievance. Economic Agendas in Civil Wars*, Boulder, Colorado, Lynne Rienner Publishers, 2000, pp. 91-111.

<sup>4</sup> A context, according to Menkhaus, definable as “*Balkanised*.” Menkhaus, K., “Governance without government in Somalia,” in *Journal of International Security*, vol. 31, 2007, no. 3, pp. 74-106.

<sup>5</sup> To guarantee, for example, security services to international actors on the part of local militia.

Courts. Despite the agreement, Al-Shabaah Islamic Courts still control a wide section of Southern Somalia.

Recent information about the political situation in Somalia is the nomination of a new prime minister: Mohamed Abdullahi, former diplomat in the USA. He has begun his mandate by forming a new government of eighteen ministers mainly from the Somali diaspora abroad. The government controls 60% of the national capital and intends to call for national elections in 2011. Latest news attests to a new evolution of the political situation with the fall of the government due to internal conflict among representatives of the TFG.<sup>6</sup>

The political insecurity makes the social and economic insecurity widespread and deeper. The negative linkage attests its worse effects when other internal shocks, such as drought, floods and food crises, intensify their underlining presence as it is the case in the current dramatic famine.

In September 2011 the UN Food Security and Nutrition Analysis Unit attests that four million people in Somalia are in risk of starvation, and of these 750,000 people are in risk of death.<sup>7</sup> According to the UNHCR, 55,000 Somali have passed the borders to find asylum in the refugee's camp of Dadaab in Kenya (the world's largest refugee complex) where the humanitarian situation is worsening day by day. But many other IDPs are blocked by internal conflict: at the beginning of September 2011 Al-Shabaab has blocked the possibility of hundreds of thousands of people escaping from the famine in Bay and Bakool, to research the humanitarian assistance in Mogadishu, because insurgents didn't want that people abandon their area of control.<sup>8</sup> Emergency organisations declare the necessity of a rapid international intervention to help the Somali people in need of assistance, but many humanitarian workers on the field attest the difficulty to reach places which are also quite closed to the capital Mogadishu, because of the political insecurity of the area.

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<sup>6</sup> Somali President Sharif Ahmed and Parliamentary Speaker Sharif Hassan Sheikh Aden met President Museveni in Kampala, following intense disagreements and tensions regarding extending the mandate of the Transitional Federal Government (TFG). The Prime Minister accused the Speaker of dishonesty, indecisiveness and failing to respect the will of the Somali government and people. At: <http://allafrica.com/stories/201106250014.html>.

<sup>7</sup> FSNAU, *Somalia Integrated Food Security Phase Classification. Rural and Urban Populations*, 2011, at <http://www.fsnau.org>.

<sup>8</sup> IRIN, *Insurgents Divert Famine IDPs from Aid*, 2011, at <http://www.irinnews.org>, accessed 6 September 2011.



### III. Development Cooperation in Somalia: an International Framework

International cooperation is widely present in Somalia; its coordination centre is located in Nairobi as a consequence of continuous political insecurity in the national capital, Mogadishu. Official Development Assistance (ODA) intends to improve Somalia's critical conditions. In order to fulfil and facilitate such processes development cooperation can leverage on a multidimensional harmonisation of the following relationships: – *Multilateral cooperation*: the UN and its agencies; – *Regional cooperation on an inter-governmental scale*: the Intergovernmental Authority on Development (IGAD) and the Arab League States; – *Regional cooperation on a transnational scale*: the African Union and the European Union; – *Bilateral cooperation*: US, Norway, Italy, the United Kingdom, Uganda, etc.; and – *Non-governmental cooperation*: the International Consortium for Somalia inclusive of international and local non-governmental organisations.

Given the multiplicity of stakeholders involved, coordination and joint actions have been recognised as important features in pursuing various development objectives as established by the actors themselves. With this aim, several coordination initiatives have been proposed, such as the International Contact Group (ICG) and a forum within the International Donor Community for Somalia.

Along with various initiatives Somalia has benefited from significant support by the international community through ODA. According to data from the Development Assistance Committee (DAC) – operating within the Organisation for Economic Cooperation and Development in Paris (OECD) – and from the World Bank, Somalia's ODA in 2009 has reached the value of 662 million US\$ (nearly twice the amount allocated in 2007), of which a significant part (77%) comes from bilateral cooperation. The main donors are the US – giving 219 million US\$ (2008-2009 average value); followed by the EU – assisting with 124 million US\$; individual EU member states (UK: 60 million US\$, Norway: 39 million US\$, Spain: 34 million US\$, etc.) and other countries (Canada: 24 million US\$, Japan: 23 million US\$). ODA was especially intended for humanitarian aid (more than 70%) and the rest was destined to social sectors, health and population, education and programme assistance.<sup>9</sup>

The establishment of Somalia's Transitional Federal Government in 2005 and the definition of a Transitional Constitution in 2004 (fixed to

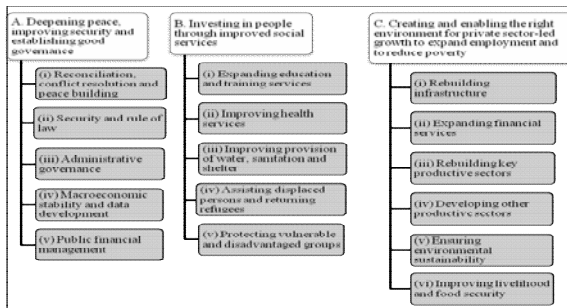
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<sup>9</sup> OECD, *Aid statistics, Recipient Aid Charts for Somalia*, at: <http://www.oecd.org>.

last for five years) were the main results of the Djibouti Peace Conference taking place in 2004. At the end of a transitional period of five years, Somalia was expected to adopt its own constitution by referendum and then to schedule parliamentary elections by 2011. In order to support the transition process and to promote political willingness to meet what was established at the Djibouti Peace Conference, the international community – in particular the UN and the World Bank – has launched a detailed analysis of the socio-political and economic context of Somalia.

In this regard, an important document was published: the *Joint Needs Assessment (JNA)*,<sup>10</sup> which further led to the definition of a *Reconstruction and Development Programme (RDP)* prepared by the United Nations jointly with the World Bank Coordination Secretariat and undertaken by the Somali authorities.<sup>11</sup> In the latter document, priority objectives to be pursued in relation to reconstruction processes in Somalia as defined by the International Development Cooperation are presented in the following Figure 1.

**Figure 1 – Objectives of Development Cooperation for Somalia**



Source: UN and WB (2008)

The EU has aligned its cooperation strategy in relation to political objectives set up by Somalia’s RDP. With this aim, specific operational tools were instituted: – Peace Facility and Stability Instrument; –

<sup>10</sup> United Nations and World Bank, *Joint Need Assessment and Reconstruction and Development Programme*, 2008, at: <http://www.somali-jna.org>. The JNA is structured as a Synthesis Report and three main documents are related to: 1) South and Central Somalia, 2) Puntland and 3) Somaliland. Other six cluster reports are proposed in relation to the following topics: 1) Governance, safety and rule of law, 2) Macroeconomic policy framework and data development, 3) Infrastructure, 4) Social services and vulnerable groups protection, 5) Productive sectors and the Environment, 6) Livelihoods solutions for the displaced.

<sup>11</sup> *Ibidem*.

European Development Fund (ACP); – Thematic Budget Line (i.e. food security and other actors); and – Humanitarian Assistance (ECHO).

Along this operational approach, the financial contribution to Somalia from the EU was specified in the Joint Strategy Paper (2008), explicitly indicating a commitment of 212 million Euros to be dispensed over the period 2008-2013.<sup>12</sup> This budget was divided into three main sets of objectives in line with Somalia's RDP. Despite the allocation of each amount, the publication of expenditure for annual programmes has not appeared on the EuropeAid website since 2009.

It would be appropriate to stress the role of international non-governmental organisations engaged in cooperation through the setting up of their own international consortium meant to coordinate operational strategies in Somalia. International cooperation particularly needs to deal immediately with the critical situation of Internally Displaced People (IDP) and rural agro-pastoralists who have lost all their assets and are starving. UNHCR figures state that out of a total of almost 1.5 million IDPs in Somalia, over 85% are concentrated in the Southern-Central regions of the country. Such movement of people has aggravated already poor local conditions affected by famines and droughts.

#### **IV. Agriculture, Livestock and Forestry: Sector Analysis and Future Policies**

The agriculture, livestock and forestry sectors represent the main sources of income and the most important paid work opportunities for most Somali people. Their potential role in the development of Somalia's economy is widely acknowledged by international organisations.<sup>13</sup> Agriculture and its inter-connections with other economic sectors could represent an interesting "starting point" to achieve reconstruction and to implement policies aiming at the promotion of an integrated rural development approach. The role of other meta-economic factors needs to be included to ensure sustainability of such a process from its very beginning. These meta-economic factors may include: rural educational systems, rural health systems, rural physical infrastructure, rural governance system aiming at a peace building process, etc.

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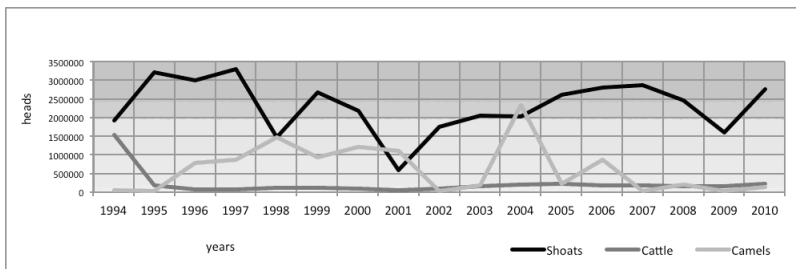
<sup>12</sup> EU, *Somalia Joint Strategy Paper for the period 2008-2013*, at: [www.ec.europa.eu/development/icenter/repository/scanned\\_so\\_csp10\\_en.pdf](http://www.ec.europa.eu/development/icenter/repository/scanned_so_csp10_en.pdf).

<sup>13</sup> *Ibidem*.

In 1991 the agricultural sector contributed to 63.6% of the Somali gross domestic product (GDP).<sup>14</sup> GDP composition indicates the essential importance of agricultural sub-sectors: livestock (52%), crops (37%), forestry (9%) and fisheries (1%). The civil war has dramatically changed Somali life as well as the country's economic system to the point of transforming it into an enduring war economy.<sup>15</sup> Hence, the exact composition of the Somali GDP is presently unknown. Since the 1990s, three main driving forces have been determining Somalia's agricultural GDP: livestock increase, crop production decrease and forest products depletion.

All these trends are worthy of analysis starting from the first driving force, i.e. livestock, which has increased its importance as main economic activity: 50% of the Somali population is engaged in it. Breeding activities represent a possible source of income during times of conflict and post-conflict; most importantly they preserve the value of household capital despite external shocks. Exports of livestock between 1994 and 2010 (data from the ports of Bosaso and Berbera) prove its importance as a significant source of revenue for Somalia's economy. Data collected from the *Food Security and Nutrition Analysis Unit Integrated Database System* indicate that, on average during the last years, 80% of all export earnings derived from livestock (65%, considering other sources).<sup>16</sup> Data fluctuation for exports (Figure 2) can be interpreted as periodic interruptions due to recurrent droughts and to international bans from Arab states, especially Saudi Arabia.

**Figure 2 – Livestock exports through all Somalian ports (1994 – 2010)**



Source: FSNAU <http://www.fsnau.org/ids/exports/livestock.php>, last accessed 2 September 2011

<sup>14</sup> World Bank, *Somalia at a Glance*, 1991, at: <http://devdata.worldbank.org>.

<sup>15</sup> Grosse-Kettler, S., *External Actors in Stateless Somalia*, op. cit.

<sup>16</sup> FSNAU, Special Brief – Post Deyr 2010/11 Analysis, 2011, *Food Security and Nutrition Analysis Unit-Somalia*, FAO, at: <http://www.fsnau.org>.

The livestock sub-sector is divided into four distinct parts, with each one associated to different areas of the country: an extensive pastoral zone (Haud plateau), an agro-pastoral area (Western Hiran), a livestock region in the inter-rivers valley (Bay and Bakool) and coastal plains. Each area, to different degrees, is characterised by a specific livestock management system linked to the crop sub-sector.

The main problems affecting livestock are identified by the Somali Joint Needs Assessment<sup>17</sup> and can be conceptualised into: – *Insecurity* that limits livestock movements; – *Pasture and water conditions* reflecting reduced sector productivity; – *Lack of health control strategies*; – *Inadequate support services and applied research*; – *Fluctuating and unfavourable terms of trade*; – *Lack of reliable data* on animal health; – *Absence of processing capacity* to add value to transformed products of animal origin; and – *Lack of skilled human resources*.

The second driving force for the crop sub-sector – engaging 14% of the Somali population – relates to the decrease in agricultural production. Its performance is determined by water availability during the two main rainy seasons: *Gu* season – from April to June – and *Deyr* season – from October to December; both are crucial for agricultural activities. The main area for agricultural production is situated in Southern Somalia, where smallholders typically rely on the following crops: sorghum, maize, sesame, cowpeas, sugarcane and rice. Water conditions in Juba and Shabelle allow agriculture to flourish. Around 90% of the country's cereal crops are grown in Southern Somalia and a substantial part of it is sold in the whole country. Moreover, 70% of the total national cereal production takes place during the *Gu* season.<sup>18</sup> Before the war, large private farms also produced commercial crops such as bananas, citrus fruits, vegetables and cotton, which were then exported all over the world. During the war, due to ruined water schemes, these activities have subsided. Currently, sesame – an increasingly important cash crop – is being cultivated in Southern Somalia and partially sold locally or exported to Arab states.

The Somali JNA identified the main problems affecting agricultural productivity for crops and related them to the following aspects: – *Insecurity* determines the displacement of skilled farmers (contributing to the increase in number of IDPs); – *Clan-based disputes over land*

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<sup>17</sup> United Nations and World Bank, *Productive sectors and Environment Cluster Report*, 2008, at: [http://www.somali-jna.org/downloads/vol5\\_V.pdf](http://www.somali-jna.org/downloads/vol5_V.pdf)

<sup>18</sup> FSNAU and FEWSNET, Seasonal Climate Update. Deyr 2010. *Seasonal Rainfall and NDVI*, 2010, FAO, at <http://www.fsnau.org>, last accessed 7 September 2011.

discourage national and international investments due to high financial and political risk; – *Poor rains*<sup>19</sup> reduce cereal production, heightening food insecurity, i.e. Deyr season in 2010; – *Reduced irrigations*, only 15% of the cultivated land is now irrigated and the efficiency of irrigation schemes has decreased to 30% compared with pre-war levels. The main causes are lack of maintenance of physical infrastructures for water storage, distribution and flood control. Consequently, 85-90% of originally irrigated land is now used for rain-fed agriculture; – *Damaging floods*, increasing livelihood insecurity; – *Lack of adequate agricultural services* and of research activities; and – *Lack of adequate infrastructure* to connect rural areas with urban markets.

The third driving force relates to forest products: if the contribution of the forest sector to GDP increases in the short-term, then the level of wood products utilisation will seriously threaten forest resources in the long-term. Forests and woodland areas cover 12% to 23% of the total surface average deforestation rate is estimated to be 0.97% per year. Most evidently, human forces exert great pressures on the areas of the Riverine forest in order to satisfy new agricultural needs; hence dry-land forest areas are being depleted for charcoal to meet increasing local and international demand.

The RDP contains some potential policy suggestions to tackle problems affecting agriculture, livestock and forestry sectors in Somalia. A cluster report, namely “productive sectors and environment,” clearly identifies policies and programmes intended to reconstruct and strengthen the agricultural sector. Table 1 presents the baseline situation in 2006 and the target outcomes for 2011 for Central-Southern Somalia.<sup>20</sup>

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<sup>19</sup> *Ibidem*. Somalia is a rain-fed dependent country and this aspect strongly affects Somali livelihoods. The assessment made by FSNAU and FEWSNET after the Deyr 2010/11 rainy season attests that the number of people in need of humanitarian assistance, due to a deteriorated food security situation, has increased by 20% (up to 2.4 million people, corresponding to 32% of Somalia’s 7.5 million population).

<sup>20</sup> Similar tables have been prepared for Puntland and Somaliland. In these cases the identification of baseline situations and target outcomes are quite similar to those presented above for Central-Southern Somalia.

**Table 1 – Central-Southern Somalia: Baseline situation and target outcomes for livestock, crops, forests and fisheries**

Livestock		Crops		Forests		Fisheries	
Baseline situation (2006)	Target outcome (2011)	Baseline situation (2006)	Target outcome (2011)	Baseline situation (2006)	Target outcome (2011)	Baseline situation (2006)	Target outcome (2011)
1. Livestock export complies neither with sub-regional standard (EXCELEX) nor the international standard (OIE).	1. International export inspection and certification standard achieved.	1. Productivity remains low despite high potential for crop production.	1. More efficient crop production and watershed management.	1. Declining forest cover.	1. Outreach programme on the cost of deforestation carried out.	1. High potential for fish production but low yields.	1. Sustainable production of fish and fish products increased to 50 percent of estimated sustainable catch.
2. Tsetse fly - which carries trypanosomiasis - is widespread in Central South Somalia as well as Rinderpest.	2. Tsetse fly and Rinderpest eradicated and incidence of epizootic diseases reduced.	2. Significant decrease of irrigable lands because of deteriorating flood control and irrigation infrastructure.	2. Flood water control structures in Shabelle and Juba valley rehabilitated.	2. No reliable data available.	2. Awareness campaign on alternative energy sources carried out.	2. High wastage and postharvest losses, lack of markets and exploitation by foreign intermediaries.	2. At least one-third of fish products produced in Somali fish-processing factories.
		3. Major disruption to land right.	3. Irrigation scheme structures renovated.	3. No data on charcoal exports.		3. Low, albeit increasing levels of internal consumption of fish products.	3. Wastage of fish caught reduced by 75%.
			4. Water users associations formed.	4. No accurate data on energy consumption.		4. High potential for fish production but low yields.	4. Income generating capacity of artisanal fishermen improved.
			5. Land titling. 6. Strengthening of agricultural support services				

Source: United Nations and World Bank, *Productive sectors and Environment Cluster Report* (2008)

In each sub-sector, the aim is to promote a shift from traditional production methods to: new modern techniques, new marketing systems, new regulations on natural resources and new information systems. The latter could induce knowledge exchange and potential interest from international enterprises to invest in Somalia.

The final aim remains to insert progressive strategies for development to be evaluated in light of all constraints to policy change. These constraints, considering the present situation, are quite difficult to handle. The required shift is unlikely to be achieved in the short-term given that all target outcomes, fixed for 2011, have not been reached. The sectoral methodology adopted by RDP can contribute to the reconstruction process yet, to make it sustainable, a territorial approach to rural development involving all actors from the initial phase of policy definition is necessary. According to the Forum participants' opinion, a

clear redefinition of rural development strategies is indispensable in order to attain the objectives set by the international community.

Despite various political efforts by the international community and national authorities to ensure compliance with RDP objectives, the situation in Central-Southern Somalia remains complex and difficult to disentangle. The international community needs to make a stronger commitment to jointly involve all actors in reducing political insecurity of sensitive areas and managing natural disasters (droughts, floods, etc.) along with their strong impacts on Somalis' everyday lives. UN agencies in joint action with local authorities of Somaliland and Puntland are attesting to the real possibility of a phase-out period from the war economy and this could be the case for Central and Southern Somalia. Surely, more time is needed to see results from this joint effort.

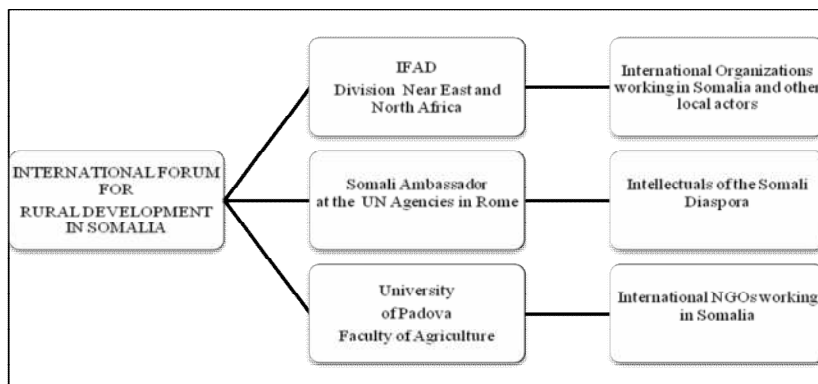
## **V. What Types of Rural Development best fit the Current Situation in Somalia?**

Somalia's government representatives at IFAD, researchers at the University of Padova and some Somali intellectuals living abroad promoted the International Forum and the debate opened with the following question: "What types of rural development best fit the current situation in Somalia?" This question has stimulated the Forum's participants (Figure 3) into proposing thoughts and actions in relation to the complex dynamics of continuous transformation occurring politically and economically in Somalia.

The first issue of complexity is found in Somalia's relentless political crisis. Constant conflict in the country has led to a political and normative void and has discouraged long-term supporters of community reconstruction, before the creation of an internationally recognised nation state. The second issue of complexity is found in development strategies promoted by international agencies, much more focussed on reestablishing the state's legal and institutional structures rather than sustaining a process of construction of community social purpose shared by all clans. This feature is at the basis of political and social identity funding principles of any functioning nation state. The third issue of complexity is found in defining the best policy approach in international cooperation, in regard to beneficiaries and donors, especially on the basis of what happened after the Siad Barre regime (1991-2011).



Figure 3 – Forum Participants



Source: own elaboration

Within this framework of complexity, the Forum – since the beginning of its debates – has reached four widely shared assumptions. They are described in synthesis in the following sections, yet they are at the basis of all project proposals that will be developed within the Forum activities.

### ***A. Assumption No 1: the Forum Agrees on Development Policies Prioritising Actions in Rural Areas***

Rural areas are the main pillars for developing Somalia's economy. The agriculture sector has been of fundamental importance for the national economy since 1991, it contributes to 63.6% of GDP and employs more than 50% of Somalia's labour force.<sup>21</sup> Rural economy development has the highest potential for poverty reduction, as shown from the comparative international economic analysis exposed in the IFAD Rural Poverty Report 2011: "1% growth in GDP originating in agriculture increases the expenditures of the poorest 30% of the population at least 2.5 times as much as growth originating in the rest of the economy."<sup>22</sup>

Rural areas development cannot exclusively deal with agriculture, livestock rearing and forestry. Its strategy needs to focus on the primary

<sup>21</sup> World Bank, *Somalia at a Glance*, *op. cit.*

<sup>22</sup> Ligon, E., Sadoulet, E., "Estimating the effects of aggregate agricultural growth on the distribution of expenditure," in *Background paper for the World Bank Development Report*, 2008, at: <http://worldbank.org>.

sector in a wider perspective given the current ceaseless instability. It is necessary to emphasise actions on multiple rural non-farming activities (RNFAs), essential components to reduce livelihood risks in the case of unfavourable seasons for agriculture. RNFAs can be intended as socio-economic shock absorbers and stability factors in maintaining steady income and self-sufficiency in rural communities.

Rural areas development cannot exclusively be reduced to an economic perspective. If development is a process to reach quantitative objectives conceptualised as improvements of existing and socially defined situations, considerations about social relations are meant to strengthen well-being through safeguarding the collectivity, first of all by addressing health and education. The actions of Somalia's diaspora have significantly mitigated the social effects of institutional collapse – ongoing since 1991 – by supporting communities of origin through financial aid meant to sustain education, skills building and coping with poor health services. Not all needs have been met, yet the level of awareness about such issues has increased and spurred support by Somalia's civil society and international agencies.

***B. Assumption No 2: the Forum Agrees that Rural Development should be Prioritised and Organised at Community Level***

Continuous changes at the political level in Somalia have reduced its capacity to propose development policies for rural areas; once the government is internationally recognised and operational then its political actions will also be legitimised. Constant governmental fluctuations – from 2004 till today – have clearly underlined a significant lack of political will and a distrust of the institutions by the population. The absence of political stability has led to the formation of local and self-governed units of governance as replacements for the political void; they act in accordance with internal clan rules and rely on village elderlies as conflict mediators.

Development policies should target rural communities in order to ensure local socio-economic stability as a facilitating factor for a wider and more complex process of political stabilisation. The analytical observation in support of this hypothesis is based on the concept of “weak states” for Somalia. Once latent or explicit conflicts are enduring, the economic system – intended as sphere of exchanges and sharing – still survives, therefore more emphasis should be directed towards identifying the factors that can trigger development and unfold economic potentials in the process of political stabilisation.

**C. Assumption No 3: the Forum Agrees on Project Initiatives Favouring Rural Areas on the Basis of Community Development Principles**

Since rural communities are of central importance in Somalia, actions in international cooperation should aim at prioritising a community development approach, considering local specificities. Its characterising features are described in the following table 2. Implementing the classical approach of participatory democracy can trigger perplexities among clan members, especially when hierarchical structures are still dominant. Yet, self-governance along these terms can be legitimised as a survival system for a society exposed to complex environmental, economic and socio-political factors. In this regard, a re-application of community development principles seems favourable within Somalia's rural communities in order to emphasise the fundamental functions of communities in conflict resolution and to utilise local knowledge and skills as a collective strategy to reach development objectives, hardly achievable by individuals.

**Table 2 – Community development characteristics and assumptions**

Characteristics of community development	Assumptions about people and community system
Focus on a unit called community.	People are diverse. Community systems can organise to take advantage of that diversity.
Conscious attempts to induce non-reversible structural change.	Community systems are not totalitarian. People have life spaces outside of the community structure.
Initiation by groups, agencies or institutions external to the community unit. Use of paid professionals/workers.	People learn from participation in community systems and community systems learn from the participation of people.
Emphasise public participation.	People are capable of exercising a considerable degree of autonomy, while exercising self-restraint required for social order.
Participate for the purpose of self-help.	People have the capacity for empathy with others that permits tolerance and voluntary relationships within the community systems.
Increase dependence on participatory democracy as the mode for community (public) decision-making.	While people prefer justice and fairness in community systems, they often perceive it differently.
Use a holistic approach.	Imperfections will mark every community system. A degree of inequality will exist in every community system.
	Working from the principle that everyone affected by a decision has a right to participate helps the community system to identify difficulties and to expand the range of potential interactions between a definite situation and the system.

Source: Cook, J.B., *Community Development Theory*, available at: <http://extension.missouri.edu/publications/DisplayPub.aspx?P=MP568>

#### ***D. Assumption No 4: Project Initiatives should Activate Project Actions Meant for Development***

International Cooperation has often looked at Somalia as a receiver state of funding for its emergencies rather than an actor of a political proposal aimed at development. Such an attitude on the part of the International community – although legitimised by continuous humanitarian crises that have dramatically affected the Horn of Africa – needs a fundamental overhaul in order to help Somali's communities to overcome its emergency. The RDP, as predisposed by the United Nations and the World Bank, represents the first attempt to modify the old strategies. The report's starting point is to reconstruct the State of Somalia and to legitimise it in the eyes of the international community with the ultimate aim of stabilising the current political crisis.

The development rationale borne out of donors' communities for Somalia needs a new language and operational approaches, differentiated from those established by other international actors. The project proposals defined by the International Forum for Rural Development in Somalia (Final Report of Forum Activities) widely support a vision of lifting rural communities out of enduring crisis.

## **VI. Conclusions**

Many doubts and uncertainties have been raised among the Forum participants on which type of rural development could better fit the current situation in Somalia. During the Forum meetings early news circulated about the absence of precipitations during the Deyr rainy season and all the Somali participants at that point concurred in forecasting the present harsh circumstances. Despite this, Forum participants strongly agreed on the necessity to transition from a policy of emergency towards a policy of development, based on the strong involvement of local communities and sustained by the international community till the end of the insecurity phase.

During the meetings, participants have analysed specific kinds of development activities, related to the agricultural sector and already realised by non-governmental organisations, designed first to cope with the emergency and later to build the path for a development process. The assumptions presented in the previous paragraphs are only some premises of a much more detailed analysis inserted in the final report of the Forum activities that will be presented at IFAD in November 2011. In that document a detailed programme based on project proposals will be offered in order to give a practical guide to field workers so as to settle the path for a sustainable development process for Somalia.

# **A Socio-ecological Architecture: Building a Well for the Children of San Pedro in Peru**

Erika EBERMANN VERA

*Architect, President, ANES*

## **I. Introduction: a Committed Start**

ANES was founded at the end of 2009 as a non-profit organisation at the initiative of the Peruvian architect Erika Ebermann Vera.<sup>1</sup> Its activities are oriented to applying bio-architecture to development projects, in particular to helping the poorer rural areas in Peru.

The mission of ANES is the contribution to the development of rural populations in the underdeveloped world and the support of the local economy. Its approach is focussed on the generation of production projects through a collective participation of the town's people giving them suitable instruments and technology that serve to improve their quality of life. Governmental help is never enough in Peru, and foreign organisations usually concentrate on particular areas with particular needs. ANES desires to give assistance to those communities that are more isolated or simply ignored. Moreover, it is very important that the help given is not simply conceived as a "gift" but as a constructive, moral, practical and social contribution to the community.

ANES wants to develop projects that promote natural and sustainable architecture with the consideration that, through bio-architecture, relations between inhabitants can be improved and economic solutions can be proposed which use local materials and respect the environment and the identity of the local population. It is therefore necessary that these projects should offer input for self-help

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<sup>1</sup> ANES was officially organised and registered at the Fiscal Agency – Agenzia delle Entrate di Padova on 4th November 2009. On 8<sup>th</sup> April ANES evolved into a non-profit organisation. Its founding members are Erika Ebermann Vera, Cristian Minesso, Isabella Magello, Andrea Candian and Michela Disarò.

construction of basic facilities like wells, schoolrooms, housing, etc. with the appropriate technical, legal and economic support from ANES.

## **II. The First Project**

### ***A. Context and Content: a Storytelling***

The search for the first community with which ANES could work was a rather cumbersome process. Only after a series of coincidences and encounters did ANES meet Stefania Grimaldo, a Peruvian woman who, apart from many other occupations, collaborates with two other organisations in the Ica area: ANIA (Asociación para la Niñez y su Ambiente) and The Royal Botanic Gardens. Stefania indicated the San Pedro villagers and their needs.

San Pedro is a small community near the city of Ica, South of the capital Lima. It is situated in a very green area, surrounded by sand dunes and valleys where grapes, cotton, corn and asparagus are cultivated alongside the forests of huarango (*Prosopis pallida*), a very important tree, endangered of extinction because of its use as firewood.

A first encounter with the San Pedro villagers was planned. In a very short time, ANES organised a Christmas party for the children and their families on 23<sup>rd</sup> of December 2009. The event was a great success also because the language barrier was overcome having a native speaker among the ANES group. From the conversations with the village people it was soon clear that improvements in the existing water supply was urgently needed and consequently, that the village well could be the first project for ANES in the San Pedro area.

The well is school property and supplies water for everyday purposes in school life; it also supplies water that the children use to water their vegetable patches created through collaboration with another organisation (ANIA). Because of its central place in the village, any improvement in the structure of the well would satisfy the needs of the whole San Pedro community.

As an immediate follow-up of the first encounter with the village, ANES started fund-raising in close cooperation with Stefania Grimaldo. A few months later and again by pure coincidence, help came along: persons working on similar projects with other international organisations indicated Seregel, the Peruvian well excavation company. The lack of existing technical knowledge by the villagers, the urgency for the much needed water supply and the very good budget granted by Seregel prompted ANES to accept outside assistance, going against its ideals of community participation. In the period between the first meeting and the moment of intervention on the well, the villagers

constructed their own chapel illustrating the manual capacity of the villagers when they are given the materials and the proper technical support.

The main goal of the project was the implementation of the water extraction system at the old San Pedro school well; in particular it consisted in deeper excavation, consolidation of the walls and installation of an electric pump. Simultaneously, the administration of the well was prepared. At the completion of the project, a five women committee was installed, representative for the community, to manage the “use or abuse” of the newly built water supply. It was also decided to put the on/off switch of the well inside the school building to avoid risks of acts of vandalism or non-controlled use of the water. Moreover, any villager who wants to benefit from the well has to register and join the committee, pay his part of the electricity bill, and give an annual contribution for the maintenance costs. For the San Pedro people, the importance of the well to the community made them participate in its funding and created the general feeling of responsibility and belonging among the villagers.

### ***B. Assessment: a Learning Process***

The San Pedro project was a very strong learning experience for everyone involved. The four lessons which are drawn from this project development experience regard distance, time, trust and overcoming any unwarranted change.

#### *1) The Distance Factor*

As mentioned before, Stefania Grimaldo became ANES overseas local and social contact, being the bridge for the social relationships between ANES and the San Pedro community. But ANES also needed concrete technical support, essential to any successful project. The search for good and willing collaborators must therefore be thoroughly done. The success and satisfaction for all involved in the project very much depended on “team” work in which all participants were complementary to the realisation of the project.

The use of new communication technologies such as Internet, facebook and mobile phones is useful, but not sufficient when coordination and collaboration between team members are not well defined. Early face-to-face contact is therefore necessary to clarify the trajectory of the project and eventually anticipate possible conflicts. One spokesperson through whom all communication to or from ANES with the villagers was done, was considered essential for the success of the project.

## *2) The Time Factor*

Rushed jobs are no good. Not only was it necessary for ANES to find trust and be trusted in San Pedro about its good intentions, it turned out to be necessary that the San Pedro villagers be directly involved in deciding when the project could start. The fact that they were unwantedly overlooked, created an atmosphere of suspicion and uneasiness. The village head was put into the difficult position of asking for clarification about how the excavation in his village should be handled. Talking clearly and immediately with all present on site was the second lesson we learnt.

## *3) The Trust Factor*

Crucial is the recognition that the external interventions are not “hit and run.” These must be measured and permanently communicated in dialogue with everyone involved to avoid misunderstanding. The social and family aspects are very important in community building and trust gaining measures do have long term impact and create social cohesion. Geographical distance is therefore less determining than incomprehension and lack of confidence between people in development cooperation. Suspicion is often hard to eliminate. It remains an ongoing struggle to gain and maintain trust in development projects and to cultivate a delicate but much rewarding liaison between donor and recipient.

## *4) The Change Factor*

ANES' initial project was a well for the school, to be used for cooking, drinking water and watering the bio-patches. In the process it was realised that economically the improvement of the well could serve the whole community, connecting a water pipe to bring the water to all homes. San Pedro is geographically divided into five quarters with fields in between; at the moment there is one quarter that has already requested the water committee to activate the procedure for bringing a water pipe into that area. Having all technical know-how needed; digs were made to bury the pipes and all connections and payments were conducted by the villagers.

## ***C. Concluding Remarks***

The efforts and inputs made by ANES were well received by the villagers. They were conceived in an ongoing locally based development process in view of creating a higher well-being for the inhabitants of San Pedro.



Every ANES project aims at the realisation of a principal target with secondary goals attached. Interestingly, ANES' planned actions also produced indirect positive consequences. Three rebound actions can be identified:

1) ANES offered an important opportunity to communicate with others about what is happening in other places in the world. Exchanging such information raises awareness and makes people look beyond their specific place. It makes them reflect about their own situation in a broader context. It is important to create a conscience in those who offer help and to translate it to those who need to be helped. In short, communication is a very important part of the work of ANES. It implies a mutual learning process and dialogic framework.

2) San Pedro is an isolated village. The area has been saved from the general passage of tourists and its consequences. The agriculture is flourishing but unfortunately all belongs to multinational companies that prefer to grow non-sustainable agricultural products. The San Pedro villagers are aware of the necessity for growing alternative and long lasting processes of economic development. A possibility lies in the promotion of ecological awareness tourism. According to professionals of this sector, a general and balanced economic improvement in the San Pedro area, using the right infrastructures, may open up new opportunities.

3) The encounter with outsiders always brings something new to see, to talk about. Although the digging of a well seemed a small intervention with a circumscribed impact, it created an actual opportunity for changing views and true dialogue with others with a long-term impact. Once trust and respect were established, the San Pedro villagers were confronted with processes of change shaped by factors outside their daily life. It resulted in a self-evaluation and critical questioning about possibilities of improving their lives. In short, the excavation of the well turned out to be the beginning of a re-evaluation that led to higher expectations and a new development project.

### **III. The Second Project**

#### ***A. Context and Content***

The positive feedback of the well-project was conducive for ANES to start preparing a "second project." It was clear that San Pedro still needed support for the minimal infrastructure that was lacking. Together with the San Pedro villagers different needs were identified. Finally the focus was set on the sanitary situation.

In the centre of the village, a piece of land was assigned to the new construction. The project idea is to build a two-floor structure that would resolve two important needs: – the ground floor will serve as a medical surgery and – the second floor will be an extension of the existing school, i.e. a multi-purpose hall where children and adults can study. The architectural project will offer all technical support needed and provide for the construction materials. Natural materials will be used and the manual work will be done by the San Pedro inhabitants.

This project is more demanding from all perspectives. At this point it is relevant to refer to the fund-raising issue. ANES as a small non-profit organisation receives practically no government support. The possibility of applying to Italian or European funding opportunities requires at least three years of experience. It means that during these three years ANES relies completely on voluntary work to raise funds. For the first project funding relied exclusively on local activities (such as parties, and country fairs) and membership contributions to promote ANES. However, the second project will need more financial and administrative support. Therefore ANES-Peru has divided its work in operational local branches, i.e. ANES-Ica, ANES-Lima and ANES-Usa. New fund-raising activities are planned.

The project is rooted in the philosophy of the association: bio-architecture. Ecological architecture is an instrument that gives the possibility to construct in harmony with the environment. It keeps the balance between building and men in favour of an eco-sustainable world. The use of materials from the surrounding area and of local manpower allows more economically viable solutions and promotes self-help construction that can be translated into an enhancement of the local economy.

A bioclimatic building is a construction made with the right materials and the right orientation. It takes into consideration all aspects of the local climate. An eco-bioclimatic building offers well-being in summer and winter, guarantees healthy spaces and is also a nice building. Each detail is projected in view of the best quality of life for the users. Indoor climate is a crucial factor in the well-being of persons. Comfort much depends on the temperature, the humidity, the radiation to and from surrounding objects, and the polluted air content of a given room. Earth has the ability to balance indoor humidity like no other building material.

In reality, this architecture is not new, it was the architecture used by our ancestors. In Peru there are several examples of earth buildings. One of the most known is Chan Chan, the biggest pre-colombian city of Latin America. Chan Chan is an archeological site, near Trujillo, in the Northwest of Peru. It was built by the Chimù culture around 850 AD and

was used as the capital of the Inca Empire in the 15<sup>th</sup> century. It is estimated that thirty thousand inhabitants have lived there for five to six centuries. This huge complex is an example of excellent bio-architecture and demonstrates that it is possible to realise beautiful, earthquake-resistant earth constructions.

Another example of beautiful and functional bio-architectural earth construction is the school made with loam and bamboo in Radrapur, Bangladesh by the architect Anna Heringer.<sup>2</sup> In this example, the strategy adopted was to share an innovative knowledge with the local population to boost a durable process of development, based only on the locally available resources. A massive ground floor was built using a straw-earth mixture. The upper floor, made of bamboo, is light and open offering views on the surroundings.

### ***B. Earth as an Eco-social Building Material***

Going back to the characteristics of earth constructions, it is known that earth has always been the most prevalent building material, available in most regions of the world and especially used in nearly all hot-arid and temperate climates. It is frequently obtained directly from the building site when excavating foundations or basements. Increasingly, when building homes, people demand energy- and cost-effective buildings that emphasise a healthy and balanced indoor climate. It is slowly realised that mud, as a natural building material, is superior to industrial building materials such as concrete, brick and lime-sandstone. Loam must be sheltered against rain and frost, especially in its wet state.

Earth, when used as a building material, has different names. Referred to in scientific terms as loam, it is a mixture of clay, silt (very fine sand), sand, and occasionally larger aggregates such as gravel or stones. When speaking of handmade unbaked bricks, the terms “mud bricks” or “adobes” are usually employed; when speaking of compressed unbaked bricks, the term “soil blocks” is used. When compacted within a standing mould, it is called “rammed earth.” Earth walls can be protected by overhanging roofs, damp roof courses, appropriate surface coatings, etc.<sup>3</sup>

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<sup>2</sup> Moro, M., Heringer, A., “Eike Roswag – Scuola in Terra e Bambù in Bangladesh,” in *Architettura naturale*, vol. 40, 2008, pp. 18-25.

<sup>3</sup> Minke, G., *Building with Earth – Design and Technology of a sustainable Architecture*, Berlin, Birkhauser, 2006, pp. 11-14.

Loam has many advantages in comparison to common industrial building materials:<sup>4</sup>

- Loam balances air humidity: Loam is able to absorb and release humidity faster and to a greater extent than any other building material, enabling it to balance the indoor climate.
- Loam stores heat: Like all heavy materials, loam stores heat. As a result, in climatic zones with high diurnal temperature differences, or where it becomes necessary to store solar heat gain by passive means, loam can balance indoor climate.
- Loam saves energy and reduces environmental pollution: The preparation, transport and handling of loam on site requires only approximately 1% of the energy needed for the production, transport and handling of baked bricks or reinforced concrete. Loam, then, produces virtually no environmental pollution.
- Loam is ideal for do-it-yourself construction: Provided the building process is supervised by an experienced individual, earth construction techniques can usually be executed by non-professionals. Since the processes involved are labour-intensive and require only inexpensive tools and machines, they are ideal for do-it-yourself building.
- Loam absorbs pollutants: It has been scientifically proven that earth walls can absorb pollutants dissolved in water. It cleans polluted indoor air.

Despite the many advantages of loam, prejudices against earth as a building material<sup>5</sup> still exist. Owing to ignorance, prejudices against loam are still widespread. Many people have difficulty conceiving that a natural building material such as earth need not be processed and that, in many cases, the excavation for foundations provides a material that can be used directly in building. The anxiety that mice or insects might live in earth walls is unfounded if these are solid. Common perceptions that loam surfaces are difficult to clean (especially in kitchens and bathrooms) can be dealt with by painting them with casein, lime-casein, linseed oil or other coatings, which makes them non-abrasive. In reality, bathrooms with earth walls are more hygienic than those with glazed tiles, since earth absorbs high humidity quickly, thereby inhibiting fungus growth.

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<sup>4</sup> *Ibidem*, pp. 14-15.

<sup>5</sup> *Ibidem*, pp. 18.

The biggest prejudice is the perception that earth construction is for poor people. The nature of this prejudice in Peru depends on the fact that actually, in the last years, only poor people without economic possibilities have constructed with “poor materials,” meaning the materials they found in nature. Due to cultural and social different perceived interpretations, industrial building materials such as concrete, brick and lime-sandstone have become a symbol of economic power.

However, the main issue is related to the fact that the proper ancient technology for building with earth has been almost lost. Moreover, no new building regulations are being taught to the poor communities. Peru is a zone with high earthquake risks. There are special building rules for earth construction that have to be respected, but ordinary people do not receive these pieces of information.

One of the missions of ANES is to re-elaborate these techniques, organise laboratories and demonstrate to the inhabitants the high quality of building with natural materials. In fact, San Pedro villagers constructed their own chapel last year, and of course they did it with industrial materials. Although a decision to construct the new building for San Pedro with industrial materials would be an easy option, ANES took up the challenge of building its second project based on its bio-ecological philosophy.

### ***C. Earthquake Construction Technology***

Considering that the project is not only a bio-climatic project but also a construction project with social interest at reduced cost, while resisting any seismic action, the form must respect any Peruvian anti-seismic regulation (Norma E.080). It is good to recall the basic concepts of building in seismic zones in Peru:

- A more compact structure is a more stable structure. A square structure is better than a rectangular one, but a circular one is the best.
- Considering that structures with more corners are ill-advised, it is better to divide the structure in two blocks. Maintaining a flexible and light union among the blocks is necessary.
- The foundations must be laid on solid earth and constructed with solid materials like stones.
- The ideal adobe unit is 38 x 38 x 8 cm and the inside and outside plaster can be at least 1 cm on each side; it means that the walls thickness will be at least 40 cm.
- Walls with buttress are more stable.

- To reinforce walls one must insert a vertical and horizontal combination of canes between the adobe courses. Specially care is needed in the corners, they are the most critical rupture points.

- Doorways and windows must be small and preferably central. Wall areas between doorways and windows must not be too reduced otherwise the structure weakens and there is risk of collapse. Moreover, the Peruvian ADOBE regulation specifies that between doorways, a window or a corner a wall area of at least 1.20 m wide must exist.

- Lintels must penetrate sufficiently into the wall otherwise there is a risk of collapse. It would be better to reinforce the lintel creating a connection with the horizontal beam.

- It is necessary to construct a curb in beam style horizontally, both above the wall and below the wall to connect all parts of the wall.

- The shingle/roof must be firmly connected to the walls (with the beam) and must be as light as possible.

- The ground floor is a heavy structure made in mud brick or rammed earth. The first floor must be constructed with a light structure and with light materials like wood or bamboo.

#### ***D. A Perfect Balance of High Tech and Low Tech***

This second San Pedro project also needs to consider the basic facilities, like water for hygiene use and electricity. The building should therefore be climatically comfortable and energetically sustainable. The support will particularly focus on natural ventilation and thermal insulation.

Natural ventilation can be created by raising or tilting part of the roof, thus realising an efficient air circulation system. Openings can be higher on one side which can then be closed with sliding Plexiglas panels. Thermal and acoustic insulation are given by the appropriate thickness of the walls. If necessary, thermal insulation can be improved by placing a wooden floor. The building will be connected to the well in order to provide water to a water tank. Solar panels will produce 100% of the building's energy needs. The toilet will have its own one chamber septic tank.

The building will be a perfect balance of high tech and low tech – very basic building methods combined with modern, alternative energy power systems. Because the building is passively heated and cooled, and optimises natural light and ventilation, a relatively small solar panel and battery system will provide all of the power the building requires.

The village of San Pedro very well qualifies for applying earth construction. The inhabitants have the manual experience and most of

the material is locally abundant. The project will be developed into a two-phase construction project; first, the medical surgery on the ground floor and then, funds permitting, a multi-purpose hall at the second floor.

In conclusion, the efforts and challenges of ANES are manifold. A combination of traditional and modern building knowledge should be sought, creating structures that are environmentally satisfactory to all, while providing the community with the structures they need. This structure must complement the needs of the villagers and the surroundings in which it will be built, while being conform to Peruvian building regulations.





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